
(2014) 11 MP CK 0159
In the Madhya Pradesh High Court
Case No : W.P. No. 4678 of 2014 (S)

Om Prakash and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 299, 311
Evidence Act, 1872 — Section 115

Citation : (2015) LabIC 1571 : (2015) 1 MPLJ 707

Hon'ble Judges : S.K. Gangele, J; Rohit Arya, J

Bench : Division Bench

Advocate : B.P. Singh, Jitendra Sharma and Alok Sharma, Advocates for the Appellant; J.P. Saxena and M.K. Sharma, Advocates for the Respondent

Judgement

1. Since the issue involved and relief sought for in Writ Petition Nos. 4678, 4679, 4685, 4737, 4738, 4740 and 5036 of 2014 are similar, therefore, all these writ petitions are heard analogously and decided by this common order.

By this writ petition and aforesaid connected writ petitions the order dated 28-7-2014 passed in bunch of Original Applications by Central Administrative Tribunal, Jabalpur (in short "the CAT") is under challenge.

2. Facts as pleaded in the writ petitions are to the effect that the petitioners have been working in the office of the Accountant General, M. P., Gwalior as daily-wager for more than 10-15 years, but respondents did not take any steps for regularization of their services though they acquired right to be conferred temporary status under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 (in short "the Scheme of 1993").

3. After implementation of the recommendations of the Sixth Pay Commission, all group D posts were upgraded as Multi Tasking Staff (in short "MTS") carrying grade pay of Rs. 1800/-. The Comptroller and Auditor General of India vide circular dated 31-12-2009 has issued instructions providing minimum

qualification as matriculation for the aforesaid MTS posts, however, in the case of daily wage workers engaged in IA and AD this condition was relaxed and for them the minimum required qualification was 8th class subject to following conditions:

"(i) The candidates will have to pass 10th class from any recognized Board of education/National Open School.

(ii) Such candidates shall have to pass 10th class within a period of two years. Failure to do so shall entail termination of services."

The aforesaid circular was issued in the backdrop of office memorandum of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) [in short "the DoPT"] dated 23-1-2012 regarding applicability of revised group D pay scale to casual labourers that who were in receipt of wages based on S-I scale as on 1-1-2006 shall be given pay Band I with grade pay of Rs. 1800/- w.e.f. 1-1-2006 provided they are matriculate. In the case of non-matriculate temporary status casual labourers, it was provided that the aforesaid benefit shall be extended w.e.f. 1-1-2006 only after imparting the requisite training by the respective administrative Ministries/Departments on the lines indicated in the MOF O.M. No. 1/1/2008-IC dated 24-12-2008.

4. Pursuant to the aforesaid decision of the CAG, advertisement in the weekly Rojgar Express newspaper dated 19-4-2010 inviting applications for MTS posts was published with stipulation that in case of daily wage workers in IA & AD the minimum qualification will continue to be 8th class subject to the condition as hereinabove mentioned. Copy of advertisement is on record as Annexure R/2.

5. It appears that on 10-1-2012 CAG issued a circular No. 8-Staff (App. 1) 25-2010/KW, wherein it was provided that non-matriculate MTS were required to pass matriculate examination within two years and failure to do entail termination of their services. Copy of the circular is annexed as Annexure R/8.

6. On 3-4-2012 the DoPT issued a circular, F. No. 14014/2/2009-Estt. (D) for regulation of conditions for compassionate appointment. It was provided that person appointed as trainee on compassionate ground has to acquire minimum educational qualification (10th examination) in five years. It is relevant to mention that the CAG vide its clarificatory note No. 275-Staff (App-II) 87-2011 dated 9-4-2012 issued an order with reference to and in the context of the aforesaid order of the DoPT dated 3-4-2012 to the following effect:--

"These orders will apply to the newly recruited non-matriculate MTS also. The clarifications issued vide circular No. 8 Staff (App. I) 25-2010/KW dated 10-1-2012, which are not in conformity with these instructions, may be treated as superseded."

