



W.P.Nos..34308 of 2022, etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.12.2023
Pronounced on	10.04.2024

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.34308, 34311, 34315, 34313, 34328, 34330, 34333, 34317, 34327, 34319, 34322, 34324, 34366, 34397, 34399, 34400, 34592, 34594, 34612, 34614, 34617, 34622, 34624, 34629, 34615, 34623, 34625, 34627, 34628, 34619, 34801, 34936, 34937, 35099, 35103 and 35105 of 2022, 97, 103, 107, 108, 110, 181, 186, 190, 195, 192, 194, 197, 202, 209, 205, 203, 207, 246, 248, 258, 261, 264, 295, 299, 300, 306, 310, 325, 343, 346, 349, 432, 449, 450, 443, 444, 438, 439, 441, 442, 446, 451, 452, 434, 448, 435, 437, 453, 465, 467, 468, 489, 490, 491, 501, 506, 512, 528, 742, 748, 749, 824, 829, 834, 837, 843, 831, 833, 835, 840, 842, 972, 1266, 1272, 1274, 1278, 1281, 1476, 1481, 1487, 1482, 1485, 1542, 1548, 1550, 1717, 1728, 1727, 1723, 1725, 1718, 1721, 2243, 3169, 3526, 3529, 3533, 3537, 3540, 3528, 3534, 3536, 3544, 3532, 3535, 3541, 3545, 3548, 3549, 3552, 3539, 3543, 3547, 3551, 3553, 3559, 4282, 4318, 4325, 4326, 4329, 4333, 4322, 4321, 4324, 4328, 4330, 4332, 4334, 4327, 4338, 4331, 4336, 4337, 4906, 5011, 5234, 5242, 5247, 5252, 5244, 5246, 5254, 6432, 6435, 6867, 14416, 14454, 14618, 14645, 14664, 14682, 14695, 14703, 15033, 15041, 15075, 15104, 15082, 15111, 15119, 15126, 15107, 15110, 15112, 15129, 15147, 15148, 15212, 15275, 15655, 15808, 16142, 16146, 16154, 16354, 17122, 17123, 17126, 17127, 18427, 18402, 15304, 19153, 25008, 28244, 32165, 35602 and 35697 of 2023.

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and

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2023

W.P.No.34308 of 2022

A.Akila

...Petitioner

Vs.

The Annamalai University,
Rep. by its Registrar (in charge),
Annamalai Nagar,
Chidambaram – 608 001.

...Respondent



W.P.Nos..34308 of 2022, etc., batch

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records pertaining to the impugned order in University Order No.785/2022 [C1] dated 07.12.2022 passed by the respondent and to quash the same and consequently to direct the respondent to allow the petitioner to continue to hold and officiate the present post of Liaison Officer/Special officer in the same Scale of Pay received by petitioner in Rs.15600-39100+GP 5400 with all other service and attendant benefits.

(In W.P.No.34308 of 2022)

For Petitioner : Mr.Menon

For Respondent : Mr.J.Ravindran,
Additional Advocate General
assisted by
Mr.E.C.Ramesh, Standing Counsel
for Annamalai University

COMMON ORDER

With the consent of both the parties, all these Writ Petitions were heard together and accordingly, the following common order is passed.

2. In all these Writ Petitions, the petitioners were originally appointed as Liaison Officers/Special Officers Grade-I and Grade-II, Zonal Officers, Assistant Programmers, etc., and have been reduced to lower ranks of Assistant Section Officers, Lab Assistants, Record Clerks, Typists, Assistants, etc., in the guise of re-designation and their pay-bands



were also reduced.

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3.1. The brief facts preceding the impugned action by the respondents, which gains significance for consideration of their cases, are as follows:-

3.2. The Annamalai University was established under the Annamalai University Act, 1928 (Tamil Nadu Act 1 of 1929). Owing to administrative mismanagement over the years and appointment of excess staff, the University resulted in severe financial burden. In order to rehabilitate the University and its staff members, the State Government had repealed the Annamalai University Act, 1928 and enacted the Annamalai University Act, 2013, by which it became a State University. The Government had appointed an Administrator to manage the University, with recommendations for redeployment of surplus staff, revision of Block Grant, conversion of the University into affiliation type, takeover of Medical College and Hospital by Government and sanction of special financial package to improve the financial position of the Annamalai University.

