

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.418 of 2023

Sri Ranjit Kumar Mahishya Das & others

..... Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s)

For Petitioner(s) : Mr. B.N. Majumder, Sr. Advocate,
Mr. B. Paul, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

12/01/2024

Heard Mr. B.N. Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel for the petitioner and Mr. Mangal Debbarma, learned Additional Government Advocate for the respondents-State.

2. Certain officers holding the post of Assistant Demonstrator (seri) approached this Court in writ petition seeking consideration of their case for promotion to the higher post of Sericulture Development Officer (SDO) claiming that they fulfil the eligibility criteria. The writ petition was dismissed. Thereafter those petitioners preferred a review petition being Review Pet. No.38/2018 in which the learned Court was pleased to issue a direction to constitute a D.P.C. to consider the cases of eligible Assistant Demonstrator (seri) having minimum ten years of service with the certificate course of training in sericulture for promotion to the post of SDO (seri) and promote those who were found suitable for such promotion. The D.P.C. led to promotion of certain persons to the post of SDO (seri), Group-C, Non-Gazetted, but the present petitioners were left out though the petitioners were also in the same cadre and had joined in individual posts between 29.10.1997 to 07.11.1997.

The reason for leaving out these petitioners was that the Recruitment Rules of 1999 were amended in the year 2009 vide notification dated 30.09.2009 [Annexure-2] which enhanced the educational qualification for promotion:

11.	In case of recruitment by promotion/deputation/ transfer from which grade promotion/ deputation/ transfer is to be made	(A) <u>BY PROMOTION</u> (i) From the post of Demonstrator (Sericulture) having one year's Certificate Course Training in Sericulture from recognized Institute of the Central Silk Board/ State Govt. with H.S.(+2 Stage) Examination Passed in any stream. <u>Failing Which</u> (ii) From the post of Junior Demonstrator (Sericulture)/ Asstt. Demonstrator (Seri) with 10(ten) years of total Service experience in the grades having One year's Certificate Course Training in Sericulture from recognized Institute of the Central Silk Board/ State Govt. with H.S. (+2 Stage) Examination Passed in any stream. (B) <u>Failing Both By Transfer/ Deputation</u> (iii) By transfer/ deputation from the analogous posts having at least 10 (Ten) years experience in Sericulture/ Agriculture promotional activities under State/ Central Govt.
12.	If a D.P.C. exists what is its composition	Group- 'C' D.P.C.
13.	Circumstances in which public service commission is to be consulted in making recruitment	Not applicable

Copy to :-

1. The Manager, Printing & Stationary Department, Govt. of Tripura, with request to publish of this notification in the extra-ordinary issue of the official Gazette.
2. The Under Secretary, G.A. (Confidential & Cabinet), Govt. of Tripura.
3. All Head of Department.

(A. Debnath)
Deputy Secretary to the
Government of Tripura

3. The petitioners did not have the educational qualification of Higher Secondary i.e. 10+2. They admittedly are Madhyamik pass. Therefore, they approached this Court in the present writ petition asking upon the respondents to comply with the judgment and order dated 21.08.2018 of this Court passed in Review Pet. No.38/2018 and promote them after constituting a D.P.C. to the post of SDO (seri). They also prayed for a writ of prohibition to restrain the respondents from acting in furtherance of the notification dated 30.09.2009 i.e. the amended Rules, as petitioners claim to have acquired

eligibility for promotion to the post of SDO (seri) in the year 2007 upon completion of the qualifying period of ten years of service as per the un-amended Recruitment Rules dated 08.06.1999. They also prayed for a declaration that the amended Recruitment Rules dated 30.09.2009 laying down a higher educational qualification should not apply to the case of the present petitioners, as they were qualified from before and to consider their cases as per the mandamus issued by this Court in Review Pet. No.38/2018 to consider the cases of all eligible persons.

