

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.8864 of 2012
and
M.P.Nos.1 to 5 of 2012

M.G.Narasimha Rao

... Petitioner

Vs

1. The Chairman,
Board of Governors,
The Indian Institute of Technology, Madras,
No.3 Jaswant Baug (Runwal Park),
Behind Akbarallys, Chembur Naka,
Chembur,
Mumbai- 400 071.
2. The Director,
Indian Institute of Technology, Madras,
Chennai - 600 036.
3. The Registrar-cum-Secretary,
Board of Governors,
Indian Institute of Technology, Madras,
Chennai - 600 036.
4. The Director,
Indian Institute of Technology, Indore,
DAVV Campus, Khandwa Road,
Indore - 452 017.
5. The Director,
National Geo-Physical Research Institute,
No.724, Uppal Road,
Hyderabad - 500 007.
6. The Director General,
Council of Scientific and Industrial Research,
Anusandhan Bhawan, No.2, Rafi Marg,
New Delhi - 110 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, for issuance of Writ of Certiorarified

Mandamus, calling for the records in the termination order dated 29.03.2012 in Letter No. F.R/150/03/2012/45, on the file of the 3rd respondent, and quash the same as arbitrary, illegal, malafide and against the principles of natural justice and further direct the 3rd respondent to permit the Petitioner to continue his services in the IIT, Madras as per his appointment order.

For Petitioner : Dr.A.Thiayagarajan, Senior counsel
for Mr.S.Ramesh Kumar

For Respondents : Mr.V.Vijay Narayanan, Senior Counsel
for M/s.Karthik Mukundan(for R1 to R3)
Mr.B.N.Suchindran (for R4)
Mr.T.Ravikumar (for R5 and R6)

O R D E R

The petitioner has filed the instant Writ Petition for the issue of writ of Certiorarified Mandamus, calling for the records in the termination order dated 29.03.2012 in Letter No. F.R./150/03/2012/45, on the file of the 3rd respondent and quash the same as arbitrary, illegal, malafide and against the principles of natural justice and further direct the 3rd respondent to permit the Petitioner to continue his services in the IIT, Madras as per his appointment order.

2.The case of the petitioner is that he was selected and appointed as Assistant Grade-I by direct recruitment by the Council of Scientific and Industrial Research (CSIR), New Delhi by an order dated 06.01.1999 and posted at Hyderabad, the 5th respondent office and served for 10½ years. It is the further case of the petitioner again that on 07.07.2010, the petitioner was selected for the post of Assistant Registrar routed through proper channel and joined as Assistant Registrar in the I.I.T. in Indore, the 4th respondent Institute after getting relieving order from the previous employer namely, Council of Scientific and Industrial Research (CSIR). The petitioner further pleads that while he was working as Assistant Registrar in the I.I.T. in Indore, The I.I.T. Madras, the 3rd respondent herein issued notification/ advertisement IITM/R/3/2010 dated 26.10.2010 calling for application in its advertisement dated 26.10.2010 for the post of Assistant Registrar-I. The qualifications as per the advertisement for the post of Assistant Registrar is as under:

"Assistant Registrar: 2(UR); 1(OBC);2(SC);1(ST)
Pay band Rs.15600-39100+ GP 5400 plus allowances
Essential qualifications :

Master's Degree with atleast 55% marks or its equivalent grade of B in the UGC 7 point scale with a good academic record and a total of Eight years of relevant administrative experience in Supervisory capacity in a Government office/University/Technological Institutions or an organization of repute which may include activities related to Administrative, Accounting, Purchase, Academics, R & D, Examinations, Student affairs etc.

Desirable :

Candidates should have leadership qualities and requisite experience in one or more of the following areas:

Accounting, Auditing and financial procedures

Administrative matters including legal, recruitment, establishment

Academic matters such as conduct of examinations, maintenance of student records, award of scholarships, degree etc.

Purchase Procedures, procurement/distribution of materials, import procedure/stores accounting, stock verification etc.

Knowledge/ Experience of using Computer systems with relevant software in related area for information processing and Retrieval."

3.It is the further case of the petitioner is that he was selected by the 3rd respondent routed through proper channel, offered and appointed him as Assistant Registrar-I on probation for a period of one year by an offer of appointment order dated 05.05.2011. The petitioner has joined in duty as Assistant Registrar-I in the I.I.T. Madras, 3rd respondent herein on 08.06.2011. A quarter was allotted to the petitioner. While so, on 18.10.2011 the 3rd respondent relieved the petitioner from the post of Assistant Registrar by the relieving order dated 19.10.2011 and directed the petitioner to report to CSIR, the 6th respondent herein and also issued an order to vacate the quarter allotted to the petitioner. The petitioner challenged the relieving order dated 18.10.2011 by filing a writ petition in W.P.No.24726 of 2011. In the said writ petition the 3rd respondent filed a counter making certain allegations made against the petitioner for issuing the relieving order. Since the petitioner was on probation for a period of 1 year, the petitioner objected the relieving order as one of the punishment, in view of the allegations in the counter affidavit. The 3rd respondent withdrew the Relieving Order and also sought permission to withdraw the counter affidavit filed in the writ petition. On 16.11.2011 the writ petition was closed as the 3rd respondent withdrew both the Relieving Order dated 18.10.2011

and also the counter affidavit making such allegations against the petitioner.