3.3. Based on the recommendation of the Administrator, the



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Government had issued orders for redeployment of surplus teaching and non-teaching staff of Annamalai University in various categories to the Secretariat and other Government Departments, Undertakings, Government Colleges and State Universities, for a period of three years, on agreement basis, as per Section 19 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

3.4. Accordingly, the Government had issued orders during the period from 2016 to 2020 and redeployed 1204 surplus teaching and 3246 non-teaching staff of the University in various categories of the Government Colleges, Departments, etc., through various Government Orders. On redeployment, these surplus teaching/non-teaching staff were relieved from the University and posted in these redeployed posts, for a period of three years on agreement basis. Their services were periodically extended for three years/one year, through Government Orders.

3.5. In spite of redeployment, the financial position of the University did not improve and therefore, a decision was taken to accommodate the surplus non-teaching staff against some other cadre. Accordingly, a show cause notice dated 13.08.2018 came to be issued to the so-called surplus



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non-teaching staff numbering about 785, claiming that their initial appointment, as well as their confirmation with the University that without availability of a sanctioned post and in order to strike a balance between the deteriorating financial position of the University and the retrenchment of these surplus officers, it was proposed to accommodate the Zonal Officers, Liaison Officers, Special Officers Grade-I and Grade-II in the scale of Rs.15,600 – 39,600 + Grade Pay Rs.5,400/-, into the cadre of Assistant Section Officers/equivalent posts with the scale of Rs.9,300 – 34,800 + Grade Pay Rs.4,600 and thereby called for their explanations. The explanations rendered by the petitioners were rejected by the University through an order dated 07.12.2022, by holding that the concerned staff were unable to substantiate and establish that they were appointed in a sanctioned post with the assessment of workload and therefore, their representations were not feasible of acceptance. The Government had, thereafter, passed the following orders:-

- (a) Through G.O.(D).No.80, Higher Education [H1] Department, dated 20.03.2023, allotting 3 Assistant Executive Engineers and 30 Special Officers Grade-I and Grade-II/Assistant Section Officers from the non-teaching staff of Annamalai University to the Public Works Department for the posts of Assistant Executive Engineers



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and Assistants, on agreement basis for a period of three years.

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(b) Through G.O.(D).No.76, Higher Education [H1] Department, dated 20.03.2023, allotting the surplus non-teaching staff of Annamalai University in the categories of Deputy Farm Superintendent/Deputy Garden Superintendent and Assistant Sections Officers to the Agriculture and Farmer's Welfare Department for appointment as Agriculture Officers and Assistants [Non-Security].

(c) Through G.O.(D).No.99, Higher Education [H1] Department, dated 29.03.2023, allotting surplus non-teaching staff of the Annamalai University in the categories of Deputy Superintendent, Special Officers Grade-I and Grade-II/Assistant Section Officer and Liaison Officers of the University to the Directorate of Collegiate Education for the post of Assistant Programmer, Junior Assistant, Typist, Lab Assistant, Store Keeper and Record Clerk.

(d) Through G.O.(D).No.106, Higher Education [H1] Department, dated 06.04.2023, allotting surplus non-teaching staff of the Annamalai University in the categories of Assistant/Assistant Section Officer and Assistant Programmer to the Directorate of Technical Education for the post of Junior Assistant and Typist.

3.6. Following these Government Orders, allotting non-teaching



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staff of the University to various Government Departments, appointment orders were also issued to the concerned employees of the University, appointing them to various State Government Departments, for a period of three years on agreement basis in the scale of Rs.9,300 – 34,800 + Grade Pay Rs.4,600. These non-teaching staffs are aggrieved against the re-designation to lower ranks in the Government Departments and reduction of their pay scales from Rs.15,600 – 39,600 + Grade Pay Rs.5,400 to Rs.9,300 – 34,800 + Grade Pay Rs.4,600. Some of these non-teaching staff have also challenged the Government Orders of allotment of the surplus non-teaching staff, as well as the order of the University, dated 07.12.2022, re-designating them to lower posts.

