

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Writ Appeal No.3377 of 2019

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 Relations 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.
- ...Appellants/Respondents
- Vs
- B.Muruga Boopathy ..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 19/11/2018 made in W.P.No.22848 of 2008.

W.P.No.22848 of 2008:

This Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order made in Lr.No. A/442/93 dated 18.08.1993 issued by the 3rd respondent and the consequently direct the respondents 2 ad 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 ad hoc 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 Appellants : Mr.A.Ansar, Government Advocate

J U D G M E N T
(Judgment of the Court was delivered by S.MANIKUMAR,J)

Being aggrieved by the order made in W.A.No.22848 of 2008, dated 19/11/2018, instant writ appeal is filed.

2. Respondent was a graduate in B.E.(Electronics). He was appointed temporarily, on 16/4/1993, under Rule 10 (a) (i) of Tamil Nadu State and Sub-ordinate Service Rules, under the time scale of pay of Rs.2000-60-2300-75-3200, for the post of Electronics Engineer, in Tamil Nadu Films Division, Chennai, third respondent therein, addressed to the Joint Director (Ad.), second respondent therein, requested for necessary amendment to Adhoc Rules, for the post of Electronics Engineer. Aggrieved against the said communication, W.P.No.22848 of 2008, has been filed to quash the orders made in Lr.No.A/442/93, dated 18.08.1993, issued by the Chief Producer, Tamil Nadu Films Division, Chennai, third respondent therein and the consequential order made in Proc.No.2294/A/92, dated 18.10.1993, by the Director of Information and Public Relation and Ex-Officio, Joint Secretary to the Government, Information and Tourism Department, Fort St.George, Chennai, second respondent and consequently, to direct the respondents 2 and 3 therein, to pay corresponding salary to the writ petitioner/respondent herein, in the scale of pay of Rs.2000-60-2300-75-3200, as fixed in Adhoc Rules, in G.O.(Ms.) No.293, Information and Tourism (ADMN.II) Department, dated 19.11.1991, issued by the Secretary to the Government, Information and Tourism Department, Chennai, first respondent therein, with all arrears and attendant benefits.

3. Writ Court, vide, order, dated 19/11/2018, a learned Single Judge, observed as under:-

"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 be 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 on 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 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."

4. Being aggrieved, instant writ appeal is filed on the following grounds:-

(i) Writ Court ought to have noted the fact that the scale of pay for the post of Electronics Engineer was Rs.1400-40-1600-50-2300-60-2600, as per G.O.(Ms) No.285, Information and Tourism (F.T.1) Department, dated 7/11/1991 for a temporary post and further continuance of the said post upto 30/9/1983 was obtained, as per G.O.(Rt) No.355, Information and Tourism (Admn.II) Department, dated 3/9/1993, wherein the scale of pay was also Rs.1400-40-1600-50-2300-60-2600.

(ii) Writ Court failed to note the amendment issued by the Government in Letter No.37560/Admn.II/93-5, dated 29/10/1993,

amending the scale of pay for the post of Electronics Engineer, as Rs.1640-60-2600-75-2900.

(iii) Writ Court ought to have noted the fact that 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 the Adhoc Rules issued in G.O. (Ms) No.293, Information and Tourism (Admn.II) Department, dated 19/11/1991, but no candidates appeared for interview.

(iv) Writ Court, ought to have considered the fact that in the second interview, only two candidates appeared and they had no experience in serving and maintenance of professional video equipment, so the Director of Information and Public Relations ordered to call for B.E. degree candidates and accordingly, a letter was addressed to the Employment Exchange to sponsor a list of five candidates having B.E., Degree in Electronics and Communication and pursuant to the same, an interview was conducted on 13/4/1993 and the respondent was appointed.

(v) Writ Court failed to note that in order to settle the disparity in the appointment order Adhoc rules and scale of pay drawn by the respondent, a proposal was sent by the Chief Producer in Letter No.A/442/93, dated 18/8/1993 and thereafter, the said letter was placed before the Government for consideration and the second appellant herein, who by letter, dated 18/10/1993 made a downward revision of the scale of pay of Rs.2000-60-2300-75-3200 to Rs.1640-60-2600-75-2900.

(vi) Writ Court failed to note that the respondent was appointed on 16/4/1993, as Electronics Engineer and as on that date G.O.(Ms) No.293, Information and Tourism (Admn.II) Department, dated 19/11/1991 was in existence in which the scale of pay of Electronics Engineer is mentioned as Rs.2000-60-2300-75-3200. Subsequently, proceeding has been issued on 18/10/1993 before the regularisation of the respondent by amending the scale of pay for the post of Electronics Engineer as Rs.1640-60-2600-75-2900.

(vii) Writ Court, failed to note the fact that the respondent has not challenged the reduction of pay immediately and in fact, he received the said reduced scale of pay and challenged the same only in the year 2008.

5. Heard Mr.A.Ansar, learned Government Advocate for the appellants.

6. Article 309 of the Constitution of India envisages that the Government 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.

7. Government have issued G.O.(Ms).No.242, Information and Tourism (FT) Department, dated 05.06.1989, is extracted hereunder:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Tamil Nadu Films Division, Madras - purchase of U-matic Professional Video equipment for Video studio in Tamil Nadu Films Division - Cost of Rs.2.75 Lakhs under Part.II Schemes 1989-90 (Plan) - Expenditure - Sanctioned - Orders - Issued.

INFORMATION AND TOURISM (FT.1) DEPARTMENT.

G.O.Ms.No.242 Dated : 5-6-1989.

