
(1980) 09 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 661, 2006, 2007, 2008, 2009, 2010, 2016, 2050 and 2051 of 1975

Ramchandra Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-09-1980

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 32

Citation : (1980) WLN 507

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Judgement

M.C. Jain, J.—These writ petitions involve common questions, so they are being disposed of by this common order. The petitioners' case in brief is that the following are the three posts having different grades and authorised scales:

(i) Travelling Ticket Examiner (T.T.E)

Scale of pay: Rs. 130-5-175-EB-6-205-7-212.

(ii) Passenger Guide (P.G.)

Scale of pay: Rs. 110-1-150-4-170-5-180 EB-5-200.

(iii) Leave Reserve Ticket Collector (L.R.T C.)

Scale of pay: Rs. 110-3-131-4-155-EB-4-175-5-180.

2. According to the petitioners, they were working as L.R.T.C for T.T.E. in the grade of Rs. 110-180(A8). Thereafter, they were promoted as officiating PGs. in the grade of Rs. 110-200(AS). Ultimately they were promoted to officiate as T.T.E. in the grade of Rs. 130-212 (AS). The orders of promotion in SB. Civil Writ Petition No. 661/ 1975, Ram Chander Sharma v. Union of India for the post of item no. 2 is Ex. 1 dated 16.1.68 and his name appears at item No. 9. On promotion, his pay was fixed on Rs. 142/-per month. His second order of

promotion as T.T.E. is Ex. 2 dated 20th August 1968. He was promoted to officiate as T.T.E. on pay of Rs 150/-.

3. One Rameshwar Joshi whose name appears at item no. 6 in the order Ex. 1 was straight-way promoted as T.T.E. from the post of L.R.T.C. for T.T.E. from the grade of Rs. 110-180 on pay Rs. 135/-per month to the grade of Rs. 130-212 on a pay Rs. 140/- per month. The said Shri Joshi filed a writ petition in this Court as S.B. Civil Writ Petition No. 2102/1970 Rameshwar Joshi v. Union of India seeking a direction for fixing of his pay at Rs. 150/- per month on the day of his promotion i.e. 16.1.68 and to fix his subsequent pay according to rules on the basis of the initial pay of Rs. 150/- per month. His case was that in this Division T. Cs. have been grouped with P. Gs. for promotion to the post of T.T. Es. Accordingly, a T.C. is first promotion as P.G. from which post he is further promoted as T.T.E. This arrangement gives the advantage of pay under rule 2018(B). Thus, the T. Cs. get two promotions and their pay would accordingly be fixed at two occasions but in his case, a departure was made and he was directly promoted at T.T.E. from the post of T.C. without being promoted as P.G. as he was the senior most T.C. His contention was that he should have been first fixed on the post of P.G. with reference to rule 2018-B and then on the post of T.T.E. This Court taking into consideration the Railway Board's Circular dated 26.3.57 allowed the writ petition in part and directed the Railway Administration to examine the case of Shri Rameshwar Joshi within a period of six months and the Railway Administration if eventually upheld the fixation of the persons junior to the petitioner namely Shri Ramchander, then the Railway Administration should give the same benefit to him from the date from which it was allowed to his juniors i.e. from 16.1.68. It was further directed that however if the Railway Administration is persuaded to hold that the fixation of the pay of Ramchander and others junior to the petitioner was erroneous then they accordingly rectify the mistake, then the petitioner's case will rest.

4. The petitioners' case further is that when they came to, know of the aforesaid decision of this Court, they made a representation to the D.P.O. on-7.10-74 Ex. 5A and thereafter, one mote joint representation was made to the General Manager on 23.10.74 marked as Ex. 6.

5. Thereafter, the General Manager, Northern Railway New Delhi sent a letter Ex. 7 to respondent No. 2, the Divisional Superintendent, Northern Railway, dated 14.3.75 directing to refix the pay of the juniors of Shri Rameshwar Joshi. In compliance of this, direction, the Divisional. Personnel Officer respondent no. 3 refixed and revised the pay. of, the petitioners vide order dated 17.3.75 Ex. 8 whereby the petitioners pay was reduced. The petitioners have challenged these orders Ex. 7 and Ex. 8 on grounds, which shall be considered presently have prayed that the said orders be quashed and set-aside and the respondents be restrained from refixing the petitioner's pay and the petitioners be allowed to continue to draw pay according to the fixation made in Ex. 1 and Ex. 2 and it may be declared that the petitioners are entitled to the benefit of rule-2018-B. It

was also prayed that the respondents be further restrained from effecting any recovery against the petitioners.

