

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.41 of 2024

Bijay Debray,
Son of Late Kartik Chandra Debray, resident of A.D. Nagar, Road No.5 (near Shani Mandir), PO & PS A.D. Nagar, District West Tripura, Pin 799003, Age 58 years.

..... Petitioner(s)

V E R S U S

- 1. Tripura University,**
Represented by its Registrar, having his office at Suryamaninagar, PO Suryamaninagar, PS Amtali, Agartala, District West Tripura, Pin 799022.
- 2. The Registrar, Tripura University,**
Having his office at Suryamaninagar, PO Suryamaninagar, PS Amtali, Agartala, District West Tripura, Pin 799022.

..... Respondent(s)

WP(C) No.42 of 2024

Sima Dasgupta,
Wife of Sri Samar Chakraborty, resident of Jogendranagar (near Agradut Club), PO Jogendranagar, PS East Agartala, District West Tripura, Pin 799004, Age 57 years.

..... Petitioner(s)

V E R S U S

- 1. Tripura University,**
Represented by its Registrar, having his office at Suryamaninagar, PO Suryamaninagar, PS Amtali, Agartala, District West Tripura, Pin 799022.
- 2. The Registrar, Tripura University,**
Having his office at Suryamaninagar, PO Suryamaninagar, PS Amtali, Agartala, District West Tripura, Pin 799022.

..... Respondent(s)

For Appellant(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. Koomar Chakraborty, Advocate.
For Respondent(s)	:	Mr. D. Bhattacharya, Senior Advocate. Mr. S. Saha, Advocate.
Date of hearing & delivery of judgment	:	29 th July, 2024.

Whether fit for reporting	:	YES	NO
		✓	

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

We have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel for the petitioners and also Mr. D. Bhattacharya, learned senior counsel for the respondents.

[2] Common issues being involved, both the writ petitions are heard together and are being disposed of by this common judgment.

[3] In WP(C) No.41 of 2024, petitioner, Bijay Debray was initially joined as 'Jr. Assistant' in Tripura University w.e.f. 26.08.2002 and thereafter, on promotion he joined to the post of 'Assistant' w.e.f. 16.12.2015. His next promotional post is Section Officer and according to the petitioner, 3(three) posts of such Section Officer have been lying vacant but no step for filling up such promotional post was taken by the respondents, though the petitioner became eligible for such promotion w.e.f. 16.12.2020 on completion of his 5 years of service in the feeder post of Assistant. Meanwhile, repealing the previous Recruitment Rules namely, Tripura University Cadre Recruitment Rules (Non-Teaching Employees), 2011 (for short- Recruitment Rules of 2011) which was in force when he became eligible for such promotion, another Recruitment Rules namely, Central University Non-Teaching & Other Academic Posts Recruitment Rules, 2023 (for short-Recruitment Rules of 2023) was brought into force w.e.f. 02.06.2023 by way of issuing notification.

[4] According to this petitioner, as per Recruitment Rules of 2011, 50% post of Section Officer was provided to be filled up through promotion based on seniority-cum-fitness from the feeder posts of Assistants having 5

years continuous regular service but now the Recruitment Rules of 2023 modifies said Rule by making provision that 75% of such promotional post will be filled up from the cadre of Assistant subject to qualifying the departmental test, failing which by deputation. It has also been further provided that for such promotion, 5 years of regular service in the feeder grade of Assistant in Level 6 will be required subject to seniority-cum-fitness and also that the employee concerned should have the academic qualification as provided for direct recruitment in the said Recruitment Rules of 2023.

[5] In WP(C) No.42 of 2024, the petitioner Sima Dasgupta initially joined as Stenographer (Jr.) in the University w.e.f. 04.08.1998 and later on her service was also confirmed vide Memorandum dated 09.02.2000. Thereafter, on promotion, she joined to the post of Personal Assistant on 05.08.2015 and now she has become eligible for promotion to the post of Private Secretary w.e.f. 05.08.2020 after completion of 5 years of service in the feeder post, but no exercise of such promotion was taken up by the respondents despite there was vacancy. This petitioner also expresses similar grievance that as per Recruitment Rules of 2011, 75% of such post of Private Secretary would be filled up from amongst the Personal Assistant having 5 years regular service in the grade pay of Rs.4200/- through seniority-cum-fitness but now as per Recruitment Rules of 2023, in case of promotion to said post, the eligibility criteria is 5 years regular service in Level 6 in the feeder post of Personal Assistant and promotion will be on seniority-cum-fitness basis subject to qualifying the stenography test as mentioned in Column No.7 of the relevant chapter of the Rules of 2023 i.e. in case of English, stenography speed should be 120 w.p.m and in case of Hindi, it would be 100 w.p.m. According to this

petitioner, post of Personal Assistant (feeder post) is filled up from the person who has extra ordinary expertise in stenography and typing and despite the same, compelling a Personal Assistant to undergo such stenography test again for promotion, is totally arbitrary.

