
(1967) 08 MAD CK 0010
In the Madras High Court

K.R. Krishnaswami, Superintendent, Junior Technical School,
Government Polytechnic

APPELLANT

Vs

The Director of Technical Education and Others

RESPONDENT

Date of Decision : 29-08-1967

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1968) 1 MLJ 348

Hon'ble Judges : T. Venkatadri, J;T. Venakatadri, J

Bench : Division Bench

Judgement

T. Venakatadri, J.—In this petition for the issue of a writ of mandamus, we have to consider whether the petitioner was reduced in rank as

per the rules and regulations and conditions of service, and whether the impugned order was passed on an erroneous exercise of jurisdiction,

misinterpretation and misconstruction of the Rules.

2. The writ petitioner entered Government service in the year 1945 and was in charge of teaching and training students in the Government

Cinematography and Sound Engineering Section. Before he joined Government Service, he had served as a Cameraman for four years in Motion

Picture Producers Combine Limited; While he was working as Cinema Assistant in the Central Polytechnic, he was appointed as Maintenance

Engineer, Films Divisions, Bombay, with effect from 29th November, 1954, and, in his place, one B. Sivathanu Pillai, much junior to the petitioner,

was appointed. While he was employed as Maintenance Engineer, Films Division, Bombay, the Government of Madras, in their G.O.Ms. No.

734, Education, dated 16th April, 1958 appointed the petitioner, who was on other duty under the Government of India, to act regularly as Head

of Sound Engineering Section, Central Polytechnic, Madras, with effect from 12th January, 1956. This order stated that it was without prejudice to

his appointment as Maintenance Engineer, Films Division, Bombay. As the petitioner was in Bombay the said Sivathanu Pillai was appointed, by

the same Government Order, to act regularly as Head of Sound Engineering Section, Central Polytechnic, Madras. Subsequently the petitioner got

himself relieved from the post of Maintenance Engineer, Films Division, and reported to duty as Head of Section Cinematography and Sound

Engineering, Central Polytechnic. But the Director of Technical Education posted the petitioner as Special Officer for outdoor films, Central

Polytechnic, by his order dated 22nd July, 1959. The Director of Technical Education thereby allowed the said Sivathanu Pillai to continue as the

Head of the Cinematography and sound. Engineering Section, for which post the petitioner was originally appointed in G.O.Ms. No. 734, dated

16th April, 1958. The petitioner attacks the validity of this order dated 22nd July, 1959 as also the subsequent order dated 14th March, 1962 and

attributes motives and mala fides to the Director of Technical Education.

3. It is an admitted case that the Government themselves passed various orders from time to time first announcing the appointment of the petitioner

as Head of Cinematography and Sound Engineering Section, then regularising the same and then notifying the same in the Gazette. It is therefore

necessary for me to state in detail the Government Orders passed, from time to time starting from 1958 and ending with 14th March, 1962, the

date on which the petitioner was appointed, to act as Special Officer for out-door films.

4. By G.O.Ms. No. 734, Education, dated 16th April, 1958, the petitioner was appointed to act regularly as Head of Sound Engineering Section,

Central Polytechnic, Madras, with effect from 12th January, 1956 without prejudice to his then appointment. It must be noted that the petitioner

was then, working as Maintenance Engineer, Films Division, Bombay. The appointment of the petitioner as Head of Sound Engineering Section

and Cinematography was also Gazetted on 30th January. 1958. Further, the Government also informed the Director of Technical Education by

their Memorandum dated 10th June, 1959, that the posts of Head of Section in Cinematography and Sound Engineering and Special Officer for

Outdoor Films were distinct from one another and that as the petitioner was regularly selected by the Public Service Commission and then

appointed by Government for the post of Head of Sound Engineering Section, he should be posted on reversion from the Government of India as

Head of the Sound Engineering Section, Central Polytechnic, Madras. Pursuant to this Memorandum, the Deputy Secretary to the Government of

Madras wrote to the Controller of Films Division", to relieve the petitioner, so as to enable him to join duty as Head of Section, Cinematography

and Sound Engineering, Central Polytechnic, Madras. But curiously when the petitioner, after relief from Bombay, came to report for duty in

Madras, he was informed by the Director of Technical Education, in his notification, dated 22nd July, 1959, that he had been posted as Special

Officer for outdoor films, Central Polytechnic, Madras. It is particular to note that inspite of this notification by the Director of Technical Education,

the Government notified by publishing in the Gazette that the petitioner was appointed to act regularly as Head of Sound Engineering Section,

Central Polytechnic, Madras, with effect from 12th January, 1956. In the year 1960, when the Government of Madras established a separate

institute known as the Institute of Films Technology, these staff were transferred to the control of the Director of Technical Education with effect

from 14th September, 1960. The petitioner was transferred from the Cinematograph and Sound Engineering Section in the Central Polytechnic

and was posted as special Officer, Out-door Films, and Sivathanu Pillai was posted as Head of Cinematography and Sound Engineering Section.