Read :

1. G.O.Ms.No.405, Information & Tourism, dt. 29.10.87.

2. G.O.Ms.No.92, Information & Tourism, dt. 8.3.1988.

ORDER:

In the Government Order first read above, sanction has been accorded to the Chief Producer, Tamil Nadu Films Division, Madras to incur an expenditure not exceeding Rs.4.00 lakhs (Rupees fourteen lakhs only) to purchase video equipments, in complete sets, from Tvl. Gujarat Communications and Electronics Limited, Baroda.

2. In the Government Order second read above, sanction has been accorded to him to incur an additional expenditure of Rs.1.01 lakhs (Rupees one lakh and one thousand only) for the purchase of video equipments.

3. The Government have now decided to purchase U-matic Professional Video equipments and accessories needed for the Video Studio in the Tamil Nadu Films Division, Madras. Sanction is therefore accorded to incur an expenditure not exceeding Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand Only) by the Producer, Tamil Nadu Films Division, is requested to restrict the expenditure within the allocation made for this purpose, and send the statement of expenditure in due course.

4. The U-matic Studio of Tamil Nadu Films Division requires technically qualified staff members. The Government have, therefore, decided to have the following staff the Video Section :-

S.No.	Name of the post and scale of pay	No.of posts.
1.	Video Cameraman, in the scale of pay of Rs.1160-50-1460-70-1950	1 (one)
2.	Electronics Engineer, in the scale of pay of Rs.1045-45-1450-65-1775	1 (one)
3.	Video Editor, in the scale of pay of Rs.1045-45-1450-65-1775	1 (one)

Sanction is accorded towards the employment of the above staff for the Video Section in the Tamil Nadu Films Division, Madras from the date of employment and upto 28.2.90.

5. The expenditure sanctioned in paragraph 3 above is debitable under "2220. Information and Publicity - 01. Films - 105. Production of Films - Scheme in the VIIth Five Year Plan - II. State Plan - JB. Tamil Nadu Films Division - 15. Machinery and equipments (DPC.No.2220 - 01 - 105 JB 1505) and the expenditure sanctioned in paragraph 4 above is debitable under "2220 - Information & Publicity - 01. Films - 105. Production of Films - Schemes in the VIIth Five Year Plan - II. State Plan - JB. Tamil Nadu Films Division - 01. Salaries (DPC. No.2220 - 01 - 105 - JB.0104)".

6.This order issues with the concurrence of Finance Department vide its U.O.No.62555A/TH/88-1, dt. 2.6.89.

(BY ORDER OF THE GOVERNOR)

V.SANKARASUBBIYAN,

Secretary to Government (incharge)

8. Government have issued G.O.(Ms).No.516, Information and Tourism (Admn.II) Department, dated 28.11.1990, and the same is extracted hereunder:-

GOVERNMENT OF TAMILNADU

ABSTRACT

Tamil Nadu Revised Scales of Pay Rules, 1989 - Information and Public Relations Department - Revision of scale of pay of the posts of Electronics Engineer and Video Editor - Orders Issued.

INFORMATION & TOURISM (ADMIN - II) DEPARTMENT

G.O.Ms.No.516
28.11.90

DATED :

Read:-

1. G.O.Ms.No.242, Information & Tourism Department
Dated 5.6.89.

2.From the Chief Producer, Tamil Nadu Film

Division, Madras

Letter No.A/613/90 dated 14.6.90.

ORDER:

In the Government Order first read above, among some other posts, the following posts were created for Tamil Nadu Film Division, Madras:-

- i) Electronics Engineer 1045-45-1450-65-1775
- ii) Video Editor 1045-45-1450-65-1775

These posts have been further continued from 1.3.90 to 28.2.91 in G.O.(Rt) No.206, Information and Tourism Dept, dated 14.3.90 with the following scales of pay:-

- i) Electronics Engineer Rs.1400-40-1600-50-2300-60-2600
- ii) Video Editor Rs.1400-40-1600-50-2300-60-2600

The Chief Producer, Tamil Nadu Film Division, Madras has stated that in G.O.Ms.No.501, Finance (PC) Department, dated 11.5.90, Government have further revised scales of pay of certain categories in Tamil Nadu Film Division, Madras as follows:-

Sl.N o.	Name of Post	Pre-revised scale of pay	Revised in G.O.Ms.No.66 6, Fin. dated 27.6.89	Revised further in G.O.Ms.No.5 31, I & T dated 11.5.90
(1)	(2)	(3)	(4)	(5)
1.	Production Manager	1045-1775	1400-2600	1640-2900
2.	Editor	1045-1775	1400-2600	1640-2900
3.	Sound Recordist	1045-1775	1400-2600	1640-2900

But the Posts of Electronics Engineer and Video Editor have been left out in that Government Order. He has stated that the Diploma in Films Technology is common to the post of Production Manager, Editor, Sound Recordist, Electronics Engineer and Video Editor. Therefore he has requested the revision of the Scales of pay of the posts of Electronics Engineer and Video Editor on par with these posts with effect from 5.6.89 i.e. the dates from which these two posts created.

2. The Government after careful consideration have decided to revise the Scale of pay of the posts of Electronics Engineer and Video Editor from the Scales

of Rs.1400-2600- to 1640-2900 with effect from 5.6.89 i.e. the date from which these two posts are created.

3. This order issued with the concurrence of Finance Department vide its U.O.No.122326/PC/90-1 dated 23.11.90.

(BY ORDER OF THE GOVERNOR)

JAYATHI,
SECRETARY TO GOVERNMENT

9. Government have issued G.O.(Ms).No.285, Information and Tourism (FT-1) Department, dated 07.11.1991, and the same reads thus:-

GOVERNMENT OF TAMILNADU
ABSTRACT

Tamilnadu Films Division - Sanction of technical staff for video department in the Tamilnadu Films Division - Part-II Scheme 1991-92-Expenditure - Sanctioned - Orders - issued.