Combined reading of the DoPT circular dated 3-4-2012 and the instant CAG clarificatory note dated 9-4-2012 leads to an irresistible conclusion that the non-matriculate MTS were extended the period from two years to five years for

qualifying 10th class from any recognized Board of education/National Open School; the minimum qualification required for regular appointment as MTS.

7. Petitioners applied pursuant to the aforesaid advertisement for appointment as non-matriculate MTS. After going through the selection process, petitioners were appointed as temporary MTS vide order dated 3-7-2012. The appointment letters bore the stipulation to the effect that; (i) the candidates will have to pass 10th class from any recognized Board of education/National Open School; and (ii) such candidates shall have to pass 10th class within a period of two years. Failure to do so shall entail termination of their services.

8. It appears that after appointment in the month of July, 2012, petitioners had appeared in 10th Board examination, but could not succeed purportedly for the reason that petitioners having been in service for last 10-15 years were out of touch with the studies, however, were suddenly required to appear in the examination.

9. On 20-9-2012 the CAG with reference to the clarificatory note dated 9-4-2012 issued another clarificatory note No. 820 Staff (App.II)72/2012/Vol.II to the effect that the decision taken and as contained in the earlier clarificatory note dated 9-4-2012 (supra) has been reviewed and it is further clarified that the clarification given of serial No. 2 of the DoPT circular dated 3-4-2012 (supra) would not be applicable in the cases of, newly recruited matriculate MTS and accordingly, they will have to acquire the minimum educational qualification of matriculation within two years of their appointment. Copy of clarificatory note dated 20-9-2012 is annexed as Annexure R/9.

10. As petitioners could not pass the examination as aforesaid, therefore, termination orders were issued on 14-7-2014.

11. Being aggrieved thereby petitioners preferred Original Applications before the CAT. The CAT dismissed the Original Applications on the premise that as petitioners have not been able to pass 10th Board examination within two years, therefore, respondents have rightly terminated their employment.

12. The aforesaid order of the CAT is under challenge in this bunch of writ petitions.

13. Learned counsel for the petitioners contended that petitioners have been serving respondent-AGMP as daily-wager for last more than 10-15 years. As a matter of fact under the Scheme of 1993 and as per the judgment of the Hon"ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , their services ought to have been regularized and they should have been conferred temporary status, but that was not done. Considering facts that such daily-wage employees serving various departments of the Government of India for such long period, in terms of the recommendations of the Sixth Pay Commission, it was resolved that such daily-wage employees be given an opportunity for regular appointment through selection process and accordingly, in

response to the advertisement issued by the respondents, petitioners applied, went through selection process and became successful in the selection test. Consequent thereupon, petitioners were issued appointment letters dated 3-7-2012 and started serving the department.

14. It is further contended that the DoPT had issued a circular dated 3-4-2012, wherein it was provided that the person appointed as a trainee on compassionate ground has to acquire minimum educational qualification in five years. Needless to say, such trainees were also holding the group D posts. The CAG considering the fact that such newly appointed non-matriculate MTS group D post holders were serving for last more than 10-15 years and being out of touch with the studies brought them at par with such trainee appointees on group D post and extended the period upto five years for qualifying the requisite 10th Board examination. In fact the stipulation in the earlier circular issued by the CAG on 10-1-2012 was specifically superseded. It is submitted that while the aforesaid circular was in existence and operating in the field, petitioners were provided with the appointment w.e.f. 3-7-2012, therefore, by virtue of the aforesaid circular, petitioners were entitled to avail the benefit of five years period to qualify 10th Board examination and this right has accrued to them at the time of their appointment. The appointment order has to be read in conjunction with the aforesaid clarificatory note and not in isolation thereof. It is further contended that subsequent circular issued on 20-9-2012 superseding the earlier circular dated 9-4-2012 shall be prospective and shall have no application to petitioners. Therefore, it cannot be applied to their grave prejudice and detrimental to the interest of the petitioners. It is further contended that denial of opportunity for passing 10th Board examination for the period as indicated in the earlier circular dated 3-4-2012 and consequently termination of employment in fact and in effect shall tantamount deprivation of right to livelihood and petitioners shall be driven out of means along with their family. It is submitted that the Hon'ble Supreme Court in the case of Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, has held as under:--

"24. It is notorious that the formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanizes the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential."