4. Thereafter the 3rd respondent issued a show cause notice dated 28.11.2011 to the petitioner on the following terms:

"you have submitted office memorandum dated 19.01.1999 of the National Geophysical Research Institute, CSIR as proof of your previous experience. However, on perusal of the same, it is seen that you were recruited as Assistant (G) Grade I on 06.01.1999 only in the pay scale of Rs.5,500-9,000/- which translates into replacement pay scale introduced pursuant to the 6th pay commissions recommendations as PB-2 Rs.9,300-34,800/- with grade pay of Rs.4,200/- only you were brought over to pay Band -2 with grade pay of Rs.4,600/- only effect from 06.02.2009 upon the implementation of the Modified Assured Career progression Scheme."

5. The petitioner has stated that he has filed his objections dated 07.11.2011 and requested for copies and also sought for a personal hearing. The 3rd respondent has given some of the documents and reminded the petitioner to file his objections. On 23.12.2011 the petitioner has filed a detailed explanation to the show cause notice. The petitioner further stated that on 29.03.2012, the 3rd respondent issued termination order terminating the petitioner from service as per the boards resolution held in the 212th meeting by invoking Clause-3 of the terms and conditions of the appointment order. The Petitioner has challenged the same by filing the instant writ petition.

6. The contesting 3rd respondent filed a counter for itself and also for the respondents 1 to 3. In the counter it is stated that the 3rd respondent short listed the candidates as more application has been received. In that process the 3rd respondent adopted a procedure by fixing the eligibility criteria for those who have in the roll of pay with the Grade Pay of Rs 4,600/- (Rupees Four Thousand Six Hundred only) for 8 years was considered. The 3rd respondent stated that it has reserved a condition in Clause-10 of the instructions/information to candidates applying for the post in the institute clearly stipulated the right of the institute to short list the number of candidates for interview to a reasonable number on the basis of qualifications and experience higher than the minimum prescribed in the advertisement. The 3rd respondent extracted the short listing norms as listed:

"Short listing norms:

Eight years experience in the post of Superintendent or equivalent with GP of Rs.4600/-

Experience gained after the qualifying degree only will be considered.

Minimum requirements of qualifications and/ or experience can be relaxed in respect of exceptionally outstanding candidates.

PG degrees obtained through open universities are not considered.

In the case of internal candidates, the following relaxations in the norms are recommended.

A pass in PG degree

Relaxation in age limit of 55 years."

7.The respondent further contended that the terms and conditions contained in the order of appointment vide Clause-3 put the petitioner on probation for a period of 1 year though the post is a permanent one. During the period of probation the appointing authority has the power to extend the period of probation or to terminate the services without notice and without any cause assigned. Clause-12 refers to any declaration given or information furnished by the petitioner if found to be incorrect or not in order or willfully suppressed the respondent reserves right to withdraw the appointment order. Clause-3 and 12 are extracted as under:

"Clause 3:

The post is permanent but you will be on probation for a period of one year from the date of appointment after which period, you will, if confirmed hold office subject to the amendments to the provisions of the Institute Act and Statutes till the end of the month in which you attain the age of superannuation. During the period of probation, the appointing authority has the power to extend the period of probation or to terminate your services without notice and without any cause assigned.

Clause 12.

Of any declaration given or information furnished by you is found to be incorrect or not in order or if you are found to have willfully suppressed any information considered material by the Institute, the Institute reserves the right to withdraw the offer of appointment/ cancel the appointment at any time without prejudice to take such other action as the Institute may deem necessary."

8.The 3rd respondent further stated in the counter affidavit that out of 155 applications received, as per the short listing criteria/norms of the screening committee 12 candidates who satisfied the norms were called for interview including the petitioner. The 3rd respondent further stated that short listing

criteria/norms was applied uniformly to all candidates. The respondent further states that the petitioner was called upon to produce relevant documents to prove his experience stated in the application form, which the petitioner failed to produce. Later the petitioner furnished an O.M. dated 07.09.2010 issued by the 6th respondent granted financial accreditation in the modified assured career progression scheme as proof of his experience in requisite pay scale. On perusal of the same the 3rd respondent stated that the petitioner has come within the pay band-2 with Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) only from 06.01.2009 which is contrary to the experience mentioned in the application. The 3rd respondent further stated that the petitioner was not having equivalent with Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) for eight years. The 3rd respondent had stated that an internal communication was sent to the 5th respondent to ascertain whether the petitioner was working in a supervisory post and in the pay band of Rs.9,300-34,800/- with grade pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only). The 5th respondent sent a communication to the 3rd respondent stating that the petitioner does not have any experience in the supervisory post, he was recruited as Assistant (G) Grade-I, on 06.01.1999 in the pay scale of Rs.5,500-9,000/- which was further upgraded with effect from 15.09.1996 to Rs.6,500-10,500/-. After the 6th Central Pay Commission the pay band-2 was 9,300-34,800/- with Grade Pay of Rs.4,200/- (Rupees Four Thousand Two Hundred only) and the petitioner was brought over to the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) with effect from 06.01.2009.