INFORMATION AND TOURISM (FT-1) DEPARTMENT
G.O.Ms.No.285 Dt. 7-11-1991

O R D E R :

The Government have decided to sanction of technical staff for video department in the Tamilnadu Films Division. In additions to the normal Video coverages and Video documentaries. Government have now instructed Tamilnadu Films Division to produce one Video Magazine every month to handle the entire video department the following staff is sanctioned.

2. Sanction is therefore accorded for creation of the following posts for the period of one year from the date of filling up of these posts.

- 1) Video Cameraman
in the Scale of pay - One Post
Rs.1400-40-1600-50-2300-60-2600
- 2) Electronics Engineer - One Post
in the Scale of pay - Rs.1400-40-1600-50-2300-60-2600
- 3) Lighting Assistant - One Post
in the Scale of pay of Rs.950-20-1150-25-1500

The incumbents are eligible to draw Dearness Allowance and other allowances as admissible under the orders in force.

3. The expenditure is debitable to "2200 Information and Publicity 01.Films - 105. Production of Films - Schemes in the Annual Plan - II. Dp. Code No.2220-01-105-JB 0104"

4. This orders issues with the concurrence of Finance Department vide its U.O.No.110917/TH & Ind./91-1 Dt.28-10-91.

(BY ORDER OF THE GOVERNOR)

K.GANESAN,

Director of Information and
Public Relations & Ex-Officio
Joint Secretary to Government.

10. Government have issued G.O.(Ms).No.293, Information and Tourism (Admin-II) Department, dated 19.11.1991, reads thus:-

GOVERNMENT OF TAMILNADU

ABSTRACT

PUBLIC SERVICES - Information and Tourism Department - Tamil Nadu Films Division, Madras - Tamil Nadu General Subordinate Service - Temporary posts of Video Cameraman, Electronics Engineer, Video Editor and Lighting Assistants - Ad-hoc rules - Issued.

INFORMATION & TOURISM (ADMN.II) DEPARTMENT

G.O.(Ms) No:293
1991

Dated 19th November

READ:

1. G.O.Ms.No.242, I&T (FT-I), dated 5.6.89.
2. Letter from the Chief Producer, Tamil Nadu Films Division,
Madras No.A/1959/88, dated 23.1.90.

.....

ORDER:

The following Notification will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following rules.

2. The rules hereby made shall be deemed to have come into force on the 5th June 1989.

RULES

The General Rules applicable to the holders of the permanent posts in the Tamil Nadu General Subordinate Service shall apply to the holders of the temporary

posts of Video Cameraman, Electronics Engineer, Video Editor and Lighting Assistants in the Tamil Nadu Films Divisions, Madras, subject to the modifications specified in the following rules.

2. Constitution:- The posts shall each constitute a separate category in a distinct class of the said service.

3. Appointment:- Appointment to the posts specified in column (1) of the Table below shall be made by the methods specified in the corresponding entries in column (2) thereof.

THE TABLE

Post (1)	Method of appointment (2)
(1) Video Cameraman	(i) Director recruitment; or (ii) Transfer from any other class; or (iii) Recruitment by transfer from any other service; or (iv) Promotion from the post of Assistant Lecturer in Sound Engineering in the Films and Television Institute of Tamil Nadu.
(2) Electronics Engineer	(i) Director recruitment; or (ii) Transfer from any other class; or (iii) Recruitment by transfer from any other service.
(3) Video Editor	(i) Director recruitment; or (ii) Transfer from any other class; or (iii) Recruitment by transfer from any other service.
(4) Lighting Assistants	(i) Director recruitment; or (ii) Transfer from any other class; or (iii) Recruitment by transfer from any other service; or (iv) Promotion from the post of Electrician or Skilled Attender or Skilled Assistant, in Tamil Nadu Films Division.

4. Preparation of annual list of approved candidates.- For the purpose of preparation of the annual list of approved candidates for appointment to the posts by promotion or by recruitment by transfer, the crucial date on which a candidate should possess the qualification shall be the 1st December of the year in which the selection for appointment is made.

5. Appointing authority.- The appointing authority for the posts shall be the Director of Information and Public Relations.

6. Qualifications- (a) Age.- No person shall be eligible for appointment to the posts by direct recruitment if he has completed or will complete the age of thirty five years on the first day of July of the year in which the selection for appointment is made.

(b) Other Qualifications.- No person shall be eligible for appointment to the posts specified in column (1) of the Table below, by the methods specified in the corresponding entries in column (2), unless he possesses the qualifications specified in the corresponding entries in column (3) thereof:-

THE TABLE

Posts	Method of appointment	Qualifications
(1)	(2)	(3)