4. The learned senior counsels/counsels on record appearing for the petitioners submitted that the action of the University cannot be termed to be a mere re-designation, since it amounts to downgrading their designation, as well as reducing their pay-bands. When Article 311(2) of the Constitution of India protects such indiscriminate reduction in rank, without any inquiry, the entire action of the University requires to be struck down. It was also submitted that there was no staff fixation in the University at all and therefore, there was no basis for the University to



claim that the petitioners herein are surplus staff. The learned counsels also submitted that all the petitioners have been working for several years and after having extracted work from them, the University was not justified in arbitrarily downgrading their cadre in the guise of re-designation and also by reducing their pay-band. The claim of the respondents that some of these petitioners did not possess the essential qualification at the time of their appointment, was also denied.

5. Both the learned Additional Advocate Generals appearing on behalf of the University, as well as the Government, submitted that the appointment of the petitioners herein were not only irregular, but they were also unqualified for appointment. It was their submission that after the Government had taken over the University, the surplus non-teaching staff were identified and were redeployed in the needy departments of the Government.

6. By placing reliance on the counter affidavit filed by the respondents, it was represented that the scale of pay for these petitioners would be protected. However, with regard to re-designation is concerned, it is their submission that the posts, which these petitioners held at the



University, were not available in the Directorate of Collegiate Education and therefore, they were constrained to accommodate them in suitable posts available with the Directorate of Collegiate Education by re-designating them.

7. The two main issues that have come up for consideration in these batch of Writ Petitions are:-

(a) as to whether the University was justified in reducing the pay-band of these petitioners while re-designating them;

(b) as to whether the petitioners can be re-designated and reduced to a lower cadre.

8. Insofar as reduction of the pay grade is concerned, the respondents have filed a counter affidavit dated 01.06.2023 and in paragraphs 14 and 15, it is stated that the surplus staff, who were redeployed in the vacancies that exist in various Government Departments/Colleges, their pay protection resulting to the original designation in the Annamalai University shall stand protected. In view of this specific stand taken by the Government, as well as the University, the grievances of these petitioners, with regard to their pay protection, have



been redressed.

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9. However, I would hasten to add here that though the respondents have realized their bodge in reducing the pay grades and have now offered for pay protection, they are reminded that such pay protection could only mean an intent for restoration of the original pay grades of the petitioners. Thus, if the impugned orders have already been given effect to by reducing the pay grades of any of these petitioners, the same shall be restored back to the original pay scales drawn by them and also the respondents are bound to refund the difference of their salary emoluments, that the petitioners may have been deprived of.

10. Insofar as the re-designation of the posts of these petitioners are concerned, the respondents have re-designated the petitioners through various posts like Special Officer to Assistant Section Officer/Lab Assistant/Store Keeper/Record Clerk and some of the Assistant Programmers to Typists. Such reduction in their ranks in the guise of re-designation can be outrightly said that such an action would tantamount to imposition of a punishment without inquiry, which is not only impermissible in law, but also unconstitutional.



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11. Article 311(2) of the Constitution of India prescribes, among other, that no person who is a member of the civil service of a State or holds a civil post under a State, shall be reduced in rank, except after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard, in respect of those charges.

12. Two important factors that emerge under this constitutional safeguard provided to a person holding a civil post under the State, before he is reduced in rank, are through framing of charges against him and by extending a reasonable opportunity of being heard in respect of those charges, which requires to be followed by an inquiry. The principles of natural justice have been highlighted under Article 311(2) and violation of the same would render the consequential action of reduction in rank as unconstitutional.

13. In the case of *Appar Apar Singh Vs. The State of Punjab and Others* reported in (1970) 3 SCC 338, the action of reducing the rank of a civil servant was set aside by the Hon'ble Supreme Court, in the following



manner:-

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“17. After giving due consideration to the various aspects placed before us by the learned counsel on both sides and the reasons given by the Letters Patent Bench, we are of the opinion that the impugned order, in the circumstances, is one which amounts to “reduction in rank” of the appellant to which Article 311(2) is attracted and as admittedly no enquiry has been held as contemplated by the relevant rules regarding disciplinary proceedings, the judgment of the Division Bench will have to be set aside.”