9. The 3rd respondent further stated that on 28.11.2011 a show cause notice was issued and the petitioner has given a reply on 07.12.2011. The 3rd respondent also stated that copies of some of the documents sought for in the reply dated 16.12.2011 was furnished to the petitioner. On 23.12.2011, the 3rd respondent forwarded the explanation given by the petitioner dated 22.12.2011 to the 2nd respondent. It is further stated by the 3rd respondent that the petitioner was only on probation, the continuation in service has to be decided by the competent authority namely the 1st respondent. The 1st respondent held a meeting on 23.02.2012 and decided the issue after going through the materials on record including the clarification furnished by the petitioner and came to a conclusion that the petitioner can be terminated as per Clause Nos.3 and 12 of the terms and conditions of appointment mentioned in the appointment order dated 05.05.2011 read with statute 13(5) of the Indian Institute of Technology, Kharakpur/Bombay/Madras/Kanpur/Delhi. The 3rd

respondent has also denies the allegations and the grounds raised in the writ petitions are untenable.

10.The petitioner filed an additional affidavit after receipt of the counter and stated that the petitioner was appointed as an Assistant Grade I which is a Group-B post as per the extract of the classification of the Central Government Post. The writ petitioner referring to the classification issued by the Central Government, that the petitioner was performing as a Supervisory Cadre. The petitioner has further stated in the additional affidavit, that the petitioner has required experience and qualification as per the notification dated 26.10.2010 issued by the 3rd respondent. Referring the short listing norms Grade Pay System which was introduced only during the 6th Central Pay Commission which was given effect from 01.01.2006. If the Grade Pay was taken as a short listing criteria/norms none of the persons appointed would have received the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred Only) for a period of 8 years. The petitioner further states that the Grade Pay adopted by the 3rd respondent for short listing, which was disclosed first time after the termination of the petitioner.

11.The petitioner further states that the short listing criteria/norms refers to "Eight years experience in the post of Superintendent or equivalent with GP of Rs.4,600/-." The petitioner contended in the short listing norm they have used the word "or". The petitioner further pleaded that there was no mis-declaration about his experience in the application form submitted to the 3rd respondent. The petitioner further contended that since he was appointed as Assistant Grade-I and worked for more than 10½ years in the 5th respondent and worked as an Assistant Registrar in the 4th respondent which is one of the unit of the 1st respondent. The petitioner cannot be treated as a probationer as he was appointed in a permanent absorption basis. The petitioner has filled up the form as on the date of filing application his salary was as stated in the column. The petitioner pleaded that his service to be protected.

12.Having heard the learned senior counsel for either side and going through the affidavit filed in support of the writ petition, counter affidavit filed by the 3rd respondent for respondents 1 to 3, additional affidavit filed by the petitioner various typed sets of papers, this Court finds that the issue involved in this instant writ petition is, whether the petitioner can be terminated without assigning any valid reason simply invoking as per Clause 3 and 12 of the terms and conditions contained in the offer of appointment dated 05.05.2011. Whether the petitioner mis-declared his grade pay or

he has fulfilled the short listing norms.

i) 8 years experience as superintendent

13. This Court finds that as per the advertisement notification dated 26.10.2010 filed in the typed set of papers at page 9 there is no condition of pay band or Grade Pay was stipulated. This aspect has been admitted by the learned Senior Counsel Mr. Vijay Narayanan, appearing for the 3rd respondent. However, the learned Senior Counsel strenuously contended that short listing was recognized and in fact the same was reserved by the respondent in Clause-10 of the instruction/information to the candidate. As there are as many as 155 applications were received and 12 candidates have been short listed as per the norms fixed by the screening committee. The 3rd respondent fixed the norm for short listing 8 years experience in the post of Superintendent or equivalent with Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only). This Court finds the 1st short listing norm uses the word "or". In this case the petitioner has to satisfy either 8 years experience in the post of Superintendent or equivalent with Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only). The other norms are not in dispute, only this Court has to decide whether the petitioner has 8 years experience in the post of Superintendent or the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only). The Court gone through classification of Central Government relied upon by the petitioner which is extracted hereunder:

"S.O.946(E).- In exercise of the powers conferred by the proviso to article 309 and clause 5 of article 148 of the Constitution read with rule 6 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and in supersession of the notification of the Government of India in the Department of Personnel and Training number S.O.332 (E) dated the 20th day of April, 2998, and after consultation with the Comptroller and Auditor General Of India in relation to persons serving in the Indian Audit and Accounts Department, except as respects things done or omitted to be done before such supersession, the President hereby directs that with effect from the date of publication of this order in the Official Gazette, all civil posts under the Union, shall be classified as follows:-

Sl. No.	Description of Posts	Classification of posts
(1)	(2)	(3)
1. (a)		Group A
(b)		
2. A Central Civil post carrying the following grade pays:- Rs.5400, Rs.4,800, Rs.4,600 and Rs.4,200 in the scale of Group B pay of Rs.9,300-34,800 in Pay Band-2		

3.
4.

This Court also gone through the office memorandum relied by the petitioner issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 17.04.2009. The said Office memorandum reads as follows:

"Subject :Classification of posts under the CCS (CCA) Rules, 1965

Under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, all Central Government posts are classified into four categorized, Viz., Groups "A", "B", "C" and "D". This classification at present is based on the norms prescribed by the Department of Personnel and Training vide S.O.332(E) dated 20.04.1998 published in the Gazette of India Extraordinary.