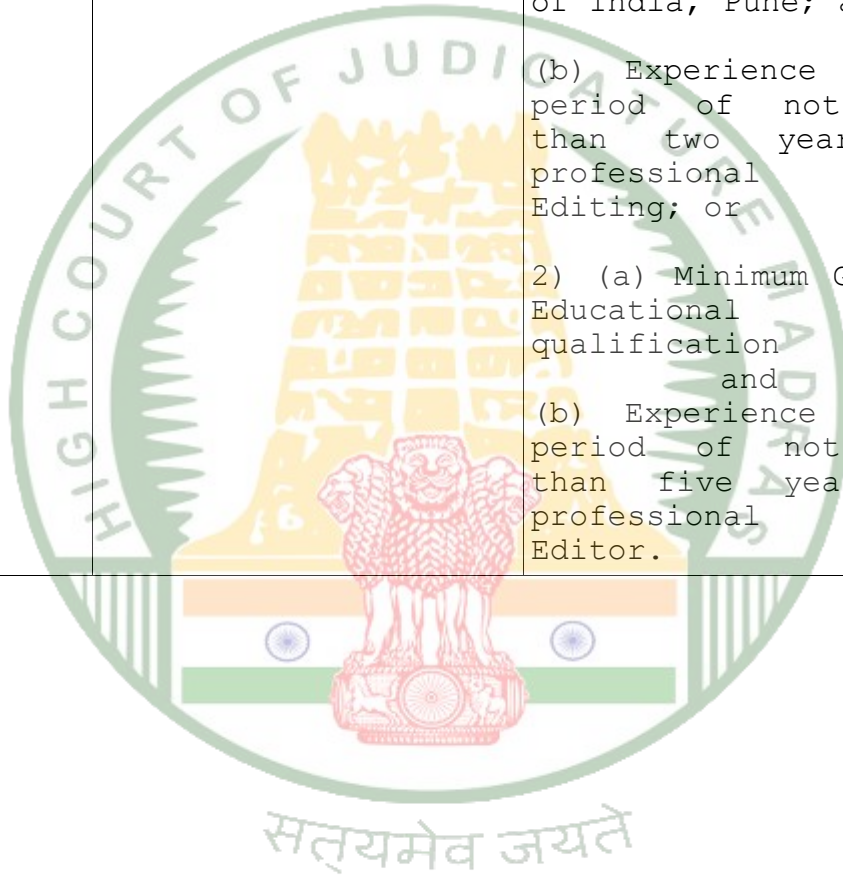
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Posts	Method of appointment	Qualifications
(1) Video Cameraman	Direct recruitment or transfer from any other class or recruitment by transfer from any other service.	(a) A diploma in Film Technology (Cinematography or Sound Recording and Sound Engineering) awarded by the State Board of Technical Education and Training, Tamil Nadu; or A diploma in Cinematography or Sound Recording and Sound Engineering awarded by the Film and Television Institute of India, Pune; and (b) Experience for a period of not less than two years in the operation of Umatic Video Camera in the Production of Newsreel, Documentary or Video Film Series in a Video Production concern dealing with newsreel, documentary, Tele-Film and Advertisement films; or
	Promotion	(a) Minimum General Educational qualification; (b) Experience for a period of not less than five years in motion pictures camera operation; and (c) Experience for a period of not less than two years in operation of Umatic Video Camera in any Video production concern dealing with

Posts	Method of appointment	Qualifications
2) Electronics 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; or (2) (a) Diploma in Electronics awarded by the State Board of Technical Education and Training, Tamil Nadu; and (b) Experience for a period of not less than three years in the maintenance of professional video equipments; (3) (a) Diploma in Film Technology (Sound Recording and Sound Engineering) awarded by the State Board of Technical Education and Training, Tamil Nadu or a diploma in Sound Recording and Sound Engineering awarded by the Film and Television Institute of India, Pune; and (b) Experience for a period of not less than two years in the maintenance of professional video equipments.

Posts	Method of appointment	Qualifications
(3) Video Editor	Director recruitment or transfer from any other class or recruitment by transfer from any other service.	(1) (a) Diploma in Film Technology (Film Editing) awarded by the State Board of Technical Education and Training, Tamil Nadu or Diploma in Film Editing, awarded by the Film and Television Institute of India, Pune; and (b) Experience for a period of not less than two years in professional Video Editing; or 2) (a) Minimum General Educational qualification and (b) Experience for a period of not less than five years as professional Video Editor.



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Posts	Method of appointment	Qualifications
(4) Lighting Assistan t	Director recruitment or transfer from any other class or recruitment by transfer from any other service.	(1) (a) Minimum General Educational Qualification; (b) Wireman competency certificate issued by the Industrial Training Institute recognised by the Government of Tamil Nadu; and (c) Experience for a period of not less than three years as Video Production Lighting Assistant.
	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 Newsreel or Documentaries.

7. Probation.- (a) Every person appointed to the posts by direct recruitment shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years.

(b) Every person appointed to the posts by recruitment by transfer shall, from the date on which he joins duty, be on probation for a total period of one years on duty within a continuous period of two years.

8. Pay. - There shall be paid to the holders of the posts specified in column (1) of the Table below a monthly pay calculated in the scale specified in the corresponding entries in column (2) thereof:-

THE TABLE

Posts (1)	Scale of pay (2)
(1) Video Cameraman	Rs.1640-60-2600-75-2900
(2) Electronics Engineer	Rs.2000-60-2300-75-3200

(3) Video Editor Rs.1640-60-2600-75-2900
(4) Lighting Assistant Rs.950-20-1150-25-1500

(BY ORDER OF THE GOVERNOR)

K.J.M. SHETTY
PRINCIPAL SECRETARY TO GOVERNMENT.

11. Letter No.A/2294/92, dated 01.04.1993, of the Chief Producer, Tamil Nadu Films Division, Madras, is extracted hereunder:-

UNDER CERTIFICATE OF POSTINGS

TAMIL NADU FILMS DIVISION
MADRAS -113

D.NEHRU DHYRIAM D.F.TECH.,
CHIEF PRODUCER.

Letter No.A/2294/92. dated 1.4.93

Sub: Establishment - Tamil Nadu Films Division -
Filling up of a

vacant post of Electronics Engineer-
Interview called for.

Ref: Asst. Director, Professional & Executive
Employment

Office, Madras -4 letter No.X2/PE/103/93,
dt. 26.2.93.