6. On behalf of the respondents, a counter to the writ petition has been filed, in which it was stated that the correct grades are as given in para 2 of the counter. It was further stated that the petitioners were of course posted as P. Gs. but it is denied that it involved any promotion. It was only by mistake that the petitioners were given increments. The mistake has been subsequently rectified. It was further stated that the petitioners were not necessary parties in the writ petition filed by Shri Rameshwar Joshi. The judgment of this Court is binding on the Railway Administration as well as on the employees and the same cannot be set at naught in this writ petition. The fixation has been made and recovery is being started in accordance with the judgment of this Court. The representations of the petitioners were forwarded to the competent authorities but in view of the judgment of this Court, action had to be taken with regard to the cases of seniors, to the petitioners to whom similar promotion was accorded earlier. It was stated that even the pay of number of such persons have already been regularised and for the remaining, it is being regularised. It was also stated that the post of P.G. is not all higher than the post of T.C. as will be apparent, from Annexure Rule 1 and Annexure Rule 2. A little difference of grade is of no consequence. The real test is of grouping together and the combined seniority. It was only a mistake whereby the post of P.G. was treated to be a promotion post. With regard to the ground of opportunity of hearing it was stated that the petitioner was fully heard as he had filed a representation, which was duly considered before passing the impugned orders. Besides, no question of hearing arises in such matters as the present is a case of rectification of mistakes. With regard to the plea of abandonment or waiver, it was stated that in a case of rectification of mistake, no question of abandonment or waiver arises and the mistake can be rectified. Whenever it is brought to notice.

7. Having stated the respective cases of the parties in brief as above. I proceeded to hear Shri M.R. Singhvi, learned Counsel for the petitioners and Shri A.K. Mathur, learned Counsel for the respondents.

8. At the out-set, Shri Mathur raised a preliminary objection that by way of writ petition, the judgment of this Court passed in Rameshwar Joshi's writ petition mentioned above cannot be called in question. The petitioners are essentially questioning the judgment of this Court and it is not open to them to challenge the judgment by way of writ petition. So, the writ petitions directing against the judgment of this Court are not maintainable. Reliance was placed by him on a decision of the Supreme Court in Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, .

9. I do not find any substance in this preliminary objection of Shri Mathur. The writ petition is essentially directed against the orders Ex. 7 of the General Manager dated" 14-3-75 wherein direction has been given to the Divisional Superintendent, Northern Railway, Jodhpur, for refixation of pay in accordance

with the judgment of this Court and the order passed by the Divisional Personnel Officer Ex. 8 dated 17-3-75 whereby the petitioner's pay has been revised and refixed treating the post of P. Gs. not as a promotion post. It is true that while considering the writ petitions, the correctness of the judgment of this Court may fall to be considered but it cannot be said that the writ petition is directed against the judgment of this Court. The Single Bench decision of this Court is undoubtedly binding on me sitting in Single Bench but if this Court feels that the judgment requires reconsideration, then the same can be referred to a Larger Bench, In the case cited by Shri Mathur, a petition was moved before the Supreme Court under Article 32 of the enforcement of petitioners fundamental rights under Article 19(1)(a) and (g) of the Constitution and the grievance of the petitioner was that the order passed by the High Court in proceedings inter parties indirectly affected their fundamental rights. Their Lordships held that the judicial decision of a competent jurisdiction can not be said to affect fundamental rights. Remedy is by way of appeal against the decision and not by way of writ petition. It Was also held that judicial orders passed by the High Court in or in relation to the proceedings pendina before it are not empowered to be corrected by the Certiorari under Article 32(2). Thus, the case of Naresh Shridhar Mirajkar is distinguishable. The preliminary objection raised by Shri Mathur is, therefore, overruled.