2. As per clause (4) of the Central Civil Services (Revised Pay) Rules, 2008 notified vide notification No. G.S.R. 622(E) dated 29.08.2008, the pay band and grade pay or the pay scales, as applicable, of every post/grade specified in column 2 of the First Schedule thereto shall be as specified against it in columns 5 and 6 thereof. Consequent upon the notification of the said rules, it has become necessary to prescribe revised norms for categorization of posts into the abovementioned four categories based on the pay band and grade pay or the pay scales as applicable, as approved by the Government. Accordingly, an Order classifying the various Central Civil Services posts in Group "A", "B", "C" and "D" based on the revised norms of pay has been notified in the Gazette of India Extraordinary vide S.O. 946 (e) dated 09.04.2009. A copy of the Order....."

14.The Court finds that the communication issued by the Council of Scientific and Industrial Research (CSIR) sent a communication to the petitioner dated 10.09.2013 in which the Assistant Grade-I of CSIR is classified as Group-B (Non gazette). A Central Civil Post carrying the following Grade Pays Rs.5,400/- (Rupees Five Thousand Four Hundred only), Rs.4,800/- (Rupees Four Thousand Eight Hundred only), Rs.4,600 (Rupees Four Thousand Six Hundred only) and Rs 4,200/- (Rupees Four Thousand Two Hundred only) in the scale of pay Rs.9,300-34,800/- pay band will be classified as Group-B post. This Court after going through above found that the petitioner has established that he was holding the post, which was classified as a Group-B and the same is in the nature of supervisory capacity as per the notification dated 26.10.2010. The contention of the 3rd respondent that the petitioner has sought for confirmation from the 5th respondent herein on the experience

of the petitioner in the supervisory post and the 5th respondent stated that the petitioner did not have experience in a supervisory post is not acceptable as the same was obtained from the 5th respondent which the petitioner was not aware and not put on notice to the petitioner. The contention of the 3rd respondent was rejected as the same is against the principles of natural justice. The petitioner has established his position based on the Central Civil Services (Classification, Control And Appeal Rules 1965) and orders issued by the Ministry of Personal, Public Grievance and Pensions. Considering the above statutory provisions this Court comes to the definite conclusion that that petitioner has satisfied the short listing norms of eight years experience in post of supervisory capacity. The application was filled up by the petitioner based on the pay drawn by him on the date of presented the application the pay band of Rs 4,600/- (Rupees Four Thousand Six Hundred only) Grade was based on the 6th Pay Commission with effect from 01.01.2006. In the view of the above facts there cannot be any possibility for any of the person coming within the grade pay of Rs. 4,600/- (Rupees Four Thousand Six Hundred only) for 8 years. The said pay band as per the 6th Pay Commission came into force only on 01.01.2006 and the notification calling for application was made by 3rd respondent was on 26.10.2010. The petitioner has joined as Assistant Registrar Grade-I in the 5th respondent and worked for 10½ years thereafter as Assistant Registrar under the 4th respondent which is also one of the unit of the I.I.T. The petitioner's services has to considered for the decision.

15. This Court found the petitioner acted bonafidely and filled up the application form, there is was no mis-declaration. The 3rd respondent having withdrawn the reliving order dated 18.10.2011 and also the counter filed in the earlier W.P.No.24726 of 2011, elected to issue show cause notice. Without proceeding further passed the impugned order which is also a non speaking order.
ii) Grade pay of Rs.4,600/-

16. The learned Senior Counsel for the 3rd respondent submitted that the appointment was made on scrutinizing the application and the Grade Pay referred in the application was taken into consideration and the petitioner was appointed. The communication received from the 5th respondent confirmed that the petitioner was not working in the cadre of Superintendent and the Grade Pay was shown in the application as Rs.4,600/- (Rupees Four Thousand Six Hundred only). Whereas the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) was not for 8 years. Therefore, the 3rd respondent contended that the petitioner has suppressed the grade pay which lead to an

inference for appointing the petitioner. The learned Senior Counsel further submitted that as the petitioner was on probation and there is no necessity for proceeding with the show case notice, by invoking Clause-3 of the terms and conditions of the appointment order terminating order was passed. Therefore, the termination was in accordance with the terms and conditions contained in the appointment order is not acceptable for the simple reason, the petitioner worked in the supervisory cadre for more than 8 years as discussed above.

17. Once the petitioner satisfies the notification calling for application for the post of Assistant Registrar and appointment orders have been issued the appointment deemed to be in order and there is a right vested with the petitioner. The petitioner's contention that the Grade Pay came into force after the 6th Central Pay Commission. Scale of pay Grade Pay was with effect from 01.01.2006 for the employee belonging to Group A, B, C and D categories. I.I.T., Madras and adopted the revised Pay Scale (Pay Band) corresponding to pre-revised scale of pay is on record and supported by order passed by Central Administrative Tribunal. The petitioner's further contention that all the persons selected including the petitioner could have the pay band for pay scale (Grade Pay) at Rs. 4,600/- (Rupees Four Thousand Six Hundred only) from 01.01.2006 is sustainable. There cannot be a possibility of any other selected candidate could fulfill the short listing norm equivalent with Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) for 8 years. The petitioner's further contention based on the order passed by the Central Administrative Tribunal in O.A.No.37 of 2005 dated 26.05.2005 was implemented by the Government is also an accepted fact.