In Harjinder Singh Vs. Punjab State Warehousing Corporation, has held as under:--

"31. It need no emphasis that if a man is deprived of his fundamental and constitutional rights, and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the Courts must be compatible with the constitutional philosophy of which the directive principles of State policy

constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private."

In *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, it has been laid down that the ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system. Insistence on reason is a requirement for both judicial accountability and transparency. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision making process.

In *Brijesh Vipin Chandra Shah Vs. State of Gujarat and Others*, it has been held that depriving of service on not passing the examination is too harsh.

15. Learned counsel further contended that after appointment to group D posts, all appointees form homogeneous class and, therefore, there cannot be any discrimination between the non-matriculate MTS and non-matriculate MTS appointed on compassionate basis in group D in the matter of period for qualifying 10th Board examination: in the case of MTS non-matriculate two years and in the case of MTS non-matriculate compassionate appointees five years. It is contended that such classification shall amount to a class within a class having no intangible differentia. It also has no nexus with the objects of achieving efficiency in the service of group D employees. Hence, such discrimination violates Article 14 and 16 of the Constitution of India.

16. Counsel further contended that deprivation of period of time in the matter of qualifying 10th Board examination reducing the same from five years to two years shall tantamount denial of accrued right to the petitioners.

17. It is further contended that the subsequent circular dated 20-9-2012 is wholly arbitrary and unreasonable as there is no reason whatsoever assigned therein or any justification for withdrawal of earlier circular dated 9-4-2012. This by itself reflects abuse of authority in a most unreasonable and illegal manner for which there is no justification.

18. It is submitted that respondents were estopped from withdrawal of circular dated 9-4-2012 in relation to petitioners by force of principle of promissory estoppel based on principles of equity, justice and good conscience.

19. With the aforesaid submissions learned counsel for the petitioners submitted that the CAT has, therefore, committed grave error of law having not adverted to

the legality, validity and propriety of withdrawal of circular dated 9-4-2012, instead dismissed the Original Applications merely on the ground that as petitioners failed to pass 10th Board examination within two years as indicated in the advertisement and the appointment letters, the act of respondents terminating services of the petitioners; was legal and proper.

20. Per contra, learned counsel for respondents justified the action of respondents and submitted that the circular dated 9-4-2012 though issued in the light of the circular dated 3-4-2012 issued by the DoPT and was made applicable to the newly recruited non-matriculate MTS also with further stipulation that the clarifications issued vide the circular No. 8 Staff (App.I) 25-2010/KW dated 10-1-2012, which are not in conformity with these instructions, may be treated as superseded, however, the said circular was issued due to inadvertence and, therefore, authority has passed the impugned circular dated 20-9-2012. There is no illegality in the action taken by the respondents terminating services of petitioners as they failed to pass 10th Board examination within two years. Authority was fully competent to withdraw the circular dated 9-4-2012 and issued the impugned circular dated 20-9-2012. With the aforesaid submissions and relying on following judgments in support of their submissions respondents sought dismissal of writ petitions.

21. Considering the submissions put forth by learned counsel for the parties, in our opinion, following questions inter alia amongst others arise in the instant case:--

"1. Whether withdrawal of concession of reducing the span of passing 10th Board examination from five years to two years after appointment of petitioners is not hit by the principles of promissory estoppel based on equity and concept of legitimate expectations?

2. Whether withdrawal of concession granted vide circular dated 9-4-2012 in consonance with circular of the DoPT dated 3-4-2012 by circular dated 20-9-2012 was necessitated by overriding public interest?