10. Shri M.R. Singhvi, learned Counsel for the petitioners vehemently urged that rule 2018-B of the Railway Establishment Code Will be applicable to the petitioner's case as the post of P. Gs. carry duties and responsibilities of greater importance than the post of T. Cs. and the post of P. Gs. carry higher scale of pay arid the channel of promotion of the T. Cs. to the post of T.T. Es. is through the post of P. Gs. The petitioners were rightly promoted first to the post of P.G. by order Ex. 1 and then to the post of T.T. Es. by order Ex. 2. It was urged by Shri Singhvi that the Railway Board's Circular dated 26-3-57 Annexure Rule 1 cannot be taken to mean that rule 2018-B will not be attracted despite grouping of the post of P. Gs. and T. Cs. It was also urged by Shri Shinghvi that the employees senior to the petitioners have been dealt with in the past by the Railway Administration in a manner similar to the petitioners. They were first promoted as P. Gs. and an increment was allowed to them at that time and they were further promoted as T.T. Es. and a further increment was allowed to them. The petitioners cannot be discriminated. The Railway Administration has been following this practice despite the Railway Board's Circular dated 26-3-57. Prior to 17-3-75 since the issuing of the order Ex. 8 for more than 17 years, the Railway Administration has been first promoting the T Cs. to P.Gs. and fixing their pay accordingly and thereafter, from P. Gs. to T.TEs. and again fixing their pay for that post. It may be deemed that having regard to the long drawn practice for more than 1 1/2 decades, the effect of the Circular has been abandoned or waived and in the light of the long established practice, it is not open to the Railway Administration to revise and refix the pays of the petitioners.

11. I do not find any force in these submissions of Shri Singhvi in view of the

judgment of this Court in Rameshwar Joshi's case. The view taken in that case, in my opinion, does not require any reconsideration. This Court has considered the effect of the Circular. The Railway Administration in Rameshwar Joshi's case took a stand that the fixation of the persons junior to Rameshwar Joshi was made by mistake and the accounts were advised to review the past cases. It was further submitted in Rameshwar Joshi's case that if wrongly some concession has been granted in the past cases, it cannot justify the repetition of the same mistake in the case of Shri Rameshwar Joshi. Kansingh J. in Rameshwar Joshi's case made reference to rule 2018-B and the Circular Ex.2 and posed a question as to whether the Railway Administration is correct in holding that rule 2018-B of the Railway Establishment Code will not be applicable for fixation of the pay of the petitioner, who was straight-way promoted from the post of LRTC to that of TTE without being appointed as P.G. and accordingly there would be no question for fixing his notional pay as P.G. and then fixing his pay as the TTE. After posing the aforesaid question, the Railway Board's Circular dated 26-3-57 was considered. The material portion of the said Circular reads as under:

Reference Railway Board's letter No. 53 RC1/51/3 dated 9-9-1956. The Board have had under consideration the question as to whether the Passengers Guides who are at present working against post carrying prescribed scales of pay of Rs. 150-225 and Rs. 110-185 as personal to themselves, should continue to be included in the Ticket Collectors, Group for a channel of promotion or they should be given a channel of promotion in other categories. After taking into account the various aspects of the question, they have in partial modification of the orders contained in the above letter, decided that all the Passenger Guides irrespective of the scale of pay allotted to them, should continue to be grouped with the Ticket Collector in the scale Rs. 60-130, their seniority being reckoned among the Ticket Collectors on the length of service. The existing Passenger Guides may however, be considered for General posts such as Assistant Welfare Inspectors, Complaints Inspectors etc., to the extent their background and experience warrant.

It would appear from the above Circular that the Board considered the question that the P.Gs. who were at present working against post carrying prescribed scales of pay of Rs. 150-225 and Rs. 110-185/" as personal to themselves, should continue to be included in the Ticket Collectors Group for a channel of promotion or they should be given a channel of promotion in other categories. It appears that the PGs, had two different scales of pay and they were enjoying these pay scales as personal to themselves. When the question of their channel of promotion came to be considered, then the Railway Administration decided that all P.Gs. irrespective of the scale of pay allotted to them, should continue to be grouped with the T.C. in the scale of Rs.60-130/-their seniority being reckoned among the T.Cs. on the length of service. However, for the existing P.Gs., it was provided that they should be considered for General post such as Assistant Welfare Inspectors, Complaints Inspectors etc, having regard to their background and experience. With regard to the above Circular, Kan Singh J,

observed as under:

The above order of the Railway Board goes to show that the Post of P.Gs. and LR T.Cs. are in one group and there is common seniority. It is, therefore, difficult to hold that when a LRTC is appointed as a P.G. there would be; promotion as the Railway Administration has been considering the post to be equivalent though there was difference in pay grades. It appears that the difference was due to some historical reasons as a legacy from the varying grades of posts in the different units that were integrated in the Indian Railway system after Federal Financial integration. Therefore, the Railway Administration are correct in holding- that there could be no promotion from the post of L.R.TCs to that of P.Gs.