18. This Court has gone through the office of memorandum dated 14.04.2009, S.O.946(E) issued by the Ministry of Personal, Public Grievances and Pensions (Department of Personnel and Training), the under Secretary to Government of India dated 25.02.2010 issued to the Director of I.I.T. of all the Units. In the counter affidavit, the 3rd respondent pleaded that Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) as far as the petitioner is concerned as suggested in paragraph-12 of the counter affidavit, that the petitioner has experience in Pay Band-2 with Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) from 06.01.1999 to 06.01.2010. The same is mentioned in paragraph-41 of the counter affidavit and contended by the 3rd respondent that the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) is applicable to the petitioner only from 06.01.2009 is not acceptable for the simple reason all the statutory records submitted by the petitioner found in the typed set of papers which has been extracted above would prove that the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six

Hundred only) was given effect only from 01.01.2006. For the petitioner alone it cannot be given effect from 06.01.1999 as contended by the 3rd respondent. The 3rd respondent has not placed any material to support of its contention that the other persons selected along with the petitioner have the pay band of Rs.4,600/- (Rupees Four Thousand Six Hundred only) for 8 years as per the Short Listing norms. In this junction it is to be noted that the 3rd respondent in the counter affidavit did not refer the date of implementation of the 6th Central Pay Commission regarding the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred Only) which was implemented from 01.01.2006. However, the 3rd respondent has repeatedly stated that the petitioner has come over to Pay Band-2 with the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) with effect from 06.01.2009. There is no material placed for such assertion. However, (i) the order of Central Administrative Tribunal which is extracted as under:

"Considering the submissions made by the learned counsel for the parties as well as the coordinate Bench of the Tribunal, the O.A. deserves to be allowed. The impugned order dated 13.04.2012 rejecting the representation of the applicant is quashed. the respondents are directed to extend the benefit of Grade Pay of Rs.4,600/- on Pay Band-2 Scale Rs.9,300-34,800/- has been granted to their counter parts in CSS/CSSS w.e.f 1.1.2006. It is made clear that the applicant will not be entitled for any interest on the same."

(ii) O.M.No.1/1/2008 ISC dated 13.11.2009 issued by the Government of India, Ministry of Human Resources and Development, Department of Higher Education of Technical Session-I also established that the revised scale of Grade pay implemented from 01.01.2006. Therefore, the contention of the 3rd respondent that the petitioner came on to the grade pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) with effect from 06.01.2009 is not accepted by this Court and the same is rejected. Considering the contemporaneous statutory order, notification, office memorandum this Court comes to a conclusion that the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) came to be implemented from 01.01.2006. In the light of the above the contention of the petitioner, that no one could be eligible to come within the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) for 8 years is sound reasoning. The 3rd respondent has failed to prove that all the other persons selected along with the petitioner have requisite Grade Pay for 8 years. On the basis of the records this Court finds that the norm fixed for short listing the candidates by fixing Grade Pay Rs.4,600/- (Rupees Four Thousand Six Hundred only) for 8 years lack bonafide and impractical norms has been

fixed. The contention of the 3rd respondent is therefore rejected on this score. As the petitioner has established that he was working under the capacity of supervisory cadre for more than 8 years. The petitioner has complied with the norms.

iii) show cause notice :

19. The petitioner's contention in ground no.3, that the respondent having issued the show cause notice dated 28.11.2011 for which the petitioner has filed his objections and the respondents ought to have decided the same in accordance with law has been considered by this Court with the contention raised in paragraph-39 of the counter affidavit. It is stated that the termination was done according to the procedure established by law. The impugned order was passed based on the pleading made by the 3rd respondent in paragraph-37 of the counter affidavit. The 3rd respondent in his counter affidavit that the board has decided the issue in its 212th meeting held on 23.03.2012 after going through the materials placed on record including the classification filed by the petitioner, comes to the conclusion that the probation of the petitioner can be terminated as per the Clause-3 and 12 of the terms and conditions of the offer of the appointment mentioned in the appointment order dated 05.05.2011 and the statute 13(5) of Indian Institute of Technology. This Court finds that the impugned order was passed after going through the records pleaded in the counter. Though the reasons or basis for passing the impugned order is not disclosed the 1st respondent kept all the facts narrated in the counter and passed the impugned order as if invoking Clause-3 and 12 of the appointment order and statute 13(5) of Indian Institute of Technology which is not permissible under law. Once the show cause notice was issued, on the face of it this Court finds that the 1st respondent committed an error of law in invoking the conditions stipulated in the office of appointment order.

20. In the counter affidavit filed by the 3rd respondent, it is stated that the petitioner furnishes an O.M. dated 07.09.2010 issued by the 6th respondent granting financial accreditation in modified assured credit aggression has proved the experience in the requisite pay scale, however contrary to the same in the same counter affidavit in paragraph-48 the 3rd respondent stated as if the petitioner has not given any documents. This Court finds that the 3rd respondent has made inconsistent pleas contrary to records. Whether a probationer can be terminated without issuing show cause notice and giving an opportunity of being heard is concerned, the 3rd respondent in clear terms states that they need not follow the principles of natural justice, by referring the judgment of Hon'ble Supreme Court of

India reported in (2007) 1 SCC 283 in the matter of Kendriya Vidyalaya Sangathan v. Arun Kumar Madhavrao Sinddhave and another. Mr. Vijay Narayanan, learned Senior Counsel for the 3rd respondent referred to paragraph-15, 17 and 18 of the judgment and submitted that the termination order was passed, since the petitioner mis-declared his Grade Pay in the application form, no notice or enquiry is required as per the judgment of the Hon'ble Supreme Court of India in para-15, 17 and 18 is as follows:

"15. In Pavenendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences after referring to a large number of earlier decisions, the law on the point has been very clearly elucidated in the following manner: (SCC pp. 528 & 529-30, paras 21 & 29)

"One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. ... In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

17. As shown above, the nature of enquiry conducted against the respondent was merely a preliminary or fact finding enquiry and no formal full scale departmental enquiry had been conducted against the respondent. In fact, the enquiry officer had himself recommended that disciplinary action be taken against the respondent. However, the authorities chose not to hold a disciplinary enquiry against the respondent and did not serve him with any article of charges or take any further steps in that regard. Instead they chose to exercise power under the terms and conditions of

the appointment order. The termination order is wholly innocuous and does not cast any stigma upon the respondent nor it visits him with any evil consequences. The High Court seems to have proceeded on a wholly wrong basis and has treated the enquiry which was only a preliminary or fact finding enquiry into a regular disciplinary enquiry, which was not the case here. In these circumstances the judgment of the High Court is wholly erroneous in law and has to be set aside.

18. Learned counsel for the respondent has relied upon *Samsher Singh v. State of Punjab & Anr.* (1974) 2 SCC 831, *Bishan Lal Gupta v. State of Haryana & Ors.* (1978) 1 SCC 202, *Anoop Jaiswal v. Government of India & Anr.* (1984) 2 SCC 369 and *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.* (1999) 3 SCC 60 in support of his submission that the impugned order of termination of services had been passed by way of punishment and as the same had been done without affording an opportunity of defending himself, the termination order was illegal. In *Bishan Lal Gupta* (supra) it was held where the intention behind an inquiry against a probationer was not to hold a full departmental trial to punish but a summary inquiry to determine only suitability to continue in service of the probationer and the probationer was given ample opportunity to answer in writing whatever was alleged against him in show cause notice, the innocuous order of termination following such summary inquiry could not be said to be an order of punishment which entitled him to a full-fledged inquiry contemplated by Article 311 of the Constitution. In *Anoop Jaiswal* (supra) and *Dipti Prakash Banerjee* (supra) it was found as a fact that the misconduct alleged was the foundation of the impugned order of termination of services. It was after analysis of all earlier decisions that the principle of law has been laid down in *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*, referred to above. Therefore, the authorities cited by learned counsel for the respondent do not advance his case in any manner."

21. The judgment referred by the learned senior counsel is distinguishable on facts. That is the case where an appointment was made for a temporary post of Physical Education teacher in Kendriya Vidyalaya Sangathan on 25.06.1974. The service was terminated on 21.03.1975 in accordance with conditions of appointment mentioned in the appointment order. A suit was filed for declaration of appointment order of service dated 21.03.1975

was illegal, inoperative of binding. The contention was an enquiry has been held behind the back of the petitioner some witnesses were examined and after completion of which without giving an opportunity to object, the report and the allegations made against him was the basis termination of service of the petitioner. The suit was dismissed by the trial Court and appeal was also dismissed by the 1st Appellate Court. The Second Appeal was allowed against which the school management appealed to the Supreme Court. The Hon'ble Supreme Court of India held that Article 311 is not applicable to employees of Kendra Vidyalaya. However in the instant case Article 311 is applicable, therefore the judgment relied upon by the respondent is not helpful to the 3rd respondent.

22. The other Judgments produced by the respondents as follows:

(I) In Kamal Nayan Mishra v. State of Madhya Pradesh and Others reported in (2010) 2 Supreme Court Cases 169, it is stated as follows:

"11. Yadav submitted an attestation form dated 26.6.1998, wherein he answered two of the queries thus:

"12. Have you ever been prosecuted/kept under detention or bound down/fined, convicted by a court of law for any offence? - 'No';

13. Is any case pending against you in any court of law at the time of filling up this attestation form? - 'No'."

On the said attestation form being referred for verification, it was found that the information furnished by him was false and that a criminal case under Sections 323, 341, 294 and 506-B read with Section 34 IPC was pending against him. He was therefore terminated from service, by the Sangathan, by memorandum dated 7-4-1999/8.4.1999, as being unfit for employment. The Tribunal upheld the termination. The High Court set aside his termination on the ground that the criminal case against him was subsequently withdrawn by the Government and the offences alleged did not involve any moral turpitude so as to disqualify him for employment. The said decision was reversed by this Court.

12. This Court in Ram Ratan Yadav held that the purpose of requiring an employee to furnish information under Clauses 12 and 13 of the attestation form was to assess his character and antecedents for continuation in service; that suppression of material information and making a false statement in reply to Queries (12) and (13) had a clear bearing on the

character, conduct and antecedents of a person employed as a teacher in a school; and therefore the employer was justified in terminating his service during the period of probation. This court did not accept Yadav's claim that he did not understand the contents of the questions which were in English, as it found that the Tribunal had recorded a finding of fact, after examination of the record, that Yadav was highly qualified and was aware of the significance and meaning of the said queries, and had deliberately entered false responses.

13. This Court in Ram Ratan Yadav also pointed out that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who suppresses a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer.

14. Therefore, the ratio decidendi of Ram Ratan Yadav is, where an employee (probationer) is required to give his personal data in an attestation form in connection with his appointment (either at the time of or thereafter), if it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. The decision dealt with a probationer and not a holder of a civil post, and nowhere laid down a proposition that a confirmed employee holding a civil post under the State, could be terminated from service for furnishing false information in an attestation form, without giving an opportunity to meet the charges against him.

