

THE ANDHRA PRADESH (REGULATION OF APPOINTMENTS TO PUBLIC SERVICES AND RATIONALISATION OF STAFF PATTERN AND PAY STRUCTURE) ACT, 1994

ACT No. 2 OF 1994

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THE ANDHRA PRADESH (REGULATION OF APPOINTMENTS TO PUBLIC SERVICES AND RATIONALISATION OF STAFF PATTERN AND PAY STRUCTURE) ACT, 1994

(ACT 2 OF 1994)

[15th January, 1994.]

AN ACT TO REGULATE APPOINTMENTS AND PROHIBIT IRREGULAR APPOINTMENTS IN OFFICES AND ESTABLISHMENTS UNDER THE CONTROL OF THE STATE GOVERNMENT, LOCAL AUTHORITIES, CORPORATIONS OWNED AND CONTROLLED BY THE STATE GOVERNMENT AND OTHER BODIES ESTABLISHED UNDER A LAW MADE BY THE LEGISLATURE OF THE STATE TO RATIONALISE THE STAFF PATTERN AND PAY STRUCTURE OF EMPLOYEES THEREIN AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Be It enacted by the Legislative Assembly of the State of Andhra Pradesh in the Forty- fourth Year of the Republic of India as follows:-

1. Short title and Commencement - (1) This Act may be called the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994.

(2) It shall be deemed to have come into force with effect on and from the 25th November, 1993.

2. Definitions - In this Act unless the context otherwise requires,-

(i) 'competent authority' means the officer or authority specified by the Government by notification to exercise the powers and perform the functions of a competent authority under this Act and they may specify the different authorities for different purposes, different districts and different departments and institutions;

(ii) 'daily wage employee' means any person who is employed in any public service on the basis of payment of daily wages and includes a person employed on the basis of nominal muster roll or consolidated pay either, on full-time or part-time or piece rate basis or as a work charged employee and any other similar category of employees by whatever designation called other than those who are selected and appointed in a sanctioned post in accordance with the- relevant rules on a regular basis;

(iii) 'Government' means the State Government;

(iv) 'local authority' means,-

(a) a Gram Panchayat established under the Andhra Pradesh Gram Panchayats Act, 1964 (Act 2 of 1964);

(b) a Mandal Praja Parishad or a Zilla Praja Parishad established under the Andhra Pradesh Mandala Praja Parishad, Zilla Praja Parishads and Zilla Pranalika and Abhivrudi Sameeksha Mandals Act, 1986 (Act 31 of 1986);

(c) a Municipality constituted under the Andhra Pradesh Municipalities Act, 1965 (Act VI of 1965); and

(d) a Municipal Corporation established under the relevant law, for the time, being in force, relating to Municipal Corporations;

(v) 'Notification' means, a notification published in the Andhra Pradesh Gazette;

¹[(vi) "Public Services for the purposes of this Act" means, services in any office or establishment of:-

- (a) the Government;
- (b) a local authority;
- (c) a Corporation or undertaking wholly owned or controlled by the State Government;
- (d) a body established under any law made by the Legislature of the State whether incorporated or not; including a University;
- (e) a Co-operative Society registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964); and
- (f) any other body established by the State Government or by a Society, other than the Society specified under sub-clause (e), registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government either fully or partly for its maintenance or any educational institution whether registered or not but receiving aid from the Government.]

3. Prohibition of daily wage appointments and regulation of temporary appointments - (1) The appointment of any person in any public service to any post,, in any class, category or grade as a daily wage employee is hereby prohibited.

(2) No temporary appointment shall be made in any public service to any post, in any class, category or grade without the prior permission of the competent authority and without the name of the concerned candidate being sponsored by the Employment Exchange.

4. Regulation of recruitment – ²[(1)] No recruitment in any public service to any post in any class, category or grade shall be made except, —

(a) from the panel of candidates selected and recommended for appointment by the Public Service Commission/College Service Commission where the post is within the purview of the said Commission;

(b) from a panel prepared by any Selection Committee constituted for the purpose in accordance with the relevant rules or orders issued in that behalf; and

³[(c) from the candidates having the requisite qualification either sponsored by the Employment Exchange or applied in response to the wide publicity of vacancy position through Daily News paper having wider circulation or Employment News Bulletin and also display on the Office Notice Boards or announcement through Radio or Television in other cases where recruitment otherwise than in accordance with clauses (a) and (b) is permissible.]

