

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2018
PRONOUNCED ON : 19.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No.22848 of 2008

B.Muruga Boopathy

.. Petitioner

vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Information and Tourism Department,
Fort St.George, Chennai-9.
 - 2.The Director of Information and Public
Relation and Ex-Officio,
Joint Secretary to Government,
Information and Tourism Department,
Fort St.George, Chennai-600 009.
 - 3.The Chief Producer,
Tamil Nadu Films Division,
Chennai-600 113.
- ... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Ceritorarified Mandamus to call for records relating to the order made in Lr.No.A/442/93 dated 18.08.1993 issued by the 3rd respondent and the consequential order made in Proc.No.2294/A/92 dated 18.10.1993 by the 2nd respondent and to quash the same and consequently direct the respondents 2 and 3 to pay corresponding salary to the petitioner in terms of the scale of pay of Rs.2000-60-2300-75-3200 as fixed in Adhoc Rules in G.O.(M.s.) No.293 Information and Tourism (ADMN.II) Department dated 19.11.1991 issued by the 1st respondent, with all arrears and attendant benefits.

For petitioner : Mr.R.Dhanaram for
Mr.G.Ethirajulu

For respondents: Mr.D.Surya Narayanan
Additional Government Pleader
for R1 & R2
No appearance for R3

O R D E R

The above writ petition has been filed for Writ of Ceritoriarified Mandamus to call for records relating to the order made in Lr.No.A/442/93 dated 18.08.1993 issued by the 3rd respondent and the consequential order made in Proc.No.2294/A/92 dated 18.10.1993 by the 2nd respondent and to quash the same and consequently direct the respondents 2 and 3 to pay corresponding salary to the petitioner the scale of pay of Rs.2000-60-2300-75-3200 as fixed in Adhoc Rules in G.O.(M.s.) No.293 Information and Tourism (ADMN.II) Department dated 19.11.1991 issued by the 1st respondent, with all arrears and attendant benefits.

2.The petitioner was a graduate in B.E.(Electronics), who applied for the post of Electronics Engineer in Tamil Nadu Films Division and was called for an interview vide letter bearing reference A/2294/92 dated 01.04.1993. It was notified that at the time the scale of pay for the post is Rs.2000-60-2300-75-3200. The petitioner was appointed temporarily on 16.04.1993 under Rule 10 (a) (i) of Tamil Nadu State and Sub-ordinate Service Rules under the aforesaid scale of pay. By a letter dated 18.08.1993, the 3rd respondent/ The Chief Producer, Tamil Nadu Films Division, Chennai addressed to the 2nd respondent, Joint Director (Ad.) and requested for necessary amendment to Adhoc Rules for the post of Electronics Engineer. This communication has been impugned in the present writ petition.

3.Subsequently, there was an impugned amendment to the appointment order dated 18.10.1993 bearing reference Proc.No.2294/A/92, by the 2nd respondent pursuant to the aforesaid impugned communication made in Lr.No.A/442/93 dated 18.08.1993 of the 3rd respondent, by including paragraph 2, which reads as follows:

"certified that the above appointment has been issued in accordance with the Adhoc Rules issued for the post of Electronics Engineer in G.O. (Ms.) No.293 Information and Tourism (Ad.II) Department dated 19.11.1991 and the above individual fully satisfies the mode of appointment, age and educational qualifications".

4.By the aforesaid order, it was further clarified the petitioner will draw a basic pay of Rs.1640 in the scale of pay of Rs.1640-60-2600-75-2900 until necessary amendment to Adhoc Rules and the specific order is issued by the Government to revise the scale of pay as Rs.2000-3200 as earlier notified. The aforesaid amendment to the appointment order was passed .

5.It is the case of the petitioner there was no necessity for re-fixation of scale of pay by amending Adhoc Rules as the pay was already fixed for the post of Electronic Engineer. Under these circumstances, the petitioner sent several representations to the respondents and has questioned the impugned communication dated 18.08.1993 of the 3rd respondent, pursuant to which, the scale of pay was re-fixed by the 2nd respondent vide impugned order dated 18.10.1993 bearing reference Proc.No.2294/A/92 as if the appointment was in terms of G.O.Ms. No.293 Information and Tourism (Ad.II) Department dated 19.11.1991.

6.The petitioner submitted that the Adhoc Rules framed vide G.O. (Ms.) No.293 Information and Tourism (Ad.II) Department dated 19.11.1991 prescribed qualification for the post of Electronic Engineer and video camera man and also the scale of pay for the respective post and accordingly, appointment was made. Therefore, there was no necessity for any amendment to the adhoc rules.