17. Ram Ratan Yadav held that the services of a probationer who gave wrong information in regard to material particulars having a bearing on his fitness or suitability for appointment, can be terminated without giving any opportunity to show cause against the proposed termination. But once a probationer is confirmed in the post, his position and status becomes different as he gets the protection of Article 311. If it is found that the government servant who is holder of a civil post, has given any false information during the course of employment, that will have to be treated as a misconduct, and punishment can be imposed only after subjecting him to an appropriate

disciplinary proceedings as per the relevant service Rules.

18. There are also several other features in this case which distinguish it from Ram Ratan Yadav. First is that Ram Ratan Yadav related to an employee of Kendriya Vidyalaya Sangathan, who did not have the protection of Article 311 of the Constitution of India, whereas in this case we are concerned with a government servant protected by Article 311. Second is that the attestation form in this case, was required to be furnished by the employee, not when he was appointed, but after fourteen years of service. The third is that while action was promptly taken against the probationer, in the case of Ram Ratan Yadav, within the period of probation, in this case even after knowing that appellant had furnished wrong information, the respondents did not take any action for seven long years, which indicated that the department proceeded for a long time on the assumption that the wrong information did not call for any disciplinary or punitive action. The belated decision to terminate him, seven years later was unjustified and violative of Article 311."

(II). In K.K.Gohil v. State of Gujarat and Others reported in (2015) 9 Supreme Court Cases 652, it is stated as follows:

"11. As per the Government Resolution dated 16-08-1994, upon completion of 9 years' service the government servant concerned is entitled for the benefit of higher grade scale if he has not been promoted or that the requisite departmental examination for the entitlement of higher post or for maintenance of the very post, are not cleared. The purpose of the policy was to see that no stagnancy was created in service on account of the fact that no higher posts are available. But at the same time when such benefits were conferred, two conditions were provided. One was that, as and when the promotion is offered to him, he will have to accept the same and the second was that he will have to pass the requisite departmental examination. Failure to comply with either of the two conditions would result in withdrawal of the benefits and also the refund of the amount of higher pay scale which was already granted, if any, prior thereto. It was not by way of compromising the merit that the benefit was to be given, just because the requisite length of service was completed but also dependent upon the merit and acceptance of the promotion."

23. It is worth while to refer the following judgment to hold whether the principles of natural justice is to be followed and a probationer can be dismissed without assigning any reason when the cause for termination was based on certain records used against the petitioner.

I. In AIR 1958 SC 36 in the matter of Purshotam Lal Dhingra v. Union of India, the Constitutional Bench of the Hon'ble Supreme Court of India has held as follows:

"Article 311 gives a 2 fold protection to persons who come within the article namely 1) against dismissal or removal by an authority subordinate to that by which they are appointed 2) against dismissal or removal or reduction in rank without giving them reasonable opportunity of showing cause against the action proposed to be taken in regard to them."

II. In 1991 2 SCC 335 in the matter of Babu Lal v. State of Haryana and others, the Hon'ble Supreme Court of India has held in paragraph-8 as follows:

".... it is well settled by several decisions of this Court that though the order is innocuous on the face of it still then the Court if necessary, for the ends of fair play and justice can lift the veil and find out the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched with the order of termination in accordance with the terms and conditions of the order of appointment, the order will be set aside. Reference may be made in this connection to the decision of this Court....".

III. In 2008 2 SCC 479 in the matter of Nehru Yuva Kendra Sangathan v. Mehbub Alam Lakar, the Hon'ble Supreme Court held in Para-15 as follows:

"The office order dated 24.05.1995 was not a speaking one. The respondent was given a notice. He accepted that he had put the money withdrawn from the banks in his own accounts. He justified his action in his letter dated 14.06.1995. It, however does not transpire that any further enquiry was made. The respondent was found to be guilty of misappropriation of the appellant's funds. Evidently, the said explanation was not considered. Had an enquiry been held, the said explanation of the respondent might have been found to be acceptable by the appellant."

IV. In 2015 (10) scale Rathnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Science, Patna, Bihar and others, it is held in para-28 as follows:-

"In the case at hand, it is clear as crystal that on the basis of a complaint made by a member of the Legislative Assembly, an enquiry was directed to be held. It has been innocuously stated that the complaint was relating to illegal selection on the ground that the appellant did not possess the requisite qualification and was appointed to the post of Chest Therapist. The report that was submitted by the Cabinet (Vigilance) Department eloquently states about the conduct and character of the appellant. The stand taken in the counter affidavit indicates about the behavior of the appellant. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry, the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment; the matter possibly would have been totally different. That is not that case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehavior and disobedience. The Vigilance Department, in fact had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his behavior, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the

counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench".

24. In the light of the above Judgments the impugned order is not passed in accordance with the procedure established by law. This Court has come to the conclusion that respondent kept something in mind and passed the impugned order on a misconception that the petitioner can be terminated by invoking conditions stipulated in the order of appointment. This Court after going through the various rules, standing order and office memorandum issued by the competent statutory authorities held that the petitioner had requisite qualification working in the supervisory cadre for 8 years. This Court has also taken into consideration the S.O.946 (E) issued by the Ministry of Personal, Public Grievances and Pensions (Department of Personnel and training) to decide the issue, that the petitioner has fully satisfied the 1st Short Listing norm namely 8 years experience in supervisory cadre. This Court also after going through the various orders come to the conclusion that once the petitioner satisfy the 1st short listing norm, considering the word used "or" would establish that the 3rd respondent adopted both the norms into considerations as one norm for terminating the petitioner.