⁴[XXXX]

1 . The Clause (vi) substituted by the Act No. 5 of 2004, section 2.

2 . Section 4 renumbered as sub-section (1) of section (4) by the Act No.16 of 1997, section 2.

3 . The Clause (c) substituted by the Act No. 5 of 2009, section 2.

4 . Explanation omitted by the Act No.16 of 1997, section 2.

¹[(2) Nothing in sub-section (1) shall apply,-

(a) to the compassionate appointments made in favour of a son or a daughter or spouse of any person employed in public service who dies in harness or who retires from service on medical grounds, in accordance with the relevant orders issued from time to time;

²[(b) to the appointments made in favour of a son or daughter or spouse or a grand son (son's son) or a grand daughter (son's daughter) or a grand son (dependent daughter's son) or a grand daughter (dependent daughter's daughter) of any married person or a brother or a sister or parent of any unmarried person killed or totally incapacitated in extremist violence or in police firing or bomb-blast or in communal violence irrespective of the age of the killed who is not accused of an offence, made in accordance with the relevant orders issued from time to time.

Explanation:- "totally incapacitated" means certified as such by the Medical Board.]]

³[(c) to the appointments made in favour of members of Scheduled Castes or Scheduled Tribes, who or whose parents or spouse are subjected to atrocities, in accordance with the relevant orders issued from time to time;]

⁴[(d) to any suitable appointments to be made in compliance with assurance bearing Number 2488/X/96, Assembly Secretariat, dated 10th September, 1996 made on the floor of the Legislative Assembly of the State.]

⁵[(e) to any appointment to be made in compliance with the decision of Council of Ministers vide resolution CR No. 708(1)/2016, dated the 22nd August, 2016.]

⁶[(f) to any appointment to be made in compliance with the decision of of Council of Ministers vide resolution CR No. 459-2/2017, dated the 1st November, 2017.]

5. Bills not to be passed - Where an appointment is not in accordance with section 4, the drawing authority shall not sign the salary bill of the appointee concerned and the Pay and Accounts Officer, Sub-Treasury Officer or any other officer who is charged with the responsibility of passing the salary bill shall not pass such bill unless a certificate issued by the appointing authority to the effect that the appointment has been made in accordance with section 4 is attached to the first salary bill of the appointee concerned.

6. Penalties - (1) Where any holder of an elective office or any officer or authority makes any appointment in contravention of the provisions of this Act,-

(a) it shall be deemed in the case of the holder of an elective office that he has abused his position or power and accordingly the competent authority shall initiate proceedings for his removal; and

(b) in the case of an officer or authority it shall be deemed that he is guilty of misconduct and the competent authority shall initiate action under the relevant disciplinary rules.

¹ . sub-section (2) of Section (4) added by the Act No.16 of 1997, section 2.

² . Clause (b) substituted by the Act No. 5 of 2009, section 2.

³ . Clause (c) added by the Act No. 3 of 1998, section 2.

⁴ . The Clause (d) added by the Act No. 27 of 1998, section 3.

⁵ . The Clause (e) added by the Act No. 17 of 2017, section 2.

⁶ . The Clause (f) added by the Act No. 9 of 2018, section 2.

(2) In addition to taking action under sub-section (1) the pay and allowances paid to the person whose appointment is in contravention of the provisions of this Act shall be deemed to be an illegal payment and a loss to the Government or, as the case may be, to the concerned Institution and the same shall be recoverable by surcharging the same under the Andhra Pradesh State Audit Act, 1989 (Act 9 of 1989) against the person, officer or authority who makes such appointment in contravention of the provisions of this Act or where such surcharge is not possible under the said Act in accordance with such manner as may be prescribed including as arrears of land revenue.