[6] Mr. P. Roy Barman, learned senior counsel of the petitioners also similarly argues that such inclusion of departmental examination or stenography test is totally arbitrary, irrational and illegal and the petitioners cannot be forced to undergo such test or examination for their promotion to the next higher level. According to Mr. Roy Barman, learned senior counsel, when the vacancy arose, at that time Recruitment Rules of 2011 was in force and it was the duty of the respondents to take necessary steps for filling up those posts which were not done and therefore, they cannot now take advantage of their own mistake by compelling the petitioners or similarly situated persons to undergo such tests as a condition precedent for such promotion by applying new Recruitment Rules of 2023. They should, Mr. Roy Barman submits, be guided by the Recruitment Rules of 2011. The next point of argument as advanced from the side of petitioners is that as per the provisions of statute no. 24(2) and Section 31(1)(p) of the Tripura University Act, 2006, it is not within the domain of the University to frame such Recruitment Rules by way of passing regulation and same can only be done by issuing ordinances. Referring to Statute 41(1)(ii), it is also argued that such regulation can be issued only when the Act, statutes or any ordinance issued under the Act permits the same to be issued. For better understanding and ready references, all the above said provisions are excerpted below:

Section 31.(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:-

.....
.....

(p) all other matters which by this Act or the Statutes, are to be or may be, provided for by the Ordinances.

Statute **24.**(1) All the employees of the University, other than the teachers and other academic staff shall, in the absence of any contract to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

(2) The manner of appointment and emoluments of employees, other than the teachers and other academic staff, shall be such as may be prescribed by the Ordinances.

Statute **41.**(1) The authorities of the University may make Regulations consistent with the Act, the Statutes and the Ordinances for the following matters, namely:-

.....

(ii) providing for all matters which are required by the Act, the Statutes or the Ordinances to be prescribed by Regulations;

.....

[7] Mr. D. Bhattacharya, learned senior counsel, for the respondents on the other hand, argues that the above said Recruitment Rules of 2023 was not framed by the University whimsically or arbitrarily, rather it was so done as per the direction of the UGC. Reference has also been made by Mr. Bhattacharya, to a letter dated 14.08.2015 (Annexure-1 of counter affidavit to both the writ petitions) by which the UGC communicated to the Registrars of all Central Universities urging for revision of guidelines for framing/amendment/relaxation of Recruitment Rules referring to letters dated 31.12.2010 and 31.03.2015 issued by the Ministry of Personnel, PG & Pensions, Department of Personnel & Training, Government of India, New Delhi to follow the guidelines/instructions for various posts while

framing/amendment of Recruitment Rules and it was also informed that the “interview” clause should not be added by any University at its own level if it is not prescribed by DOPT in its Model Recruitment Rules. Similar letter, Mr. Bhattacharjee, Ld. Sr. Counsel refers, was again repeated by another communication dated 24.01.2016 (Annexure-2 of counter affidavit to both the writ petitions) by UGC addressed to the Registrars of Central Universities. Mr. Bhattacharya, learned senior counsel also makes reference to another letter under Annexure-3 of the counter affidavit to both the writ petitions which was communicated by the Registrar of Tripura University to UGC on 04.07.2017 sending the draft Cadre Recruitment Rules (CRRs) in respect of non-teaching posts, to UGC for approval with necessary modification/alteration if so required. In the said letter, reference was made to another letter of UGC dated 30.03.2017 whereby it was advised by the UGC that proposal for sanction of new non-teaching posts would be considered only after receipt of the copy of the revised Cadre Recruitment Rules of non-teaching posts as per prescribed format of DoPT, Govt. of India as circulated by UGC through their letter dated 14.08.2015.

[8] Mr. Bhattacharya, learned senior counsel finally argues that the University framed the new Recruitment Rules of 2023 only as per guidelines of UGC and Department of Personnel and Training, Government of India. He further contends that mere being eligible for promotion does not create any vested right to any employee to get the promotion. According to him, when Recruitment Rules of 2011 was already made inoperable, the petitioners cannot claim promotion on the basis of old Rules of 2011.

[9] We have given our thoughtful consideration regarding the contention and counter contention of both the parties.

[10] So far, the point raised from the side of the petitioners that University cannot frame any Recruitment Rules unless an ordinance is issued by the University in this regard permitting the same to do so, is concerned, such argument is not only technical but self-defeating. The Recruitment Rules of 2011 was framed by the University in exercise of the powers conferred under the Statute 24(2) and Statute 41(1)(ii) as evident from the Recruitment Rules of 2011 itself. Now, if such argument of the petitioners is accepted, same will render the Recruitment Rules of 2011 itself invalid, rendering even the claim of the petitioners for their promotion through that Rule, totally unsustainable. Power of framing Recruitment Rules by the University for its teaching and non-teaching staff is already provided in Statute 24 as indicated above and it does not anyway nullify the authority of the University to frame such rules if a specific ordinance is not issued in its strict sense. Therefore, such point as raised from the side of the petitioners is not accepted.