One post of Electronics Engineer in the scale of
pay of Rs.2000-60-2300-75-3200 is vacant in Tamil Nadu
Films Division, Madras-113.

Thiru.B.Murugaboopathy, is directed to appear for
interview along with his original certificates on
13.4.93 at 10.00 A.M.

No.T.A./D.A will be paid.

Sd/-.

for CHIEF PRODUCER.

12. Proceedings No.A/2294/92, dated 16.04.1993 of the
Director of Information and Public Relations, Madras, reads
thus:-

PROCEEDINGS OF THE DIRECTOR OF INFORMATION AND PUBLIC
RELATIONS

MADRAS - 600 009

PRESENT THIRU. R.SAMPATH I.A.S.

No.A/2294/92

Dt.16.4.93.

Sub: Establishment - Tamilnadu Films Division -
Tamilnadu General Subordinate Service
- Filling up of the Vacant post of
Electronics Engineer Orders issued.

Ref: i) G.O.Ms.No.205, Information & Tourism
(FT-1) Dept. Dt.7.11.91.
ii) G.O.Ms.No.223, Information &
Tourism (Ad-II) Dept. Dt.19.11.91.
iii) Selection Grade Asst. Director, P &
E.E.O. No.4 Lr.No.X2/PE/103/93 dt.
26.2.93.
iv) Interview Lr.No.A/2294, 92 Dt.1.1.93

ORDER:

Under Rule 10(a)(i) of Tamilnadu State and Subordinate Service Rules Thiru.B.Muruga Boopathy, a candidate with B.E.(Electronics) Degree, sponsored by the Selection Grade Assistant Director, Provisional and Executive Employment Office (Regn.No.PE/7693/89 Dt.17.7.89) Madras -4 is temporarily appointed as Electronics Engineer in Tamilnadu Films Division, Madras in the scale of pay of Rs.2000-60-2300-75-3200 with immediate effect.

He will draw a pay of Rs.2000/- and other allowances admissible as per rules in force in the above scale of pay.

The appointment is purely temporary and his services are liable to be terminated at any time without assigning any reason therefor.

Sd/-.

for Director of Information
and
Public Relations.

13. Chief Producer, Tamil Nadu Films Division, Madras, has sent a Lr.No.A/442/93, dated 18.08.1993 to the Joint Director (Admin), Information and Tourism (Ad.II) Department, Madras, which reads thus:-

INFORMATION AND TOURISM DEPARTMENT

From To
Thiru.D.Nehru Dhyriam, D.F.Tech. The Joint
Director (Admin) Information and Tourism
Chief Producer (Ad.II) Department
Tamilnadu Films Division Fort.St.George,
Madras-113. Madras-600 009

Lr.No.A/442/93, Dt.18.8.93

Sir,

Sub: Establishment - Tamilnadu Films Division -
Technical staff for Video Department in
Tamilnadu Films Division - Further
continuance requested - certain particulars
called for - submitted.

Ref: 1.This office Lr.No.A/442/93 Dt.28.5.93.
2. Govt.Lr.No.19228/Ad.II/93-5 Information &
Tourism (Ad.II) Dept. of Joint Director (Admn)
Dt.5.8.93.

With reference to the Government letter 2nd cited,
I am to inform that the District Employment Officer
(T)) Madras was addressed. 12.2.92 to sponsor a list
of candidates having qualifications and experience as
prescribed in the adhoc rules issued in G.O.Ms.No.293
Information & Tourism (Ad.II) Department dated
19.11.91. During the first time, no candidate appeared
for the interview. Second time interview was conducted
on 19.8.92. Only 2 candidates appeared for the
interview. As they had no experience in servicing and
maintenance for professional video equipments, the
former Director of Information and Public Relations
had ordered to call for B.E.Degree candidates
available in the field. Accordingly the Assistant
Director, Professional and Executive Employment
office, Madras-4 had addressed and he sponsored a list
of 5 candidates having B.E.Degree in Electronics and
Communication. Again interview was conducted on
13.4.93 and Thiru.B.Murugaboopathy was selected as he
satisfied the adhoc rules and he is having sufficient
experience in maintenance of professional video
equipments.

In the circumstances stated above, the post of
Electronics Engineer was filled up only on 16.4.93
after 1/2 years from the date of creation of the post.
As the post has been created with the object of
appointing a candidate with technical skill and
specialised knowledge to achieve good result in video
work to meet the requirements of video department in
Tamilnadu Films Division, I request that the delay in
selecting the suitable candidate for the post of
Electronics Engineer any kindly be conducted.

As the services of Technical staff in Video
Department in Tamilnadu Films Division are absolutely
necessary Government orders for further continuance of
the posts mentioned in this office letter first cited

may kindly be obtained and issued early.

Also I invite kind attention to this office letter first cited and request that necessary amendment to the adhoc rules for the post of Electronics Engineer may kindly be issued early.

Sd/- . D.NEHRU DHYRIAM,
CHIEF PRODUCER.

//By order // Submitted //

ASSISTANT ACCOUNTS OFFICER

14. Government have issued G.O.Rt.No.355, Information and Tourism (AD.II) Department, dated 03.09.1993, is extracted hereunder:-

GOVERNMENT OF TAMILNADU

ABSTRACT

Tamil Nadu Films Division - Technical staff for Video Department in the Tamil Nadu Films Division - Further continuance sanctioned.

INFORMATION & TOURISM (AD.II) DEPARTMENT
G.O.Rt.No.355 Dated : 3.9.93

Read :

1. G.O.Ms.No.285, Information & Tourism (FT.I) Department

Dated 7.11.91.

2. From the Chief Producer, Tamil Nadu Films Division,

Lr.No.442/A/93, dated 28.5.93.