There are no reason to take a different view Of the matter. The Railway Board's Circular Annexure Rule 1 is explicit. It may be pointed out that when the two posts have been grouped together and the seniority list is determined on the length of service, then a T.C. may be senior having put in more service than a person who is working as P.G. and may be junior to T.C. and a T.C. may be promoted first as TTE than a P.G. who is junior to him. It would appear that when TCs. and P. Gs, have been grouped together and a seniority is created, then P.Gs. cease to be an intermediate post for promotion. This being so, the Railway Administration was justified in advancing this case that the employees junior to Shri Rameshwar Joshi have been wrongly given increment considering the P.G. as promotion post. In the view taken of the Railway Board's Circular in Rameshwar Joshi's case, the direction stated above was given. The Railway Administration is not only justified to revise and refix the pay of the petitioners in the light of the aforesaid Circular of the Railway Board but it is also justified to act in conformity with the view taken by this Court in Rameshwar Joshi's case. There does not appear to be any wrong in passing the orders Ex. 7 and Ex. 8.

12. These orders are not open to challenge on the ground of alleged discrimination or on the ground of abandonment or waiver on the part of the Railway Administration. The Railway Administration has also regularised some of the past cases and the remaining are being regularised and in such a situation, the question of abandonment or waiver does not arise. Apart from that the question of abandonment or waiver also does not arise in a case of rectification of mistake. So, on this ground, these orders Ex. 7 and Ex. 8, in my opinion, are not liable to be quashed.

13. It is next urged by Shri Singhvi that the orders Ex. 7 and 8 have been issued in violation of principles of natural justice in as much as the petitioners were not afforded any opportunity whatsoever before passing the impugned orders. There would be cut in their pay and recovery would be effected on the excess pay drawn by the petitioners. The order is visited with evil consequences and so such an order should not have been passed without giving an opportunity of being heard and without notice to the petitioners. In support of his contention, Shri Singhvi placed reliance on *M. Gopal Krishna Naidu v. State of M.P.* 1967 SLR 800,

State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta, , State of Punjab and Another Vs. Iqbal Singh, , Sayeedur Rehman v. State of Bihar 1973(1) SLR 761, K.K. Jaggia v. State of Haryana 1972 SLR 578, B.B. Dutta v. Union of India 1972 SLR 731, Divisional Superintendent, Eastern Railway, Dinapur v. Shri L.N. Keshri (2 cases) 1974 (2) SLR 546 , Gopal Singh Vs. State of Rajasthan and Another, .

14. Shri A.K. Mathur, on the other hand, submitted that after the judgment of this Court, the petitioners having come to know that their posts are going to be revised and refixed, they submitted their representations and their representations were taken into consideration by the competent authorities and thereafter, orders were issued. In a case where any order has been issued in contravention of the Circular and subsequently, mistake is noticed and that mistake is rectified after taking into consideration the representations of the affected persons, then in such a situation, principles of natural justice will not be attracted. This stand was taken by Shri Mathur that affording to the petitioners an opportunity of being heard, when they have got no case on merits as held by this Court, then in that situation, it would be an exercise in futility to afford to the petitioners an opportunity of being heard after quashing the impugned order. Reliance was placed by him in Dr. P.S. Gehlot Vs. The State of Rajasthan and Others, , Gulab Chand v. State of Rajasthan 1979(1) SLR 802, D.K. Bhatnagar v. State of H.P. 1979 (2) SLR 693, Anil Kumar v. State of W. Bengal 1979 (2) SLR 23.