3. Whether the impugned action of respondents terminating employment of the petitioners otherwise duly selected with 10-15 years service to their credit by operation of the impugned circular does not violate Articles 14, 16 and 21 of the Constitution of India and against the principles of justice, equity and good conscience?

4. Whether circular dated 20-9-2012 withdrawing earlier circular dated 9-4-2012 not informed by reasons or justifications, but having severe penal consequences of termination of employment is not arbitrary?

5. Whether withdrawal of facility by the impugned circular to pass 10th Board examination in two years instead of five years after petitioners, were declared successful and were provided with the appointment i.e. retrospectively interfering with the accrued right of the petitioners was justified?"

22. In the instant case the DoPT, as a measure of policy decision, had issued Circular dated 3-4-2012 whereunder the trainees appointed on compassionate ground to group D post were given the benefit of qualifying 10th Board examination in a span of five years. The CAG, as evident from the facts and circumstances of the case in hand, adopted the aforesaid circular on 9-4-2012 to allow sufficient time to daily-wage employees having rendered 10-15 years service with the department, as during this period they were out of touch with the studies, to meet such mitigating circumstances. In fact the suitability of daily-wage employees was already tested in the selection test for appointment to the MTS group D posts. The requirement of passing 10th Board examination was only to fulfill the conditions stipulated in the advertisement, therefore, the facility extended to such employees to pass 10th Board examination in a span of five years in no way had the effect of compromising or sacrificing the efficiency in the work of group D employees. In fact considering the fact that daily-wage employees have been continuing for more than 10-15 years and have gained sufficient experience on group D post, therefore, were permitted to appear in the selection test though they were only 8th pass. In this background, in the opinion of this Court, the CAG was fully justified having extended five years period to MTS employees to pass 10th Board examination. Petitioners having been selected and appointed as MTS employees w.e.f. 3-7-2012 were given to understand as regards availability of five years period to pass 10th Board examination. Petitioners have not missed the chance and have attempted to do so immediately in the following year and have not sat idle. Moreover, the circular issued on 9-4-2012 superseding earlier circular dated 10-1-2012 in fact and in effect stood substituted for the condition of passing of 10th Board examination in two years as contained in the advertisement and appointment letters. Under such circumstances, whether subsequent withdrawal of the facility in fact and in effect is in violation of principles of promissory estoppel and doctrine of legitimate expectations as enunciated by judicial precedents? Before we address upon it, we proceed to do survey of case laws dealing with the aforesaid principles and doctrine.

Estoppel is a rule of equity and has been evolved by a Judge-made law through judicial precedents. Black's Law Dictionary defines "promissory estoppel" as an estoppel:

"which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise."

In the case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., the principle laid down in an English case; Central London Property Trust Ltd. v. High Trees House Ltd., (1947) 1 KB 130, has been recognized as a well laid down principle of equity to avoid injustice. It has been held that even though the case would not fall within the terms of section 115 of the Indian Evidence Act, 1872,

which enacts the rule of estoppel, it would still be open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of a formal contract as required, by Article 299 of the Constitution. Relevant excerpt of para 9 of the judgment is as under:--

"(9)..... In *Robertson v. Minister of Pensions*, 1949-1 KB 227, Denning, J., observed at p. 231:

"The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt, J., in 1921-3 KB 500 but it was unnecessary for the decision because the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J., seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the judgment of Lord Atkin in *Reilly v. The King*, 1934 AC 176, 179.

In my opinion the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract," Denning, J., was dealing with a case of a serving army Officer, who wrote to the War Office regarding a disability and received a reply that his disability had been accepted as attributable to "military service". Relying on that assurance he forebore to obtain an independent medical opinion. The Minister of Pensions later decided that the appellant's disability could not be attributed to war service. It was held that as between subjects such an assurance would be enforceable because it was intended to be binding, intended to be acted upon, and was in fact acted upon; and the assurance was also binding on the Crown because no term could be implied that the Crown was at liberty to revoke it."