7. Bar for regularization of services - No person who is a daily wage employee and no person who is appointed on a temporary basis under ¹[Section 3 and no person who] is continuing as such at such at the commencement of this Act shall have or shall be deemed ever to have a right to claim for regularisation of services on any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reasons:

²[Provided that the services of those persons continuing as on the 25th November, 1993 having completed a continuous minimum period of five years of service on or before 25th November, 1993 either on daily wage, or nominal muster roll, or consolidated pay or as a contingent worker on full time basis, shall be regularized in substantive vacancies, if they were otherwise qualified fulfilling the other conditions stipulated in the scheme formulated in G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated the 22nd April, 1994:]

³[Provided further that the services of a person who worked on part-time basis continuously for a minimum period of ten years and is continuing as such on the date of the commencement of this Act shall be regularized in accordance with the scheme formulated in G.O.(P).112, Finance & Planning (FW.PC.III) Department, dated the 23rd July, 1997:]

⁴[Provided also that] in the case of Workmen falling within the scope of section 25-F of the Industrial Disputes Act 1947, one month's wages and such compensation as would be payable under the said section shall be paid in case of termination of services:

⁴[Provided also that] nothing in this section shall apply to the Workmen governed by Chapter V-B of the Industrial Disputes Act, 1947.

Explanation: For the removal of doubts it is hereby declared that the termination of services under this section shall not be deemed to be dismissal or removal from service within the meaning of article 311 of the Constitution or of any other relevant law providing for the dismissal or removal of employees but shall only amount to termination simpliciter, not amounting to any punishment.

⁵[7A. Abatement of Claims - (1) Notwithstanding any Government order, judgement, decree or order of any Court, Tribunal or other authority, no person shall claim for regularization of service under the first proviso to Section 7 as it was incorporated by the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) (Amendment) Act, 1998 (Act 3 of 1998).

1 . The expression substituted by the Act No. 3 of 1998, section 3.

2 . First proviso inserted by the Act No.3 of 1998 Section 3 and subsequently substituted by Act No. 27 of 1998, section 4.

3 . Provisos one and two inserted by Act No.3 of 1998, section 3.

4 . The words substituted by the Act No. 3 of 1998, section 3.

5 . The Section 7A inserted by the Act No. 27 of 1998, section 5.

(2) No suit or other proceedings shall be maintained or continued in any Court, Tribunal or other authority against the Government or any person or other authority whatsoever for regularization of services and all such pending proceedings shall abate forthwith;

(3) No Court shall enforce any decree or order directing the Government or any person or other authority whatsoever for regularization of services.]

8. Power to give direction - For the purpose of enforcing the provisions of this Act, it shall be competent for the Government, the Pay and Accounts Officer, the Director of Treasuries and Accounts, the Director of State Audit, Director of Accounts of the Project Department or any Head of the Department of the Government to issue such directions as they may deem fit to their subordinates and the subordinate shall comply with such directions where any subordinate officer is guilty of non-compliance with such directions it shall be deemed that he is guilty of misconduct for proceeding under the relevant disciplinary rules.

9. Abatement of claims - Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the claims for regular appointment of all daily wage employees and persons appointed on a temporary basis, shall stand abated and accordingly, -

(a) no suit or other proceeding shall be instituted, maintained or continued in any court, tribunal or other authority by the daily wage or temporary appointees against the Government or any person or authority whatsoever for the regularisation of the services;

(b) no court shall enforce any decree or order directing the regularisation of the services of such persons; and

(c) all proceedings pending in any court or tribunal claiming the regularization of services shall abate.

10. Creation of Posts - (1) No post shall be created in any office or establishment relating to a public service without the previous sanction of the competent authority.

(2) Any appointment made to any post created in violation of sub-section (1) shall be invalid and the provisions of sections 5, 6 and 7 shall mutatis mutandis apply to such appointments.

11. Review Committee - (1) Within a period of one month from the date of commencement of this Act, the Government shall constitute a Committee with an officer not less in rank than a Secretary to Government as the Chairman and such number of members of such rank as they may deem fit, to review,-

(a) the existing staff pattern in any office or establishment employing persons belonging to any public service keeping in view the workload of such office or establishment; and

(b) the pay scales, allowances, exgratia, bonus, pension, gratuity and other terminal benefits and perquisites applicable to the post belonging to any public service of such office or establishment (other than the teaching staff of the Universities) keeping in view the qualifications and job requirements of each such post.

(2) After undertaking review under subsection (1) the committee shall submit a report with its recommendations to the Government for such action as may be prescribed by rules made in this behalf.

(3) The Committee shall regulate its own procedure for discharging the

functions under this section. (4) All orders and decisions of the Committee shall be authenticated by the Chairman or a member authorised by him in this behalf.