ORDER:

The Government accord sanction for the further continuance of the following temporary posts upto 30.09.93, which were originally sanctioned in the Government Order read above.

1. Video Cameraman -- One Post
in the scale of pay of Rs.1400-40-1600-50-2300-60-2600
2. Electronics Engineer -- One post
in the scale of pay of Rs.1400-40-1600-50-2300-60-2600
3. Lighting Assistant -- One post
in the scale of pay of Rs.950-20-1150-25-1500

The incumbents of the posts mentioned above are eligible to draw Dearness Allowances, House Rent Allowances and other usual allowances under the orders in force.

2. The expenditure is debitable to "2220. Information & Publicity - 01. Films 105. Production of Films - Schemes in the Eighth Five Year Plan.II. State plan JB Tamilnadu Films Division - 01. Salaries." (DPC.2220 01 105 JB 01 04)

3. This order issues with the concurrence of the Finance Department vide its U.O.No.80877/I&T/93, date. 1.9.93.

(BY ORDER OF THE GOVERNOR)

C.K.GARIYALI,

SECRETARY TO GOVERNMENT.

15. Proceedings No.2294/A/92, dated 18.10.1993 of the Director of Information and Public Relations, Madras, is extracted hereunder:-

PROCEEDINGS OF THE DIRECTOR OF INFORMATION AND PUBLIC RELATIONS:

MADRAS - 600 009

PRESENT :THIRU.R.SAMPATY I.A.S.,

Proc.No.2294/A/92. Dt.18-10-93

Sub: Establishment - Tamilnadu Films Divison - Tamilnadu General Subordinate Service - Filling up of the Vacant post of Electronics Engineer - appointment order to Thiru.B.Murugaboopathy issued- regarding.

Ref: 1.G.O.Ms.No.42 P&AR (Per-S) Dept., Dt.5.2.92.

2.DIPR's Proc.No.2294/A/92 Dt.16.4.93.

3.Bill Return Memo Dt.30.4.93 of Pay and Accounts Office (South) Madras -35.

O R D E R:

As per the instructions issued in the G.O.first cited, the following certificate is incorporated in the appointment order of Thiru.B.Murugaboopathy, Electronics Engineer 2nd cited.

"Certified that above appointment has been made in accordance with the adhoc rules issued for the post of Electronics Engineer in G.O.Ms.No.293 Information and Tourism (Ad.II) Dept., Dt.19.11.91 and the above individual fully satisfies the mode of appointment age and educational qualifications."

As regard to para 2 of the proceedings 2nd cited, the following amendment is issued.

He 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 specific order is issued by Government to revise his scale of pay as Rs.2000-3200.

Sd/-

DIRECTOR OF INFORMATION AND
PUBLIC RELATIONS.

16. Under Secretary to Government, Information and Tourism (Ad.II) Department, Madras, has sent a letter No.37560/Ad.II/93-5, dated 29.10.1993 to the Chief Producer, Tamil Nadu Films Division, Madras, which reads thus:-

Information & Tourism (Ad.II)

Dept

Secretariat
Madras-9
Letter No.37560/Ad.II/93-5.
Dated 29.10.93.

From

Thiru.N.Kamalasekaran, B.A.
Under Secretary to Government.

To

The Chief Producer
Tamil Nadu Films Division
Madras-113.

Sir,

Sub: Establishment - Tamil Nadu Films Division,
Madras - Technical Staff for Video Department in
the Tamil Nadu Films Division, Madras -
Amendment - Issued.

Ref: G.O.Ms.No.285, Information & Tourism (FT-1)
Department dated 7.11.91.

2. G.O.Rc.No.355, Information and Tourism
Department,
dated 3.9.93.

I am directed to issue the following amendment to
the G.O.referred to above.

AMENDMENTS

For the scale of pay for the post of Video
Cameraman and Electronic Engineer mentioned as
Rs.1400-40-1600-50-2300-60-2600 in the G.Os referred
to above the following scale of pay shall be
substituted.

Video Cameraman 1640-6-2000-75-2900

Electronic Engineer 1640-60-2600-75-2900

2. This letter issues with concurrence of Finance Department vide its U.O.No.104355/I&T/93-1. dated 29.10.93.

Yours faithfully

Sd/-.

UNDER SECRETARY TO GOVERNMENT

17. Joint Director (Administration), Information and Tourism (Admn.II) Department, Madras, has sent a letter No.55974/Ad.II/93-1, dated 17.12.1993 to the Chief Producer, Tamil Nadu Films Division, Madras, which is extracted hereunder:-

MOST: IMMEDIATE Information & Tourism (Admn.II) Department.

Fort.St.George
Madras-9

Letter No.55974/Ad.II/93-1
dated : 17.12.93.

From
Thiru.B.JEYAPIRAKASAM, M.A.,
Joint Director (Administration)

To
The Chief Producer
Tamil Nadu Films Division
Madras-113.

Sir,

Sub: Establishment - Information and Tourism
Department
- Tamil Nadu Films Division, Madras -
Post of
Video Cameraman - Amendment to the Adhoc
Rules
- regarding.

Ref: G.O.Ms.No.293, Information and Tourism
Department,
dt. 19.11.91.

...

I am directed to invite attention to the G.O. cited and to state that for direct appointment to the post of Video Cameraman, the following qualifications are prescribed therein.

a) A diploma in Film Technology (Cinematography) or Sound Recording and Sound Engineering) awarded by the State Board of Technical Education and Training,

Tamil Nadu; or A diploma in Cinematography or Sound Recording and Sound Engineering awarded by the Film and Television Institute of India, Pune;
and

b) Experience for a period of not less than two years in the operation of Umatic Video Camera in the production of Newareel, Documentary or Video Film series in a Video production concern dealing with newareel, documentary, tele-Film and Advertisement films.