7.It is submitted that the 2nd and 3rd respondents have no authority to reduce the scale of pay fixed in G.O. (Ms.) No.293 Information and Tourism (Ad.II) Department dated 19.11.1991.

8.The second respondent has filed a counter on behalf of the respondents and has denied the averments filed in support of the writ petition.

9.According to the respondents, the Adhoc Rules for the post of Electronic Engineer in G.O. (Ms.) No.293 Information and Tourism (Ad.II) Department dated 19.11.1991, stated the method of appointment and qualification is as follows:

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Post	Method of appointment	Qualifications
Electronic Engineer	Direct recruitment or transfer from any other class or recruitment by transfer from any other service	1) a) B.E. Degree in Electronics and b) Experience as service Engineer in the maintenance of Professional video equipments for a period of not less than one year 2) a) Diploma in Electronics awarded by the State Board of Technical Education and Training, Tami Nadu, and b) Experience for a period of not less than three years in the maintenance of professional video equipments; or
Post	Method of appointment	Qualifications
Electronic Engineer	Direct recruitment or transfer from any other class or recruitment by transfer from any other service	1) a) B.E. Degree in Electronics and b) Experience as service Engineer in the maintenance of Professional video equipments for a period of not less than one year. 2) a) Diploma in Electronics awarded by the State Board of Technical Education and Training, Tami Nadu, and b) Experience for a period of not less than three years in the maintenance of professional video equipments; or

Post	Method of appointment	Qualifications
	Promotion from the posts of Electrician / Skilled Attender / Skilled Assistant in Tamil Nadu Film Division	Experience for a period of not less than three years in assisting Video Cameraman in the production of News Reel or Documentaries.

10.It was submitted that that since the petitioner satisfied the Adhoc Rules, the petitioner was appointed as Electronics Engineer in Tamil Nadu Films Division on 16.04.1993. According to the respondents, G.O.Ms. No.285, Information and Tourism (FT.I) Department, dated 07.11.1991, the scale of pay of Electronics Engineer was Rs.1400-40-1600-50-2300-60-2600 for temporaryr post. Further continuance of Electronics Engineer post upto 30.09.1993 was obtained as per G.O.Rt No.355, Information and Tourism (Admn.II) Department dated 03.09.1993 wherein also the scale of pay for the post of Electrics Engineer was Rs.1400-40-1600-50-2300-60-2600. Subsequently, an amendment was issued by the 1st respondent in Lr.No.37560/Admn.II/93-5, dated 29.10.1993 amending the scale of pay for Electronics Engineer was Rs.1640-60-2600-75-2900.

11.According to the respondents, the District Employment Officer (TP), Madras was addressed on 12.12.1992 to sponsor a list of candidates having qualifications and experience as prescribed in Adhoc Rules issued in G.O. Ms. No.293 Information and Tourism (Ad.II) Department dated 19.11.1991. However, no candidates appeared. In the second interview only two candidates appeared for the interview. As they had no experience is serving and maintenance of professional video equipments, the Director of Information and Public Relations ordered to call for B.E degree candidates available in the filed. Accordingly, the Assistant Director, Professional and Executive Employment Office, Madras-4 had addressed the employment exchange to sponsor a list of five candidates having B.E. Degree in Electronics and Communication and pursuant to this an interview was conducted on 13.04.1993 and the petitioner was appointed as he satisfied the Adhoc Rules.

12.It is submitted that the post of Electronics Engineer was filled up on 16.04.1993 after one and half years from the date of creation of the post. It was submitted that the post of Electronics Engineer was created to achieve good result in video department to meet the requirements of video department of Tamil Nadu Films Division. According to the respondents, as per Adhoc Rulesfor the post of Electronics Engineer under G.O. Ms. No.293

Information and Tourism (Ad.II) Department dated 19.11.1991, the scale of pay was Rs.2000-60-2300-3200.

13.It was submitted that in order to settle the disparity in the appointment order Adhoc Rules and scale of drawn by the petitioner a proposal was sent by the Chief Producer in Lr.No.A/442/93 dated 18.08.1993 and thereafter, the said letter was placed before the Government for consideration.

14.The 2nd respondent by the impugned letter dated 18.10.1993 made a downward revision of the scale of Rs.2000-60-2300-75-3200 to Rs.1640-60-2600-75-2900 to the prejudice of the petitioner.