15. I have carefully considered the rival submissions on the above point canvassed by both the parties.

16. It has been observed by the Supreme Court in Union of India (UOI) and Another Vs. P.K. Roy and Others, that the extent and application of the doctrine of natural justice cannot be imprisoned within the straight jacket of a rigid formula and, therefore, the said doctrine should be applied with respect to the facts and the circumstances of each case, which is under the consideration of the Court. It would appear from these observations that the facts of the present case will have to be taken into consideration for attracting the principles of natural justice. If the facts of the present case warrant that the petitioners should have been afforded an opportunity and no order should have been passed without hearing them, then only the impugned orders can be quashed, holding them to be invalid on the ground of violation of principles of natural justice. It is pertinent to note that in the instant cases, there had been a judgment of this Court in Rameshwar Joshi's case wherein the effect of the Railway Board's Circular dated 26-3-57 was considered and it was decided that P.G. is not a promotion post of T.Cs. When the mistake was noticed by the railway authorities and when the question was in consideration, this Court had an occasion to consider the controversy and the controversy was resolved by the judgment of this Court. The Railway authorities had not option left to them but to proceed to act in accordance with the judgment of this Court. The petitioners having come to know that their pays are going to be refixed and revised in the light of the judgment of

this Court, they made representations. The representations were made much earlier to the issuance of the impugned orders and according to the returns of the respondents, the representations were considered. In a situation like the present one, in my opinion, it is not necessary to afford the petitioners any opportunity of hearing and the impugned orders cannot be held invalid only on the ground that opportunity of hearing was not given to the petitioners. Besides, that it would be futile to afford the petitioners any opportunity of hearing now, when the petitioners have no merit in their case as considered by this Court. The case cited by Shri Singhvi relates to forfeiture of salary or reduction in pay and gratuity or cut in pension. The only case of rectification. The only case of rectification of mistake cited by Shri Singhvi is *Shyam Behari Goyal v. State of Rajasthan* 1975 WLN (UC) 88. I shall be presently considering this case while dealing with the authorities cited by Shri Mathur.

17. I may take up each case cited by Shri Singhvi one by one. In *M. Gopala Krishna Naidu's case* (supra), the charges against the delinquent Government servant were not proved beyond reasonable doubt, his period of absence was not treated as duty except for pension under clause 3 and 5 of F.R. 54. The government servant was not afforded reasonable opportunity as the same entailed penal consequence. It was held that the order is liable to be struck down as invalid on the ground of violation of principles of natural justice. The order results in pecuniary loss to government servant and it must be held to be an objective rather than a subjective function. The very nature of the function implies the duty to act judicially.

18. In *State of Punjab v. K.R. Ery* (supra), there was reduction in the amount of pension and gratuity legally payable on Superannuation. It was held that the State Government must give reasonable opportunity to the officer concerned to show cause against the proposed reduction.

19. In *State of Punjab v. Iqbal Singh*; (supra), an order imposing cut in pension and gratuity was held to be not one of reduction in rank, but it was observed that there can be no doubt that it adversely affected the civil servant, and such an order could not have been passed without giving him a reasonable opportunity of making his defence.

20. In *Sayeedur Rehman v. State of Bihar* (supra), the authority granting full pay for suspension period but subsequently reviewing the order and withdrawing the benefit it was observed that the unwritten right of hearing is a fundamental right to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestant. It was held that opportunity of hearing should have been, provided, to affected employee before Review though not provided in rules.

21. In *S.B. Dutta v. Union of India*, (supra), there was a decision to deprive Special Contribution to Provident Fund, it was held that it castes stigma on him in as much as his service is castigated as not being good, efficient and faithful

and it directly results in depriving the subscriber of a large amount of money to which he would have been entitled otherwise. The officer should have been Afforded an opportunity it was observed that nature of cut in Provident Fund is the same as cut in Pension. The authority is required to act judicially when its decision involves evil consequences.

22. In *K.K. Jagia v. State of Haryana* (supra), there was a 6% cut in pay for the period of suspension, it was held that the order under rule 7.3 imposing a cut cannot be passed without giving the Government servant an opportunity of being heard.

23. In *Divisional Superintendent, Eastern Railway, Dina pur v. L.N. Keshi* (supra), it was held that a scale cannot be reduced without giving an opportunity. On confirmation the respondents were entitled to the rights to the post and to the scale, of pay so fixed. It was a case where the respondents were confirmed on a particular scale.