2) The Government have decided tht the diploma in Film processing may also be included in the adhoc rule for the post of Video Cameraman in Tamilnadu Films Division for direct appointment as they have also to know the handling and operation of a Movie and Television Cameras. I am to request you to send a draft amendment in this connection for issuing an amendment to the Adhoc Rule immediately including the details of the date, page etc., of the Gazette in which the notification was published.

3) I am also to state that, the amendment for the above G.O., in respect of Electronic Engineer, B.E., qualification, Basic Pay of Rs.2000/- and for the promotion of the post of Video Cameraman Lighting Assistant as feeder category are under the consideration of the Government.

Yours faithfully
for Joint Director

(Administration)

18. Chief Producer (i/c), Tamil Nadu Films Division, Chennai, sent a letter No.2294/A/92, dated 19.03.1996, to the Director of Information and Public Relations and Ex-Officio, Joint Secretary to Government, Information and Tourism Department, Madras, which is extracted hereunder:-

INFORMATION AND TOURISM DEPARTMENT

From Chief Producer i/c. Information Tamil Nadu Films Division & Chennai-113. To The Director of and Public Relations Ex-Officio

Joint Secretary to Government
Information & Tourism Dept.
Secretariat, Madras -600 009

Lr.No.2294/A/92 dt. 19-3-96.

Sir,

Sub: Establishment - Taminadu Films Divison - Post of

Electronics Engineer - Revision of Scale
of pay -regarding.

Ref: Application received from

Thiru.B.Murugaboopathy.

Electronics Engineer dated 6.3.96.

I am forwarding the application received from Thiru.B.Murugaboopathy, Electronics Engineer, Tamilnadu films Division with the following particulars for further necessary action.

In his representation cited, he has stated that the B.E.degree holders in P.W.D., Highways, Electricity Board is drawing the scale of pay Rs.2000-3200. Therefore he has requested to raise his present scale of pay of Rs.1640-2900 to Rs.2000-3200 from the date of his appointment on par with other B.E.degree holders.

In this connection, I am to inform that as per G.O.Ms.No.285 Information Tourism (FT) Department dated 7-11-91, Government have sanctioned one additional post of Electronics Engineer in the scale of pay of Rs.1400-2600 along with some other posts. The post of Electronics Engineer was filled up on 16.4.93 A.N. by Thiru.B.Murugaboopathy, a B.E. (Electronics) candidate. While submitting proposal to Government it was proposed to pay Rs.2000-3200 scale to candidates with B.E. (Electronics) qualification and Rs.1640-2900 scale to candidates with Diploma qualification. but while issuing adhoc rules in G.O.Ms.No.293 Information and Tourism (Ad-II) Department dt.19.11.91, Government have mentioned Rs.2000-2900 scale to Electronics Engineer without mentioning other scale of Rs.1640-2900 and without any mention about qualification. Therefore, Government were requested to issue necessary amendment to adhoc rules in file No.167/A/90 and Government have informed in their Lr.No.55974/Ad.II/93-1 Information and Tourism (Ad.II) Department dt.17-12-93 at para 3 that the matter is under the consideration of Government. Still orders from Government are awaited.

In the circumstances stated above I request that necessary Government order in this regard may kindly be obtained and issued early.

Sd/-
CHIEF PRODUCER i/c.

19. For the post of Electronics Engineer, the qualifications are, (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; or (2) (a) Diploma in Electronics awarded by the State Board of Technical Education and Training, Tamil Nadu; and (b) Experience for a period of not less than three years in the maintenance of professional video equipments; (3) (a) Diploma in Film Technology (Sound Recording and Sound Engineering) awarded by the State Board of Technical Education and Training, Tamil Nadu or a diploma in Sound Recording and Sound Engineering awarded by the Film and Television Institute of India, Pune; and (b) Experience for a period of not less than two years in the maintenance of professional video equipments, whereas, for the post of Video Cameraman, the educational qualifications are (a) A diploma in Film Technology (Cinematography or Sound Recording and Sound Engineering) awarded by the State Board of Technical Education and Training, Tamil Nadu; or A diploma in Cinematography or Sound Recording and Sound Engineering awarded by the Film and Television Institute of India, Pune; and (b) Experience for a period of not less than two years in the operation of Umatic Video Camera in the Production of Newsreel, Documentary or Video Film Series in a Video Production concern dealing with newsreel, documentary, Tele-Film and Advertisement films, cannot be equated to a Video Cameraman, with a mere diploma in Electronics.

20. No doubt a candidate with a Diploma in Electronics awarded by the State Board of Technical Education and Training or a candidate in Films Technology (Sound Recording and Sound Engineering) awarded by the State Board of Technical Education and Training, Tamilnadu or a Diploma in Sound Recording and Sound Engineering awarded by the Film and Television Institute of India, Pune, are eligible for appellant as Electronics Engineer, but the number of years of experience in maintenance of professional video experience varies. In the case of Electronics Engineer, the experience is not less than one year, whereas in the case of Diploma Holder in Electronics it is not less than two years and whereas, in the case of Diploma Holders in Sound Recording and Sound Engineers, the experience is not less than 3 years.

21. It is trite law that post with a higher educational qualification carries higher responsibilities and duties and higher scale of pay. Thus, there is clear distinction in the recruitment rules for the post of Electronics Engineer.