Explanation:- For the purposes of this section Secretary to Government includes a Principal Secretary or Special Secretary to Government.

12. Committee to exercise the powers of the Civil Court - (1) The Committee constituted under section 11 shall, while discharging the duties under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) For purposes of discharging its duties the Committee shall have the right to inspect or cause to be inspected any office or establishment referred to in sub-section (1) of section 11.

13. Offences and Punishments - (1) Any person or authority who contravenes the provisions of this Act shall apart from the penalties otherwise provided for, be punishable with imprisonment for a term which shall not be less than six months and which may extend upto two years and also with fine which shall not be less than five thousand rupees but which may extend upto ten thousand rupees.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government.

14. Penalty for abettors - Whoever abets any offence punishable under this Act shall be punished with the punishment provided for in this Act for such offence.

15. Offences by Companies - Where an offence against any of the provisions of this Act or any rule made thereunder has been committed by a Company, every person, who at the time of the offence was committed, was in charge of, and was responsible to the company for the conduct shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding any thing in sub-section (1) where any such offence has been committed by a company and it is proved that the offence, has been committed with the consent or connivance of, or is attributable, to any neglect on the part of, any Director, Manager, Secretary or other officer or the Company, shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purpose of this section,-

(a) "Company" means a company as defined in the Companies Act, 1956(Central Act I of 1956) and includes a University, a firm, a society or other

association of individuals; and

(b) "Director" in relation to,-

(i) a 'firm,' means a partner in the firm;

(ii) a University, a society or other association of individuals means the person who is entrusted with the power to make appointments in the case of a University under the concerned law under which the University is established, and in other cases under the rules of the society or other association, as the case may be.

16. Bar of Jurisdiction of Civil Courts - No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

17. Act to override other Laws - The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force or any judgement, decree or order of any court, tribunal or other authority.

18. Power to make rules - (1) The Government may by notification, make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this Act shall immediately after it is made, be laid before the Legislative Assembly of the State, if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. Guidelines for interpretation of Act - The Schedule to this Act shall constitute the guidelines for the interpretation and implementation of this Act.

20. Repeal of Ordinance 8 of 1993 - The Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Ordinance, 1993 is hereby repealed.

THE SCHEDULE

THE STATEMENT OF OBJECTS AND REASONS TO THE ANDHRA PRADESH [REGULATION OF APPOINTMENT TO PUBLIC SERVICES AND RATIONALISATION OF STAFF PATTERN AND PAY STRUCTURE] BILL, 1993

The Constitution envisages the State to be a welfare State. The long cherished, dictum of Bentham is that the State should try to maximise the good to maximum number of its citizens. State Government has to collect taxes and non-taxes from its citizens who can afford to pay so that such funds can be used for maintaining law and order which is a pre-requisite for any orderly Government and use the rest of the funds for the welfare of various sections of the society. In this process Government has to necessarily have its own employees to collect taxes and implement the welfare and developmental programmes. The cost of such Government employees is, therefore, a necessary item of expenditure of the State Government. But, the amount so spent on its staff should be reasonable and should leave adequate amount for taking up welfare and developmental activities for the rest of citizens. The percentage of the employee population including their families to the total population of our State is about 10%. It may not be always possible to limit expenditure on the employees to that percentage but at the same time it should not be such that the staff's expenditure leaves very little for remaining 90% of the people.

The number of employees has been increasing at an enormous rate. The census of Government employees conducted by the State Government in 1976, 1981 and 1988 and as projected in 1993 shows that the number of employees of the Government, Universities, Institutions receiving Grant-In-Aid and Public Sector Undertakings, Local Bodies has increased from 6.78 lakhs in 1976 to 12.34 lakhs in 1993 which constituted an increase of 82%. Out of this, the employees of the Departments of the State alone increased from 2.85 lakhs to 5.56 lakhs representing an increase of 95%. The Public Sector Undertakings grew at 128% from 1.44 lakhs to 3.28 lakhs. Among the Government employees and Local Body employees, the class IV and other categories constitute about 41%.