24. It would appear from the above cases that either the above cases in which some penalty or penal order was passed or where some rights were accrued. In the instant cases, only officiating promotion was given and the petitioners were not confirmed in a particular scale of pay.

25. In *Shyam Behari Goyal's* case (supra), there was sudden termination of petitioner's services. The petitioner was appointed on probation for a period of two years. The mistake was noticed that he should not have been appointed for a period of two years initially as he was an untrained teacher. In that case, although it was observed that such an apparent mistake can always be allowed to be corrected as the order of appointment was an executive act and if a bonafide error had crept into it, then the respondents were entitled to make the necessary correction as soon as the error was detected. As the petitioner was appointed initially for a period of two years it was held that the termination order was bad because error was corrected without giving reasonable opportunity to the petitioner. This authority has been distinguished by this Court in *Gulab Chand's* case (supra). In the present case, there is no sudden and abrupt revision or re-fixation of pays of the petitioners. The petitioners submitted their representations and the same were considered.

26. The cases cited by Shri Mathur fully support the view that in cases of rectification of mistake, no violation of principles of natural justice is involved. In *Dr. P.S. Gehlot v. State of Rajasthan* (supra), the appointment of the petitioner was made under mistaken idea that his case has been recommended by Departmental Promotion Committee. It was observed that the Government is always at liberty to rectify its mistake. If a power to rectify a mistake is denied to the Government, then, power of good governance is denied. It must further be borne in mind that the DPC having not recommended the petitioner, his appointment was invalid and when the mistake was known, it became the duty of the State Government to rectify the same." A question was posed, can such an

order be not made without giving any notice to the petitioner and will it in the absence of an enquiry or notice amount to a breach of principles of natural justice and, therefore, bad in law? After referring to the observations in the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , it was stated that "now, looking to the aforesaid service Rules, it appears to me that while exercising the powers under the rules, the Government is not required to act judicially or quasijudicially but rules, required it to act justly and fairly and not arbitrarily or capriciously. When a court holds that an administrator should act fairly, "in general it means a duty to observe the rudiments of natural justice for a limited purpose in exercise of functions that are not analytically judicial but administrative, and on facts it was claimed that the Government had acted justly and fairly more than what the situation demanded as it was bound to set aside an order of appointment made under a mistake and while doing so, it appointed the petitioner with retrospective effect until a candidate selected by the DPC is available. It would have been arbitrary and unfair on its part to have allowed his" illegal appointment to continue and consolidate by passage of time. He could have been reverted to the post of lecturer forthwith but instead of doing so, the Government gave him an opportunity of being considered by the DPC once more."

27. In *Gulab Chand v. State of Rajasthan* (supra), the petitioner was promoted as an officiating senior clerk on the basis of merit and subsequently, the earlier order of promotion of the petitioner was revoked. In relevant rules there was no provision for promotion a lower division clerk as an upper division clerk on the basis of merit. It was held that the initial order of the petitioner was in violation of the rules. It was revoked after representation and counter representation were considered and the petitioner had acquired no right on account of the promotion obtained by him in the aforesaid manner. It was held that no complaint of the violation of the principles of natural justice, which are not any hard boiled rules, can be made, in the case.

28. In *Shri D.K. Bhatnagar v. State of M.P.* (supra), the order of regularisation of service of a government employee was void ab initio, mistake was rectified and the order was cancelled. It was held that the rules of natural justice need not be observed. The observations made in this case are most apt, which may profitably be extracted here:

Now speaking of the facts of the present case, we find that the impugned order, found at Annexures H to O have been passed on the view of the State Government that the previous confirmation of the services of the petitioners as Assistants was void ab initio as it was against the rules. If this view of the State Government is found to be correct, then the question is how far the petitioners are prejudiced for want of a show cause notice before these orders were issued. These was nothing which the petitioners could have urged at the time when the impugned orders annexures H to O were passed and which they could not have urged in this writ petition to show that these orders were not void ab initio. The question involved was purely one of law and the interpretation of the relevant