4. Mr. B.N. Majumder, learned senior counsel for the petitioners, submits that despite existence of vacancies, no promotional exercise was held since 1997 which denied the chances of promotion to the petitioners when they became eligible in the year 2007 under the existing Rules of 1999. Since the amended Recruitment Rules of 2009 make the petitioners ineligible, they have also sought to lay a challenge to the relevant part of the amended Recruitment Rules of 2009 which prescribes a higher qualification of Higher Secondary or 10+2 for being considered for promotion to the post of SDO (seri). The amendment application has been filed after filing of the Counter Affidavit of the respondents-State where they took a stand that petitioners are ineligible for being promoted to the post of SDO (seri) in view of the amended Recruitment Rules of 2009 which lays down a higher educational qualification.

5. Mr. Majumder, learned senior counsel for the petitioner, has made strenuous efforts to impress this Court that the petitioners ought to have been considered along with eligible candidates as per the directions issued in Review Pet. No.38/2018 taking into consideration their educational qualification of

Madhyamik pass under the existing Recruitment Rules of 1999 as, they were eligible since 1997 for being considered for promotion. The amendment to the Recruitment Rules in 2009 has completely denied the avenue of promotion to these petitioners. The delay in conducting the promotional exercise ought not to defeat a right which has been created in their favour under the existing Rules of 1999.

6. Mr. Mangal Debbarma, learned Additional Government Advocate for the respondents-State, submits that the principle of law which applies to the case at hand is the eligibility of the incumbent persons on the date of consideration. When the directions of this Court in Review Pet. No.38/2018 were being carried out, the petitioners were found not eligible as they lacked the educational qualification of Higher Secondary or 10+2 as per the amended Rules of 2009. The attempt to challenge the Recruitment Rules of 2009 at this belated stage, may not be allowed.

7. I have considered the submission of learned counsel for the parties and have taken note of the pleadings placed from record. I have also gone through the relevant amended Rules of 2009 extracted hereinabove.

Be it indicated herein that the claim of the petitioners hinges on the legal issue as to whether they have a vested right for being considered for promotion against the vacancies even if they do not fulfill the higher educational qualification of Higher Secondary/10+2 under the amended Rules of 2009. The pleadings on record do not show existence of vacancies of the promotional post of SDO (seri) before 2009, though petitioners contend that no promotional exercise was held since 1997. However, the existence of vacancies

before 2009 would not improve the case of the petitioners. This issue has been examined by a three-judge bench of the Apex Court in the case of *State of Himachal Pradesh and Others v. Raj Kumar and others* in Civil Appeal No.9746 of 2011 with other analogous Civil Appeals vide judgment dated May 20, 2022 reported in (2023) 3 SCC 773. The following question was raised for consideration :

“2. The question is whether appointments to the public posts that fell vacant prior to the amendment of the Rules would be governed by the old Rules or the new Rules.”

8. Upon consideration of a number of decisions laid down after the judgment in *Y.V. Rangaiah & Ors v. J. Sreenivasa Rao & Ors.*, (1983) 3 SCC 284 the Apex Court held as under:

“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 existing 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 decision 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 takes 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.”

9. From the ratio laid down as extracted above, it is clear that there was no obligation on the part of the State to consider the cases of the petitioners against the vacancies, if any existing under the un-amended Rules of 1999. When the case of eligible persons were considered against the vacancies for the promotional post of Assistant Demonstrator (seri), the petitioners did not fulfil the higher educational qualification of 10+2 or Higher Secondary as per the amended Recruitment Rules of 2009. As such, the respondents cannot be faulted if the petitioners were not promoted due to lack of eligibility in view of the amended Recruitment Rules of 2009. A candidate has a right to be considered in the light of the existing Rules, which implies the “rule in force” as on the date the consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates. There is no universal rule that vacancies must necessarily be filled on the basis of the law which existed on the date when they arose. There was no statutory obligation on part of the respondents-State to fill up the vacancies in a time

bound manner under the pre-existing Rules of 1999 which stood infringed. The respondents were under no obligation to make appointments as per the old Rules even if assumingly vacancies existed before 2009.

10. Therefore, in the light of the legal position settled by the Apex Court in the case of **Raj Kumar** (supra), this court is of the considered opinion that the petitioners do not have a legal or vested right to be considered for promotion to the higher post of SDO (seri). Accordingly, the writ petition is dismissed.

11. IA No.02/2023 seeking amendment also stands dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