In G.O.Ms. No. 2907, dated 12th December, 1961, the Government sanctioned the permanent retention of the temporary posts in the Institute of

Film Technology, and the Director of Technical Education was directed to take steps to confirm the incumbents in the respective posts, taking into

consideration their seniority, etc. It should also be noted that the Government issued general instructions in the month of January, 1962, in G.O.

No. 57, Public Service Department dated 8th January, 1962 that orders declaring probation should be issued immediately after the prescribed

period of probation expired. The order further stated that except in cases where serious charges were pending, all officers appointed by direct

recruitment or by promotion or by transfer before 1st January, 1957 and whose probation had not been declared should be declared to have

completed their probation on the strength of that order. In this case, even after six years the petitioner's probation had not been declared. But, we find, the Director of Technical Education starting disciplinary proceedings against the petitioner in the month of April for various irregularities committed by him in connection with the supply and erection of an Automatic process Machine in August, 1960. The charges have been pending enquiry till the filing of the writ petition in this Court. While so, the Government passed G.O.Ms. No. 548, dated 14th March, 1962, stating that though the petitioner was recommended by the Public Service Commission originally for the post of the Head of Section of Cinematography and Sound Engineering, the petitioner was away and was not in the teaching line from 1954 to 1959, that he did not possess adequate academic qualification and was therefore not suitable for the post of Head of Section of Cinematography and Sound Engineering. He was therefore recommended for the post of Special Officer for Out-door Films by the Director of Technical Education. The Madras Public Service Commission had concurred in the view of the Director of Technical Education. The Commission suggested that Sivathanu Pillai could, be continued in the post of Head of Section in Sound Engineering and the petitioner in the post of Special Officer for Out-door films. Accordingly, the Government issued the above notification, in supersession of the Notification already issued on 16th April, 1958, appointing the petitioner to act regularly as Special Officer with effect from 12 January, 1956, the date on which he was originally appointed as Head of Section, Cinematography and Sound Engineering.

5. The petitioner states in his affidavit that the Director of Technical Education is prompted by improper motives and that his action was done mainly with a view to give a favoured treatment to Sivathanu Pillai, who has since become the Principal of the Institute of Technology.

6. It is common case that when the petitioner was appointed as an. Assistant in the Government Cinematography and Sound Engineering Section, he was then found fit for the post. During the period 1945 to 1954, he was training students. Even prior to that, he had sufficient experience and had worked as a Cameraman. When he was appointed as Maintenance Engineer, Films Division, Bombay, in his place, the said Sivathanu Pillai

was appointed as Cinema Assistant. Admittedly Sivathanu Pillai was not only his junior but also his student while the petitioner was in the teaching staff. While he was at Bombay, the post of Head of Sound Engineering Section had to be filled up. At that time, the petitioner's seniority and appointment as Head of Sound Engineering Section was considered and determined" in consultation with the Public Service Commission. They were aware of the qualification and experience of the petitioner when they selected him for the post of Head of Cinematography and Sound Engineering Section. It was only after the approval by the Commission the Government issued the order appointing him as Head, of Cinematography and Sound Engineering Section, and it was also Gazetted. Now the Public Service Commission says that the petitioner is not qualified for the post of Head of Cinematography and Sound Engineering Section. In saying so, the Commission have concurred in the view of the Director of Technical Education. The Public Service Commission have a distinct and distinguished status under our Constitution. The Public Service Commission, cannot and should not identify themselves with the Governmental authorities. When once the Commission express their opinion that the petitioner is entitled to the post as Head of the Section of Sound Engineering, they cannot afterwards concur with the view of the Director of Technical Education and say that the petitioner is not a fit person for the disputed post. If the Commission is to change their opinion from time to time to suit the occasion, they would be placing themselves in a ridiculous situation and would be liable to public criticism. Once they give a considered opinion, they must stick to it and their decision must be final at least so far as they are concerned. Their approval is the last word in the selection of a particular candidate for a distinct post. At the time of the selection, the Commission felt that the petitioner possessed the necessary qualification and also experience in technical line. Subsequently, the Government amended the rules regarding qualification for the said post of Head of "Section of Cinematography and Sound Engineering. But this certainly would not affect the petitioner, as he entered the departmental service before the amended rules came into force, and further he had the necessary qualification when he entered service.