[11] Next point of argument of the petitioners is that the vacancy falls when Recruitment Rules of 2011 was in force and therefore, promotional exercise should be done as per said old Rules. In this regard, the law has been already made settled by the Hon'ble Supreme Court in a 3-Judge Bench decision in *State of Himachal Pradesh and others vs. Raj Kumar and others*, (2023) 3 SCC 773. In that case, there were 5 posts of Labour Officers in Himachal Pradesh and those were to be filled by promotion from *Factory Inspectors, Labour Inspectors, and Sectt. Superintendents* being the feeder category and subsequently, 7 more additional posts for Labour Officers were

created and sanctioned vide letter of Secretary, Labour and Employment Department dated 20.07.2006 and as such total posts for Labour Officers increased from 5 to 12. During that period, respondents No.1 to 3 of that case were working as Labour Inspectors in the service of the State. Thereafter, within 6 months of creation of such new posts, the original recruitment Rules viz Himachal Pradesh Recruitment and Promotion Rules, 1966 was amended on 25.11.2006. The new Rules of 2006 provided that recruitment to the post of Labour Officer was to be made by promotion as well as direct recruitment in the ratio of 75% and 25% respectively. The effect of the new Rules accompanying with 7 new posts of Labour Officers was that out of 12 posts of Labour Officers, the promotional posts increased from 5 to 9 (being 75%) and direct recruitment posts came to 3 (being 25%). The respondents No.1 to 3 approached the Administrative Tribunal challenging the action of the State Government in filling up 25% posts of Labour Officers by direct recruitment and contended that the vacancies arose in July, 2006 which was before the new Rules came into effect and therefore all the vacancies ought to have been filled up only by promotion. Finally matter went to the Apex Court and after discussing many other decisions of the Apex Court in this regard, the Court held as follows:

“Analysis

82. A review of the fifteen cases that have distinguished *Rangaiah* would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in *Rangaiah*. The findings in these judgments, that have a direct bearing on the proposition formulated by *Rangaiah* are as under:

82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, *Rangaiah* case must be understood in the context of the rules involved therein.

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire *any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government*. There is no obligation for the Government to make appointments as per the old Rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

82.4. The principle in *Rangaiah* need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.

83. The above-referred observations made in the fifteen decisions that have distinguished *Rangaiah case* demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished *Rangaiah* hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in *Rangaiah* is confined to the facts of that case.

84. The decision in *Deepak Agarwal* is a complete departure from the principle in *Rangaiah* inasmuch as the Court has held that a candidate has a right to be considered in the light of the *existing rule*. That is the *rule in force* on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India v. Krishna Kumar*. In fact, in *Krishna Kumar* Court held that there is only a "right to be considered for promotion *in accordance with rules which prevail on the date on which consideration for promotion take place.*"

85. The consistent findings in these fifteen decisions that *Rangaiah case* must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date on which they arose, compels us to conclude that the decision in *Rangaiah* is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated

hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

85.1. The statement in *Y.V. Rangaiah v. J. Sreenivasa Rao* that, “the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules”, does not reflect the correct proposition of law governing services under the Union and the States under Part XIV of the Constitution. It is hereby overruled.

85.2. The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.”

By the said decision, the earlier judgment passed by the Apex Court in the case of *Y.V. Rangaiah vs. J. Sreenivasa Rao (1983) 3 SCC 284*, was overruled.

[12] As held by Hon’ble Supreme Court that the principle that the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules, does not reflect the correct proposition of law, the basic claim of the petitioners to be governed by the old Rules of 2011 becomes unsustainable. It is now settled that a candidate can be considered for promotion in terms of the Rules as existent on the date when the consideration for such promotion takes place.

[13] That apart, nothing could be shown from the side of petitioners that by implementation of Recruitment Rules of 2023, the promotional avenues of the petitioners would be foreclosed forever warranting for judicial interference. Inclusion of certain conditions like passing of departmental examination or stenography test in the subsequent rules cannot be considered to be an attempt made by the employer to shut down the prospect of career advancement of its employee to render it arbitrary and illegal in violation of Article 14 and 16 of the Constitution. Scope of judicial interference is also limited in such policy matter of the employer regarding promotion. Reliance is

placed on para 10 of the case of *P.U. Joshi & Ors. Vs. Accountant General, Ahmedabad & Ors.*, reported in (2003) 2 SCC 632 which is extracted hereunder:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

[14] Relevantly, reliance can be made on another 3-Judge Bench decision of Apex Court in *Ravikumar Dhansukhlal Maheta and another vs. High Court of Gujarat and others*, 2024 SCC Online SC 972 wherein at Para 81 the followings were observed by the Court:

“81. However, in India, no government servant can claim promotion as their right because the Constitution does not prescribe criteria for filling seats in promotional posts. The Legislature or the executive may decide the method for filling vacancies to promotional posts based on the nature of employment and the functions that the candidate will be expected to discharge. **The courts cannot sit in review to decide whether the policy adopted for promotion is suited to select the ‘best candidates’, unless on the limited ground where it violates the principle of equal opportunity under Article 16 of the Constitution.**”

[15] In view of the above, there is no merit in both the writ petitions and accordingly, both are dismissed.

Pending application(s), if any, shall stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