In the case of *Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others*, in para 6 it is held as under:--

"6. In the backdrop, let us travel a little distance into the past to understand the evolution of the doctrine of "promissory estoppel". Dixon, J. an Australian Jurists, in *Grundt v. Great Boulder Gold Mines Pty. Ltd.*, (1939) 59 CLR 641 (Aust HC) laid down as under:

"It is often said simply that the (party asserting the estoppel must have been induced to act to his detriment Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting, this means that the real detriment or harm from which the law seeks to give protection is

that which would flow from the change of position if the assumptions were deserted that led to it."

The principle, set out above, was reiterated by Lord Denning in *High Trees*'s case (supra). This principle has been evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law, as noted in *Anglo Afghan Agencies case* (supra) and *Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others*, ."

(Emphasis supplied)

23. Therefore, a person may have a legitimate expectation to be treated in a particular way by an administrative authority although he may not have legal right in strict sense for receiving such treatment. Such expectations may have arisen from a promise or representation by the authority and in the opinion of this Court, reasonable legitimate expectation under such circumstances does provide sufficient interest, though not arisen out of a substantive right, to approach the Court seeking judicial review of the action complained of. The Courts in extraordinary constitutional jurisdiction of judicial review can always inquire about the reasonability or justifiability of the legitimate expectation on the anvil of Articles 14 and 16 of the Constitution of India and concept of rule of law. If the decision taken by the authority is found to be arbitrary, unreasonable and not taken in public interest, the doctrine of legitimate expectation can always be applied. *Union of India and others Vs. Hindustan Development Corpn. and others*, is referred to).

24. Though the discretion to change the policy in exercise of the executive power, when not subjected to any statute or rule is wide enough, but must be informed by reasons conforming to principles of Article 14 of the Constitution of India and should be fair and reasonable not influenced by vices of arbitrariness, unreasonableness or ulterior criteria for its sustainability. In the case of *Punjab Communications Ltd. Vs. Union of India and Others*, the Hon"ble Supreme Court while reiterating the principle of substantive legitimate expectation has held as under:--

"27. The basic principles in this branch relating to "legitimate expectation" were enunciated by Lord Diplock in *Council of Civil Service Unions v. Minister of the Civil Service* 1985 AC 374 at p.408-409. It was observed in that case 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 either

(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 has 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."

and further in para 37 it is held that the doctrine of legitimate expectation in substantive sense has been accepted as a part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way. The Court further addressed on the question "whether the decision-maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the Court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for change. It has been held that the Court is competent to go into the proportionality of the change in policy and intervene if the Court is satisfied that the decision is irrational or perverse.

25. Another dimension of the controversy involved in the petitions is "as to whether petitioners have accrued right by force of circular dated 9-4-2012, which cannot be taken away by impugned circular dated 20-9-2012". To address upon this question, law as regards concept of accrued right as settled by the Hon''ble Supreme Court is needed to be reiterated.

26. In the case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, ; Constitution Bench of the Hon''ble Supreme Court-addressed the question "as to whether the status of Ex-municipal employees, who have been allocated to the Panchayat services under the Gujarat Panchayats Act, 1961 as government servant, could be extinguished by making retrospective amendment in the said Act in 1978 viz. Gujarat Panchayats (Third Amendment) Act, 1978. Striking down the said amendment on the ground that it violates Articles 14 and 311 of the Constitution of India the Hon''ble Supreme Court observed as under:--

"52. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do''s and don''ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today''s rights and not yesterday''s. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history."

In the case of Ex-Capt. K.C. Arora (supra) the Hon''ble Supreme Court had

declared retrospective amendment made to the Punjab National Emergency (Concessions) Rules, 1965 as applicable to Haryana on following factual background:

"Under the Punjab National Emergency (Concessions) Rules, 1965 ex-emergency commissioned officers were entitled to the benefit of their military service on their reappointment in the State Civil Service against the vacancies reserved for ex-army officers. The Haryana Government amended the definition of the expression "Military Service" as contained in the 1965 Rules by a Notification dated 9-8-1976. As a result; the benefit of military service was restricted upto 10-1-1968, as consequence whereof the ex-army personnels came in service during the period 1969-1971 were denied the benefit of past service. The same was challenged being ultra vires as it affected prejudicially persons who had acquired vested rights."