7. Learned Counsel for the petitioner contended that, since his client has been regularly appointed as Head of Cinematography and Sound

Engineering Section, on account of the notification dated 22nd July, 1959 and the order dated 14th March, 1962 he has lost valuable rights and

benefits attached to that post by his being posted as Special Officer. According to him, the petitioner would have got the post of Principal of the

Institute of Film Technology, whereas now Sivathanu Pillai, a junior to the petitioner, has been promoted to act as the Principal from the post of

Head of Section of Cinematography and Sound Engineering. In the normal course, if the petitioner had been allowed to join, the post of Head of

Cinematography and Sound Engineering Section, he would have become the Principal of the Institute of Film Technology. Learned Counsel,

therefore, contended that that amounted to reduction in rank under Article 311(2) of the Constitution.

8. Their Lordships of the Supreme Court in *P.L. Dhingra v. Union of India* (1958) S.C.J. 217 have observed:

A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has right to a particular

rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If however,

he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment.

But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules,

the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances

be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for

the reduction also visits the servant with any penal consequences. Thus if the Order entails or provides for the forfeiture of his pay or allowances or

the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may

indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower

rank under the terms of the contract of employment or under the Rules, in truth and reality the Government has terminated the employment as and

by way of penalty...the Court has to apply the two tests mentioned above, namely (1) whether the servant had a right to the post or rank or (2)

whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be

held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to

his substantive rank must be regarded as a reduction in rank....

The Supreme Court has referred to this principle in *P.C. Wadhwa Vs. Union of India (UOI) and Another*, . The said principle has been followed

by the High Court of Andhra Pradesh in a cause on similar facts, *State of Andhra Pradesh v. Chinna Reddi (1962) 1 A.W.R. 216 : AIR 1923*

A.P. 412. The respondent in that case entered service in the Salt Department in 1940 as a clerk. His services were transferred to the Factories

Department where he completed his probation-He was thereafter appointed as a clerk in the Revenue Department where he was promoted as an

Upper Division Clerk. When the State of Andhra was ushered into existence on 1st October, 1953, the respondent sought a transfer to the

Andhra Secretariat Service and he was entertained there as an Upper Division Clerk in the Revenue Secretariat, and his services were

subsequently regularised. It must be noted that the respondent did not possess the necessary educational qualification, for the Secretariat Service.

He was therefore for a time reverted to the revenue establishment. As a result of representation made by the respondent, the Government relaxed

the rule of the minimum general educational qualification in favour of the respondent and appointed him by transfer to the Secretariat Service. This

was in 1955. But in 1960, he was reverted to the revenue establishment. He filed a writ petition the main ground being that the order of reversion

deprived him the benefits of the service in the Revenue Secretariat with its higher emoluments which would amount to a reduction to a lower rank

and that was not afforded an opportunity as required by Article 311(2). Summing up the case, the learned Judges observed that the impugned

order, though had the garb of an order of transfer from the Secretariat Service to the Revenue Department, visited the respondent with penal

consequences and therefore, amounted to a reduction in rank. Similarly in this case, though the Director of Technical Education has stated in his

counter affidavit that both the posts carry the same status, scale of pay and responsibilities, while there is chances for promotion from the post of

Head of Section of Sound Engineering to the post of Principal of the Institute of Film Technology, there is no such chance of promotion from the

post of Special Officer. Even assuming that the two posts carry the same status and scale of pay, the petitioner was designated and was also

intended to be posted as the Head of Cinematography and Sound Engineering Section only, as he had the sufficient experience and also seniority.

Certainly, he cannot be equated with a junior who was also his student, merely because the latter had obtained a Degree in Cinematography. The

petitioner has worked for nearly two decades in the Department. His knowledge, experience and age should certainly be taken into consideration

while fixing the seniority. I do realise that by issuing a writ of mandamus, the present person in the post, namely, Sivathanu Pillai, would be

reverted. But justice has got to be done in this case without consideration of persons and personalities.

9. Learned Counsel for the respondents contended that this Court had no jurisdiction to adjudicate the disputed question, as it involved, the

question of promotion and fixation of seniority coming under, the relevant service rules which are of an administrative character and therefore not

enforceable in a Court of law.