22. When the respondent was recruited on 16.04.1993, as per G.O.(Ms).No.293, Information and Tourism (Admin-II) Department, dated 19.11.1991, scale of pay of Electronics Engineer was Rs.2000-60-2300-75-3200. As per the above Ad-hoc rules, the scale of pay of video cameraman was Rs.1640-60-2600-75-2900. Accordingly, the respondent has been appointed. But subsequently the Under Secretary to the Government, Information and Tourism

Department, Madras has sent a letter No.37560/Ad.II/93-5, dated 29.10.1993, to the Chief Producer, Tamilnadu Films Division, Madras, stating that he has been directed to issue an amendment to G.O.(Ms).No.285, Information and Tourism (FT-1) Department, dated 07.11.1991 and G.O.Rt.No.355, Information and Tourism (AD.II) Department, dated 03.09.1993. The former G.O.(Ms).No.285, Information and Tourism (FT-1) Department, dated 07.11.1991 is for the Adhoc rules and the latter is for continuation of posts.

23. Adhoc rules framed under Article 309 of the Constitution of India, cannot be altered or amended by an executive order, and in the case on hand, by a letter of the Under Secretary to the Government. It is also seen from the letter, dated 17.12.1993 of the Joint Director (Admin), Information and Tourism Department, addressed to the Chief Producer, Tamilnadu Films Division, Madras that there was a proposal to make the post of Video Cameraman and Lighting Assistant, as a feeder category post for promotion to the post of Electronics Engineer. While that be the fact situation, treating an Electronics Engineer, with a higher educational qualification on par with a video cameraman, with a lesser qualification, Diploma, does not satisfy Article 14 of the Constitution of India.

24. Contention that the respondent has not challenged the reduction of pay scale within a reasonable time and therefore, the writ petition should be dismissed cannot be accepted in the light of the decision of the Hon'ble Supreme Court in Union of India and Others Vs.Tarsem Singh, reported in 2008 (8) SCC 648, wherein it is held thus:-

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of

third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

25. Length of delay cannot be a ground to deny the scale of pay, as per the adhoc rules. In *Sankaran Pillai vs. V.P.Venguduswami*, reported in AIR 1999 SC 3060, the Hon'ble Supreme Court held that,

"The question that is required to be seen is, what does the expression 'sufficient cause' means in sub-section (4) of Section 11 of the Act? It is no doubt true that the expression 'sufficient cause' has to be liberally construed to do substantial justice between the parties. But the expression 'sufficient cause' necessarily implies an element of sincerity, bonafide, and reasonableness".

26. In the light of what is stated above, as regards the letter of the Under Secretary to the Government, Information and Tourism Department, dated 29.10.1993, we find force in the submission of the respondent that unequals cannot be made equals, to be precise, an Electronic Engineer with a higher educational qualification, cannot be made as equivalent to a Diploma Holder, in the matter of scale of pay. Claim of the respondent is valid and in accordance with Adhoc rules.

27. In the light of the above discussion and decisions, W.A.No.3377 of 2019, is dismissed. No Costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

mvs

To

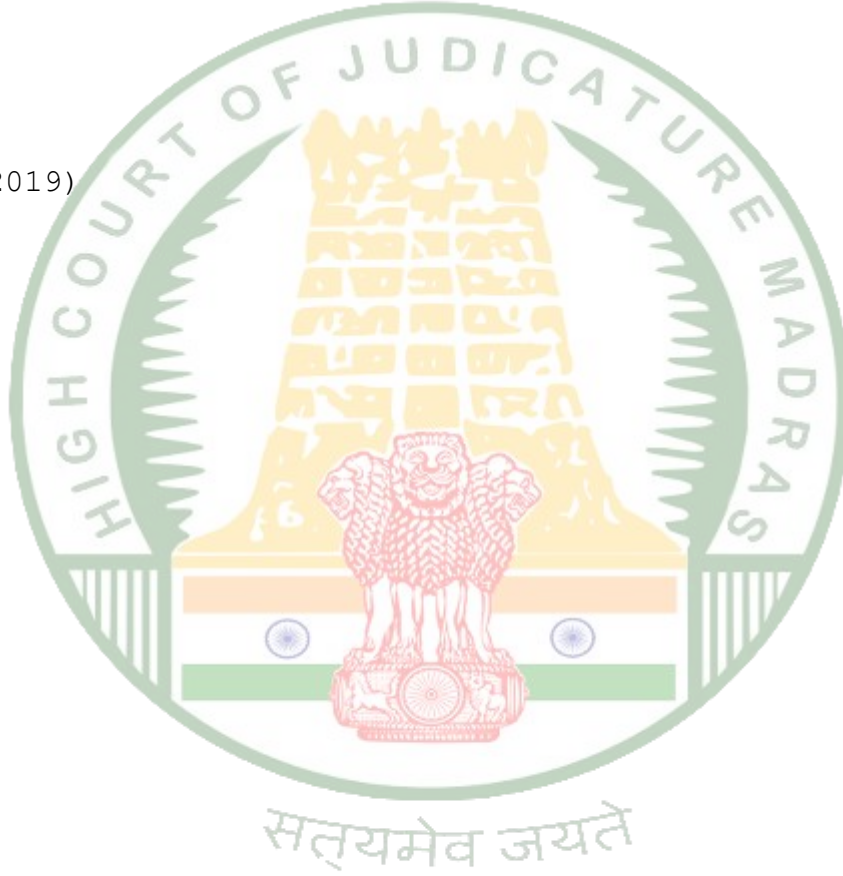
1. The Secretary to Government of Tamil Nadu
Information and Tourism Department
Fort St.George, Chennai 9.

2. The Director of Information and
Public Relations 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.

Writ Appeal No.3377 of 2019

RSI (CO)
SP(21/11/2019)



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