15.By a letter dated 19.03.1996, the 3rd respondent/Chief Producer of Tamil Nadu Film Division informed the 2nd respondent as per G.O. Ms. No.285 Information and Tourism (FT.I) Department, dated 07.11.1991, the Government had sanctioned one additional post in Electronics Engineer in the scale of pay of Rs.1400-2600 along with other posts. The post of Electronics Engineer was filed up on 16.04.1993 by submitting proposal to Government and it was proposed to pay Rs.2000-3200 scale to candidates with B.E. (Electronics) qualification and Rs.1640-2900 scale to Candidate with Diploma qualification.

16.In the aforesaid letter while issuing Adhoc Rules in G.O. Ms. No.293 Information and Tourism (Ad.II) Department dated 19.11.1991, the Government has mentioned Rs.2000-2900 as the pay scale to Electronics Engineer without referring to other scale of pay of Rs.1640-2900 and without any mention about qualification and under these circumstances and further the Government was requested to issue necessary amendment to Adhoc Rules in file No.167/A/90 and Government had issued a letter bearing reference in Lr.No.5594/Ad.II/93-1, Information and Tourism (Ad.II) Department, dated 17.12.1993 and the orders from the Government were awaited. Though the petitioner had sent several representations but has not received any reply from the respondents.

17.The respondents have not clearly mentioned as to how the pay scale could be revised from Rs.2000-60-2300-75-3200 to Rs.1640-60-2600-75-2900. In the counter, it has been mentioned the pay scale was revised to settle disparity.

18.Heard Mr.R.Dhanaram, learned counsel appearing for the petitioner and Mr.D.Surya Narayanan, learned Additional Government Pleader appearing for the respondents 1 and 2.

19.Art. 309 of the Constitution of India contemplates that the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the

State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

20. Thus, the power to make Adhoc Rules are themselves temporary arrangement for the purpose of regulating the recruitment and the conditions of service of person appointed to such post and service until appropriate Legislation are made for the aforesaid purpose. Though amendments to rules are permissible, they cannot be given retrospective effect to the prejudice of a person. Even if rules are amended prejudicially, they cannot be given effect to unless the aggrieved purpose is heard unless the law itself otherwise provides.

21. The Hon'ble Supreme Court in State of M.P. Vs. Yogendra Shrivastava reported in (2010) 12 SCC 538, has observed as follows:

"12. It is no doubt true that Rules under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing rules cannot be taken away by amending the rules with retrospective effect. [See : N.C. Singhal vs. Director General, Armed Forces Medical Services - 1972 (4) SCC 765; K. C. Arora vs. State of Haryana - 1984 (3) SCC 281; and T.R. Kapoor vs. State of Haryana - 1986 Supp. SCC 584]. Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules.

22. In the above case, the Rules were retrospectively amended on 20.5.2003 substituting the words "NPA at such rates as may be fixed by the state government from time to time by order issued in this behalf" in place of "NPA @ 25% of pay" in the Rules. It was contended that as the Rules were amended in the year 2003 with retrospective effect from 14.10.1982, it should be deemed that the NPA payable was as notified by the government from time to time and not '25% of the pay'.

The Hon'ble Supreme Court further held as under:

"12. The right to NPA @ 25% of the pay, having accrued to the respondents under the unamended Rules, it follows that respondents-employees will be entitled to Non-Practising Allowance @ 25% of their pay upto 20.5.2003."

23. In *Swadeshi Cotton Mills Vs. Union of India* reported in (1981) 1 SCC 664, the Hon'ble Supreme Court referred to the observation of Lord Parker from the Queens Bench decision in *In re H. K. (An Infant)* reported in 1965 AC 201: (1963) 3 All E R 191 (HL), which were to the effect, that good administration and an honest or bona fide decision require not merely impartiality or merely bringing one's mind to bear on the problem, but acting fairly. Thus, irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the state or the Legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.

24. In *Dora Phalauli v. State of Punjab & Ors.*, reported in (1979) 4 SCC 485, the Court, made these apposite observations:

"It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act."

25. In *Dosabhai Ratanshah Keravale v. State of Gujarat*, reported in (1970) 11 GLR 361, the Gujarat High Court held that a power to rescind or cancel an order, analogous to that under Section 21, General Clauses Act, has to be construed as a power of prospective cancellation, and not of retroactive obliteration. It is only the existence of a full right of appeal on the merits or the existence of a provision which unequivocally confers a power to reconsider, cancel and obliterate completely the original order, just as in appeal, which may be construed to exclude natural justice or a pre-decisional hearing in an emergent situation.