10. Under Article 309 of the Constitution of India, provision is made for enactment of laws for regulating the recruitment and conditions of service

of persons appointed to public services. Under that article, provision is also made for the making of rules for the same purpose. Any rule or

statutory provision, whether made under Article 309 or not, which conflicts with the rule of pleasure declared in Article 310(1) of the Constitution

will not be legally enforceable and will have the effect of an administrative rule. But the question still remains as to what rules or statutory provisions

must be regarded as repugnant to the rule of Pleasure contained in Article 310(1). Before the Constitution of India was framed, in AIR 1937 31

(Privy Council) their Lordships of the Privy Council held that, notwithstanding the breach of the service rule, the matter was not justifiable in a

Court of law. The Privy Council held that the words "subject to the Rule iv Section 96-B of the Government of India Act, 1919, only amounted to

a statutory and solemn assurance and that the remedy for breach of the rules was by approach to the higher authorities in the Government and not

legal, action in a Court of law. At the same time, their Lordships urged the necessity on the part of the Government to see that supreme care was

taken that the rules were strictly carried out in their letter and spirit. This view was also taken by the Privy Council in AIR 1937 27 (Privy Council)

where however the rule in question related to pension rights of Government servants. The above two cases may be taken to represent the law

before the Constitution. After our Constitution, a considerable divergence of views is noticed and this can be summarised. Dr. M. Krishnamoorthy

Vs. The State of Madras and Another, laid down that the service rules prescribing the procedure to be followed while taking disciplinary action

against Government servants including dismissal, removal and reduction in rank were only of an administrative character and that non-compliance

with such rules by itself would, not be a matter justiciable in a Court of law. Chhandra Bhan Varma *Vs. Union of India*, held that a suit for

declaration that dismissal was illegal was not maintainable. In *A. Sambandhan Vs. Regional Traffic Superintendent (Personnel) Southern Railway*

and Others, it was held by this Court that the breach of Service Rules and Regulations as to assignment of Seniority to Government servants was

not a justifiable matter. In *Des Raj Kirpa Ram Vs. Punjab State*, it was held that the Government's failure to observe the fundamental rules in the

matter of promotion would not give rise to a cause of action. In *G. Valayya Panthulu v. Government of Andhra* AIR 1958 An.240, it was held that

the breach of the Rules and Regulations relating to the termination of service of Government servants would not render the action taken by the

Government invalid, where no grave prejudice had been caused to the Government servant in consequence of such breach. In *Lachman Prasad*

Ram Prasad and Others Vs. Superintendent, Government Harness and Saddlery Factory, Kanpur, the Allahabad High Court held that the scales

of pay of Government servants could not be altered to their detriment when such alterations were contrary to the service rules. In *N. Baksi Vs.*

Accountant General and Another, it was held by the Patna High Court that an I.C.S. Officer was entitled to a mandamus against the Accountant-

General-ordering him to pay passage money for his wife and children according to the service Rules applicable to him. The Supreme Court in

Parshotam Lal Dhingra Vs. Union of India (UOI), held that breach of the Rules and Regulations regarding the procedure to be followed while

taking disciplinary action against the Government servant including dismissal, removal and reduction in rank would be justifiable in a Court of law.

The Supreme Court impliedly held in *Nohiria Ram Vs. The Union of India (UOI) and Others*, , that matters like seniority, of a Government servant

were open to judicial determination in so far as they depended upon the Service Rules. In *Hartwell Prescott Singh Vs. The Uttar Pradesh*

Government and Others, . the Supreme Court entered into the service rules in order to determine what the status of the Government servant was

according to the rules and whether the particular order in question in the case might be regarded as one of reduction in rank so as to attract the

application of Article 311 of the Constitution. Therefore the original view that rules relating to service conditions were merely administrative

directions not enforceable in Court of law no longer holds the field. It is clear from the above summary of the decisions, that rules and provisions

which fetter the power of the Government to terminate the service of an official will be regarded as conflicting with the rule of "pleasure" and hence

not enforceable against the Government in a Court of law. But he will be entitled to the protection under Article 311 and such protection cannot be

whittled down or negated by the service Rules. Of course executive instructions will have the status of rules and will not be capable of judicial

enforcement. But rules cannot be changed from time to time to suit the requirement of any person or authority. And such a rule can never have

retrospective operation which is repugnant to the conception of Rule of law. If the administrative acts appear to be arbitrary and capricious, the

Courts have a right to interfere in writ jurisdiction to help the persons who are meekly suffering. It is not as if the law Courts are powerless to give

sufficient redress to the Government servants in respect of their legitimate grievances grounded on favouritism and arbitrary discrimination. When

once the shortcomings of the officers is brought to the notice of Court, the Court should without hesitation rectify them. The Court should not and

cannot dictate how the discretion should be exercised but can compel the legitimate exercise of the discretion. If the authority has taken a wrong

view in law of the nature of the discretion, it is an error of law. The rules should not be made or altered or varied to the detriment of the petitioner

who have been appointed according to the existing rules.

11. Under these circumstances, I feel that the original order passed in G.O.Ms. No. 754 dated 16th April, 1958, appointing the petitioner as the

Head of Cinematography and Sound Engineering Section should stand. Consequently the petitioner will be entitled to the rights and benefits

accruing therefrom.

12. The writ petition is accordingly allowed. There will be no order as to costs.