25. This Court also found that the 1st respondent passed the termination order by such a resolution based on the documents forwarded to it by the 3rd respondent. However in the impugned order there is no reason or whatsoever stated. The non speaking order hiding the grounds is an arbitrary exercise of the power as pointed above. Though he was the probationer he was working for nearly 12½ years, as there is no discussion or finding in the impugned order about the same. The ground for passing the order has been narrated by the 3rd respondent in the counter affidavit which was in the nature of mis-declaration which was not substantiated by the 3rd respondent. The 3rd respondent further has not established, when the Grade Pay was implemented only from 01.01.2006, how could a person could have such a Grade Pay for 8 years when notification issued on 26.10.2010 i.e. 5 years only. Considering the documents, the order passed by the Central Administrative Tribunal in O.A.No.37 of 2005, it is

established that the Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) came into force only from 01.01.2006 and no one can have 8 years grade pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only). The statutory norm fixed regarding this equivalent Grade Pay of Rs.4,600/- (Rupees Four Thousand Six Hundred only) is irrational and illogical hence the petitioner cannot be terminated on the ground. This Court finds that the petitioner has established that he has 8 years experience in Supervisory capacity.

26. In the result:

(a) this writ petition is allowed by setting aside the order passed in Letter No. F.R/150/03/2012/45, dated 29.03.2012, on the file of the 3rd respondent;

(b) the 3rd respondent is hereby directed to reinstate the petitioner to continue his service in the I.I.T. Madras, as Assistant Registrar with all attendant backwages and monetary benefits;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

vs

To

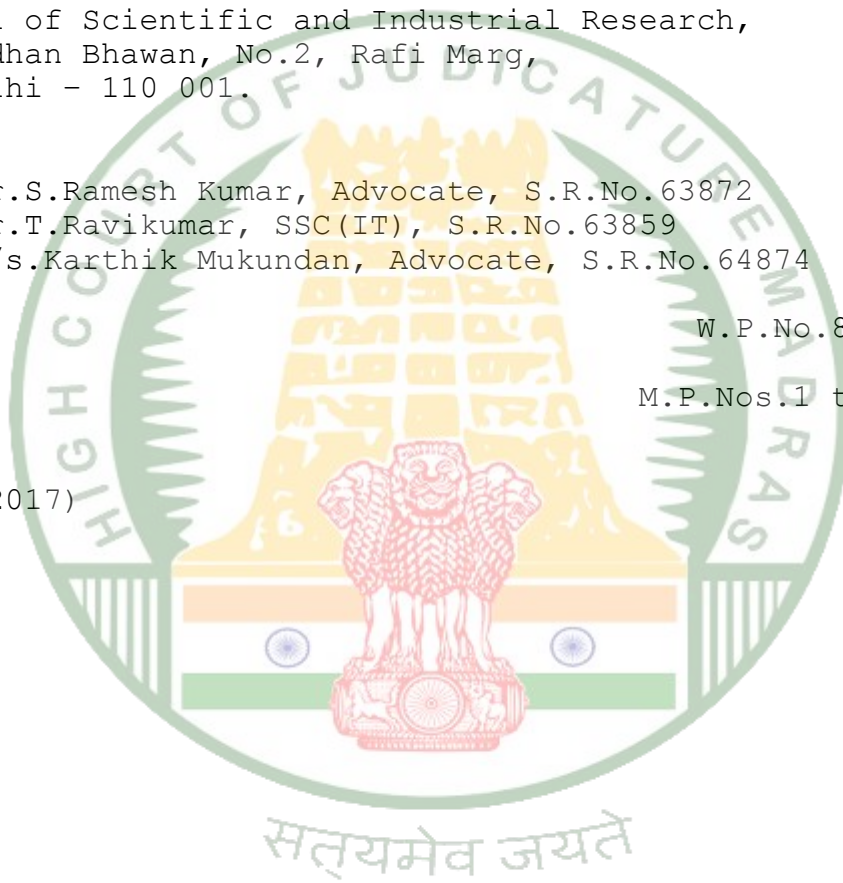
1. The Chairman,
Board of Governors,
The Indian Institute of Technology, Madras,
No.3 Jaswant Baug (Runwal Park),
Behind Akbarallys, Chembur Naka,
Chembur, Mumbai- 400 071.
2. The Director,
Indian Institute of Technology, Madras,
Chennai - 600 036.
3. The Registrar-cum-Secretary,
Board of Governors,
Indian Institute of Technology, Madras,
Chennai - 600 036.

4. The Director,
Indian Institute of Technology, Indore,
DAVV Campus, Khandwa Road,
Indore - 452 017.
5. The Director,
National Geo-Physical Research Institute,
No.724, Uppal Road,
Hyderabad - 500 007.
6. The Director General,
Council of Scientific and Industrial Research,
Anusandhan Bhawan, No.2, Rafi Marg,
New Delhi - 110 001.

+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.63872
+1cc to Mr.T.Ravikumar, SSC(IT), S.R.No.63859
+1cc to M/s.Karthik Mukundan, Advocate, S.R.No.64874

W.P.No.8864 of 2012
and
M.P.Nos.1 to 5 of 2012

SCD(CO)
CA(13/09/2017)



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