26. In the facts of the present case, the petitioner was appointed with the post of Electronics Engineer and not as a Video Cameraman in the pay scale of Rs.2000-60-2300-75-3200. The appointment letter of the 2nd respondent also informs that the pay scale for the petitioner was Rs.2000-60-2300-75-3200 and other allowance as per the rules and the appointment was

temporary and services were liable to be terminated without any reason.

27.However, the petitioner was deputed in the Video department of the Tamil Nadu Film Division and therefore his pay scale appears to have been revised to that of Video Cameraman though the petitioner was appointed as an Electronics Engineer.

28.The scale of pay cannot lowered to the prejudice of the petitioner based on the exigencies of the work that is allotted subsequent to appointment. Therefore, downward revision of the pay scale is arbitrary and contrary to principle of natural justice and well settled principle of law. Further, Art. 309 mandates legislation to be passed. However, though several years have lapsed since the Constitution came into force on 26th January 1950, most of the appointments are being made only the strength of G.Os and Rules in absence of a proper legislation. A consolidated State Legislation for the aforesaid purpose will be more desirable confirming to the well laid principles of law in the service law jurisprudence as a further guide.

29.The respondents have also not given a reasonable excuse for downward revision in the pay scale. In stead, the respondents have merely informed the petitioner that the pay scale revision was under consideration. Though, the petitioner had sent repeated representations, it did not evoke any response for the respondents.

30.I am of the view, the retrospective downward revision of pay scale of the petitioner after the appointment was made was arbitrary and and not proper. Accordingly, the petitioner is entitled for the relief as prayed for. Consequently, the respondent shall calculate the arrears of pay to the petitioner and the arrears together with interest at 7.5% p.a within a period of six weeks from the date of receipt of a copy of this order.

31.The above writ petition stands allowed with the above observations. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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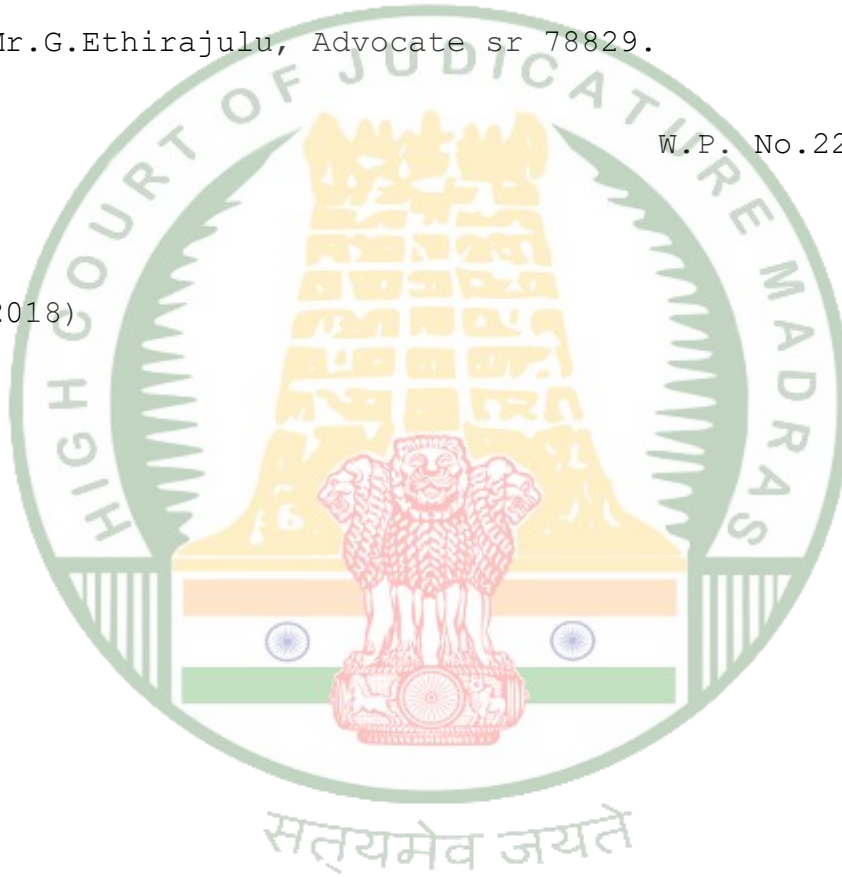
1.The Secretary to Government,
Information and Tourism Department,
Fort St.George, Chennai-9.

2.The Director of Information and Public
Relation and Ex-Officio,
Joint Secretary to Government,
Information and Tourism Department,
Fort St.George, Chennai-600 009.

+1 CC to Mr.G.Ethirajulu, Advocate sr 78829.

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