integration rules If the petitioners could have shown in this writ petition that the previous order of their confirmation on the post of Assistants was not void ab initio, the petitioner would have easily succeeded in obtaining the required writ. But if they have not been able to show that the order of their confirmation as Assistants was not void ab initio, then the mere fact that before passing the impugned orders they were not served with a show cause notice would not justify this court in setting aside these orders with a view to enable the authorities concerned to give the petitioner a fresh opportunity to show cause, because, this would be an exercise in futility and indulgence in a technical formality which would not only prolong the agony of the petitioners concerned, but would also result in further uncertainty in the administrative set up of the State Government Secretariat. The basic principle underlying the application of the rule of natural justice is to see that arbitrariness is avoided, and the persons adversely affected would have an opportunity to put up their point of view. If these basic requirements for the application of the rules of natural justice are found to have been substantially satisfied, and if it is found that no real injustice is done to the person concerned, by not complying with a particular formality, then this Court would surely be circumspect in exercising its discretionary jurisdiction under Article 226 of the Constitution. This jurisdiction which is extraordinary in its character, is not meant to be exercised for the purpose of allowing the parties to have a make play on technicalities. The real purpose of exercising this jurisdiction is to see that substantial justice prevails. That being the position, at the time of exercising its discretionary jurisdiction under Article 226 of the Constitution the High Courts are not expected to pass the orders which on one hand are not capable of bringing any fruitful result securing substantial justice, but which, on the other hand, would tend to unsettle and disturb the public administration.

29. In *Anil Kumar v. State of W. Bengal* (supra) the Government rectified civil list at a belated stage. It was observed as under:

It is well settled that an obvious mistake can be corrected without giving any opportunity. Indeed the Supreme Court in the aforesaid decision reiterated certain well known previous decisions noted above. But the alleged mistake in this case did not require examination of facts in the instant case before me. Furthermore, the parties were aware and are aware of the reasons for which the impugned action has been taken. If that is the position, in my opinion, the impugned action cannot be struck down on the ground of violation of principles of natural justice.

30. Thus, in the light of the foregoing discussion, in my opinion, orders Ex. 7 and 8 cannot be struck down and quashed on the ground that they are violative of principles of natural justice.

31. Then Shri Singhvi argued that the petitioners were promoted as far back as January 1961 and the impugned order came to be passed for the first time in March 1976 even after filing of the writ petition by Shri Rameshwar Joshi. There

was no fault of the petitioners. It would be most unfair and unjust for the respondents to effect recovery of the excess pay drawn by the petitioners. The respondents themselves had taken the position that P.G. is a promotion post and continued to pass such orders even in the year 1971. Orders of promotions and reversions were passed and recovery was made by Exhibits 11 and 12. In the circumstances of the case, the respondents be directed not to effect recovery of the excess pay said to have been drawn by the petitioner. Reliance has been placed in support of this submission on decisions of this court in S.B. Civil Writ Petition No. 570/ 1967 Mahesh Chandra v. State of Rajasthan decided on July 18, 1972 and in S B. Civil Writ Petition No. 271/1969 Iqbal Ahmed v. State of Rajasthan decided on November 30, 1973, D.B. Civil Writ petition No. 1412/1969 decided on December 15, 1979. Two more decisions have been cited, State of Punjab v. Balbir Singh 1976(1) SLR 36; and B.S. Sidhu v. Union of India 1971(1) SLR 600.

32. I find force in the above submission of Shri Singhvi. A great hardship would be caused to the petitioners in case they are asked to refund the excess pay drawn by them. There is no fault on their part. The Railway Administration continued to follow a particular practice for more than a decade. In State of Punjab v. Balbir Singh, their Lordships of the Supreme Court observed that "justice requires that the Government should not claim any refund of any part of the salary paid to the respondents until today. Partly in view of their understanding and partly because of the requirement of justice, we direct the government not to do so." I need not refer to other decisions in this regard, which have been referred to by Shri Singhvi. Although, Shri Mathur submitted that after noticing the mistake, the mistake can be rectified and as a consequence of rectification recovery shall follow. It may be so, considering the demands of justice and equities of the situation, the respondents are directed not to effect any recovery in respect of the period prior to the passing of the order Ex. & on P-3-75.

33. In the result, the writ petitions are partly allowed and it is directed that the respondents shall not effect any recovery of the excess pay drawn by the petitioners until passing of the order Ex. 8 on 17-3-75, for the rest the writ petitions are dismissed. In the circumstances of the case, the parties shall bear their own costs.