14. Likewise, in the case of ***Nyadar Singh Vs. Union of India and Others*** reported in ***(1988) 4 SCC 170***, the action of reduction in rank was held to be a major penalty, since it has been coupled along with the other major penalties of dismissal and removal under Article 311(2) of the Constitution of India. The relevant portion of the judgment reads as follows:-

“13. The import of the expression “reduction in rank” has been examined in the context of the constitutional protection afforded to government servants under Article 311(2) in relation to the three major penalties of “dismissal”, “removal” and



“reduction in rank” and the constitutional safeguards to be satisfied before the imposition of these three major penalties. In Article 311(2) the penalty of “reduction in rank” is classed along with “dismissal” and “removal” for the reason that the penalty of reduction in rank has the effect of removing a government servant from a class or grade or category of post to a lesser class or grade or category. Though the government servant is retained in service, however, as a result of the penalty he is removed from the post held by him either temporarily or permanently and retained in service in a lesser post. The expression “rank”, in “reduction in rank” has for purposes of Article 311(2) an obvious reference to the stratification of the posts or grades or categories in the official heirarchy. It does not refer to the mere seniority of the government servant in the same class or grade or category. Though reduction in rank, in one sense, might connote the idea of reversion from a higher post to a lower post, all reversions from a higher post are not necessarily reductions in rank. A person working in a higher post, not substantively, but purely on an officiating basis may, for valid reasons, be reverted to his substantive post. That would not, by itself, be reduction in rank unless circumstances of the reversion disclose a punitive element.”



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15. Apart from issuing a show cause notice to these petitioners on the contemplated action of reducing their rank, together with downgrading their scales of pay, no inquiry was admittedly conducted in these cases. When the Constitution mandates for an inquiry before reducing the rank of a civil servant, there can be no deviation from the prescribed procedure.

16. The learned Additional Advocate Generals had made faint attempts to justify the action of the University in passing the impugned orders, predominantly on the ground that all these petitioners have been rendered surplus in their University and they did not possess the essential qualification at the time of their appointments. Admittedly, all these petitioners were appointed several years prior to the enactment of the Annamalai University Act, 2013, whereby it had become a State University. These appointments were apparently made by the then Syndicate of Annamalai University. To the claim made by the petitioners that there were no staff fixation in the University at all at any point of time, there is no rebuttal from the University. Likewise, the claim of the University that some of these petitioners did not possess the essential qualification, at the time of their appointment, has also been denied.



Incidentally, the University has failed to substantiate or establish as to on what basis some of the staff members were rendered as surplus, when no staff fixation itself was done, through a scientific method, at the time when they were rendered as surplus. Likewise, no material has been placed before this Court to prove that some of the petitioners did not possess the qualification, more particularly, when they had rendered several years of service under the University.

17. The background in which the respondents have deployed their indigenous method of reducing the rank of these petitioners is when it was realized that a severe financial loss had occurred, owing to the administrative mismanagement of the erstwhile University and thereby, the University was made as a State University, through the enactment of the Annamalai University Act, 2013. This was followed by an exercise of redeployment of a large chunk of teaching and non-teaching staff to various categories of Government Colleges, Departments, etc., by claiming them as surplus staff. Even thereafter, when the financial position of the University had not improved, the present impugned action of reducing their rank in the guise of re-designation and bringing down their pay-band has been restored to. Apparently, the respondents have already taken a



final decision to set right the financial position of the University and thereafter have designed methods to reduce the financial burden by passing the impugned orders. While the object of the State to take over the University was to rehabilitate it from its financial crisis appears to be laudable, it cannot be at the cost of its employees' dignity or financial loss.

18. Apart from the constitutional violation of Article 311(2) of the Constitution of India, the present impugned action also deprives these petitioners of an equal opportunity in the matter of a public employment. These petitioners, who held various positions, cannot be stooped down to a lower position and lowering their dignity, which will also amount to violation of their fundamental right of equality of opportunities to their employment, thereby violating Article 16 also.