The expenditure particulars show that the amount spent on the salaries, allowances and pension of Government employees, Panchayat Raj employees, employees paid out of the Grant-in-Aid, amounts to a figure of Rs.4277 crores in 1993-94 salaries on the due dates. Government considers that it is not fair that people's interest should be neglected and even sacrificed by not taking up schemes just to pay salaries to its employees.

In addition to the salary and pension commitment there is a heavy debt servicing burden on the Government. The debt also has been increasing from year to year. In 1983 the total outstanding debt was Rs..2543crores. It has now reached Rs.10970 crores during 1993-94. At present, the Government are paying as much as Rs.1012 crores for payment of interest and Rs.330 crores for repayment of principal amount every year. The total amount of non-plan items of expenditure in 1993-94 is amounting to Rs. 6222 crores, which cannot be avoided. The Government are not able to complete a number of irrigation Projects and Power Projects because of lack of funds, for the same reason productive assets like completed irrigation projects and roads are not being properly maintained resulting in wastage of assets whose replacement will cost several hundreds of crores of rupees. At present, the Government are spending 81% of the debt they receive from the Government of India, Market borrowings and all other categories of loans for repayment; which means only 19% of the total debt is being added to our resources. But it is estimated that from next year onwards the repayment will be more than the debt receipts. If the Government are caught in such a debt trap the amount available to the State Government will be limited to its own tax and non-tax revenues and the

devolutions from the Government of India. The devolutions expected from the Government of India is about Rs.1698 crores in 1993-94. Since the expenditure on establishment is already 105% of the own tax and nontax revenues of the state, it can be seen that between this expenditure and other non-plan expenditure the Government would have exhausted the most of the resources leaving very little for welfare schemes and developmental programmes. Since no Government can allow such total neglect of welfare and developmental activities the employees of the State will not be getting salaries on time and eventually they will not be getting their full salary also.

The irregular appointments are adversely affecting the interest of several thousands of unemployed persons who have registered in the employment exchange and awaiting their turn for orders. It is also adversely affecting the interests of Scheduled Castes, Scheduled Tribes and Backward Classes who have reservation in employment since the N.M.R. appointments are not taking care of the reservation for these categories. Government have constituted District Selection Committees and some adhoc Selection Committees besides the Andhra Pradesh Public Service Commission to take up recruitment in accordance with law in Government Departments. Irregular appointments are depriving these legitimate recruiting bodies from performing their functions. Irregular appointments in excess of sanctioned strength will also result in industrial undertakings becoming unviable and eventually sick. When a unit goes sick, it results in retrenchment and even winding-up, thus, adversely affecting the interests of the existing employees who are recruited against sanctioned strength and through authorised process of selection. Similarly unauthorised appointments over and above the sanctioned strength in Government Departments would also increase the number of employees and to that extent militate against the Government looking after the existing employees who have been recruited through proper channel. The Act will, therefore, protect the interests of candidates in Employment Exchanges, reserved categories, the existing employees who were recruited through proper channel and the legitimate functions of the recruiting agencies.

From the above, it can be seen that the financial position of the State arising out of excessive expenditure on staff is so alarming that it cannot be tackled by ordinary administrative actions and instructions. It is, therefore, thought that a time has come then we have to provide for deterrent action for illegal and irregular appointments by enacting a law. It has accordingly been decided to enact a law to achieve the following objects, namely:-

(a) totally banning such appointments in the institutions covered by legislation;

(b) imposing stringent penalties for making appointments by public servants on violation of the law;

(c) to protect public servants from being held for contempt for non-compliance of the orders of Tribunal or High Court and also for abatement of pending cases claiming regularisation of services which are already filed before, the courts of law by making a suitable provision therefor; and

(d) to protect the interests of candidates registered with Employment Exchange, the reservation rights of Scheduled Castes, Scheduled Tribes and Backward Classes, the rights of the existing employees who are recruited through proper channel and the functions of Andhra Pradesh Public Service Commission, District Selection Committees and other Selection Committees constituted by the Government.

The legislation will prevent further deterioration of finances of the State and at the same time conserve the resources for the welfare and developmental activities.

As the Legislative Assembly was not then in session having been prorogued and as it was decided to give effect to the above decision immediately the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of staff Pattern and Pay Structure) Ordinance, 1993 (Andhra Pradesh Ordinance 8 of 1993) was promulgated by the Governor on the 24th November, 1993.

This Bill seeks to give effect to the above objectives.