At a later point of time, again the Constitution Bench in the case of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, held the above referred judgments based on principles laid down by the earlier Constitution Bench (supra) and lay down correct law. Relevant paras 23 and 24 thereof are as under:--

"23. The said decision in Raman Lal Keshav Lal Soni and ors. (supra) of the Constitution Bench of this Court has been followed by various Division Benches decisions of this Court. (See: Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, ; T.R. Kapur and Others Vs. State of Haryana and Others, ; P.D. Aggarwal and Others Vs. State of U.P. and Others, ; K.R. Narayanan and ors. v. State of Karnataka and ors., (1994) Supp. 1 SCC 44; Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, and K. Ravindranath Pai and another Vs. State of Karnataka and another, .

24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought, to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni and ors. (supra)."

In the backdrop of authoritative pronouncement of law and considering the facts of the case in hand, this Court is of the considered opinion that while petitioners entered in service as MTS employees after selection process and appointment as

such, the CAG circular dated 9-4-2012 was very much in existence and, therefore, petitioners had substantive legitimate expectations to avail the opportunity of passing 10th Board examination in a span of five years. There is no reason or justification either indicated in the impugned circular dated 20-9-2012 nor offered or explained before this Court while withdrawing the aforesaid concession or facility by the impugned circular. Instead, what has been stated is that the said circular was issued due to inadvertence, which, in our opinion, is nothing, but as a measure of exit way to avoid test of reasonability and fair play in the matter of regulation of public employment. The impugned circular, therefore, is found to be unreasonable and arbitrary. Petitioners are fully justified to make complaint of violation of substantive legitimate expectations in absence of any overriding public interest for issuance of said circular. That apart, petitioners; group D employees, undisputedly have been serving respondents for more than 10-15 years. The best part of their life span has been dedicated to the service of respondents. Considering the valuable service of petitioners and experience at hand, they were allowed to appear in the selection process: they were successful. The requirement of passing 10th Board examination may be the requirement of the advertisement for which petitioners have been and are ready to fulfill, but the same cannot be stretched to the extent of justifying the stand that failure to pass 10th Board examination in two years span shall entail termination of employment. This act of respondents in the opinion of this Court is arbitrary and cannot be justified by applying Wednesbury principles of reasonableness. Hence, termination of employment of petitioners for the reason of not having passed 10th Board examination in two years time by force of impugned circular violates petitioners' fundamental right guaranteed under Articles 14 and 16 of the Constitution of India and as they are driven out of employment and means of livelihood, their fundamental right guaranteed under Article 21 of the Constitution is also violated. As regards the submissions that petitioners accrued right by force of circular dated 9-4-2012 and the same could not have been withdrawn reducing the period to qualify 10th Board examination from five years to two years retrospectively, this Court is of the view that the concept of accrued right and principles of its application as laid down by the Constitution-Bench of the Hon'ble Supreme Court in the case of Raman Lal Keshav Lal Soni and others (supra) and followed in various judgments by the Hon'ble Supreme Court may not have application in strict sense, but protection against denial of such right on the bedrock of reasoning of protection of accrued right can always be pressed to justify reasonable and bona fide cause against arbitrary action of the respondents.

Accordingly, all the above-mentioned Writ Petitions are allowed. The impugned orders of termination of services of petitioners are hereby quashed. Respondents are directed to reinstate the petitioners forthwith as MTS employees. The provisions as contained in circular dated 20-9-2012 reducing the period from five years to two years for passing the 10th Board examination are read down and petitioners are hereby held entitled to avail the facility of passing 10th Board

examination in five years as provided in circular dated 9-4-2012.