19. When the petitioners were appointed to their respective posts, they would have been under a legitimate expectation that on redeployment, they would be deployed to the same post or in the alternate to a similar post. The posts, which these petitioners were holding at the time of redeployment, are in the nature of a promise by their employer, which cannot be unilaterally withdrawn adversely.



WEB COPY 20. In the case of ***Kerala State Beverages (M and M) Corporation***

Limited Vs. P.P.Suresh and Others reported in ***(2019) 9 SCC 710***, the law laid down by the Hon'ble Supreme Court in some of its decisions, on the principles of legitimate expectation, were referred to in the following manner:-

“14. The main argument on behalf of the respondents was that the Government was bound by its promise and could not have resiled from it. They had an indefeasible legitimate expectation of continued employment, stemming from the Government Order dated 20-2-2002 which could not have been withdrawn. It was further submitted on behalf of the respondents that they were not given an opportunity before the benefit that was promised, was taken away. To appreciate this contention of the respondents, it is necessary to understand the concept of legitimate expectation.

15. The principle of legitimate expectation has been recognised by this Court in Union of India v. Hindustan Development Corpn. [Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499] If the promise made by an authority is clear, unequivocal and unambiguous, a person can claim



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that the authority in all fairness should not act contrary to the promise.

16. M. Jagannadha Rao, J. elaborately elucidated on legitimate expectation in Punjab Communications Ltd. v. Union of India [Punjab Communications Ltd. v. Union of India, (1999) 4 SCC 727] . He referred (at SCC pp. 741-42, para 27) to the judgment in Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] in which Lord Diplock had observed that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which,

“27. ... (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.” (AC p. 408)



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17. Rao, J. observed in this case, that the procedural part of legitimate expectation relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit, that it will be continued and not be substantially varied, then the same could be enforced.

*18. It has been held by R.V. Raveendran, J. in Ram Pravesh Singh v. State of Bihar [Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381 : 2006 SCC (L&S) 1986] that legitimate expectation is not a legal right. Not being a right, it is not enforceable as such. It may entitle an expectant: (SCC p. 391, para 15)
“(a) to an opportunity to show cause before the expectation is dashed; or
(b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice.”*

21. This apart, when the petitioners herein were under a legitimate

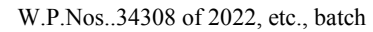


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expectation that they would be redeployed in the same or similar post, the corollary obligation on the part of the State would be to refrain from reducing their rank in the guise of re-designation, thereby adversely affecting their interest.

22. The learned Additional Advocate Generals made a reference to the unavailability of the same or similar posts in their department, which was also one of the reasons for re-designating them. I am not in agreement with such a submission. Even assuming that the concerned department did not have a sanctioned post, that could be similar to that of the posts which the petitioners were holding, there was a duty cast on the State to atleast create supernumerary posts, commemorating with the posts they originally held and accommodate the petitioners herein, rather than expressing their inability, by citing unavailability of similar posts.

23. Though the petitioners herein have phrased their prayers in these writ petitions in different forms, the unanimous grievances of all these petitioners are that the respondents ought not to have reduced their pay scales, as well as re-designated their posts into lower cadres.



allowed. Consequently, the following orders and directions are issued:-

- Grade Pay Rs.4,600, are hereby declared as illegal.



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(e) All the above directions shall be complied by the respondents,

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within a period of four (4) weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

10.04.2024

Index:Yes

Neutral Citation:Yes

Speaking order

hvk



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To



W.P.Nos..34308 of 2022, etc., batch

M.S.RAMESH,J.

hvk

- 1.The Principal Secretary,
Higher Education Department,
Fort St. George, Chennai – 600 009.
- 2.The Vice Chancellor,
Annamalai University,
Annamalai Nagar, Chidambaram – 608 002.
- 3.The Registrar, (i/c),
Annamalai University,
Annamalai Nagar,
Chidambaram – 608 002.
- 4.The Director of Collegiate Education,
Directorate of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

**ORDER MADE IN
W.P.Nos.34308 of 2022, etc. batch**

10.04.2024