



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6576/2022

SYED SHAH SIKANDAR ALI
S/O- LATE SULEMAN ALI, R/O- KACHARUA,
P.O- PUTHIMARI, P.S- KAMAL PUR, DIST- KAMRUP (R), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF
SCHOOLS EDUCATION, DISPUR, GHY-6

2:THE DIRECTOR
OF SECONDARY EDUCATION

ASSAM KAHILIPARA
GHY-19

3:THE JOINT DIRECTOR
OF SECONDARY EDUCATION

ASSAM KAHILIPARA
GHY-19

4:THE INSPECTOR OF SCHOOLS
KDC
KAMRUP (M)
PANBAZAR
GUWAHATI-01

5:THE PRINCIPAL
OF COTTON COLLEGIATE GOVERNMENT HIGHER SECONDARY SCHOOL
KAMRUP (M)
PANBAZAR

GUWAHATI-0

Advocate for the Petitioner : MR. M KHAN, MR A K DAS,J. AKTAR

Advocate for the Respondent : SC, SEC. EDU., MS K BARMAN (R-5),MR. K R PATGIRI (R-5)

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of Hearing: 15.05.2024

Date of Judgment: 06.09.2024

JUDGMENT & ORDER (CAV)

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned Standing Counsel appearing for the Secondary Education, Assam, representing the respondents no. 1 to 4 and Mr. K. R. Patgiri, learned counsel appearing on behalf of the respondent no. 5.

2. The petitioner, by way of instituting the present proceeding has prayed for a direction upon the respondent authorities for consideration of his case for promotion against the post of Junior Assistant, lying vacant in Cotton Collegiate Govt. Higher Secondary School, Panbazar, Guwahati; or, in any other vacant post of Junior Assistant. The petitioner has also presented a challenge to a communication dated 27.05.2022, issued by the Director of Secondary Education, Assam, holding therein, that there being no provision for promotion of Grade-IV employees to the post of Junior Assistant, under the provisions of **Assam Secondary Education (Govt. Schools) Service Rules, 2020** (hereinafter referred to as "the Service Rules of 2020").

3. The petitioner, who is a graduate, was initially engaged as a Bungalow Peon, to the then Director of Secondary Education, Assam, in the year 2004. Subsequently, the petitioner, in terms of a Government policy, in vogue was

absorbed as a Grade-IV employee vide the order dated 31.12.2011; in the office of the Principal of Cotton Collegiate Govt. Higher Secondary School, Guwahati (hereinafter referred to as "the school"). It is contended that the Director of Secondary Education, Assam, vide a communication dated 29.11.2017; had intimated that the Ministerial Staff of Govt. Secondary Schools as well as that of the Inspector of Schools of Assam, is to be treated as a common cadre and the Directorate was following the **Assam Directorate Esstt. (Ministerial) Service Rules, 1973**, (hereinafter referred to as "the Service Rules of 1973") for considering the cases of such Ministerial Staffs to the next higher grade.

4. The petitioner, further contends that the provisions of the said Service Rules of 1973, had undergone an amendment in the year 2016; and in terms of the said amendment, a Grade-IV employee was eligible for consideration for promotion to the post of Junior Assistant, provided that, he had a Bachelor degree from a university recognized by the Government and had rendered not less than 07(seven) years of continuous service. It further provides that the 10% of the vacancies in the cadre of Junior Assistant is to be filled up by way of promotion from amongst eligible Grade-IV employees. The petitioner, herein, being a graduate and on completion of the requisite length of service as a Grade-IV employee, submitted an application, before the Director of Secondary Education, Assam, on 28.01.2019; praying for consideration of his case for promotion against the vacant post of Junior Assistant, available in the school wherein he is working, on account of the incumbent therein, retiring on 20.10.2011.

5. The petitioner, thereafter, had again approached the Director of Secondary Education, Assam, praying for consideration of his case for promotion. One of such representations made, was forwarded by the Principal of the school, vide a forwarding dated 08.04.2022. The said representation as preferred by the

petitioner in the year 2022 and forwarded by the Principal of the said school, on 08.04.2022; on consideration, came to be responded to, by the Director of Secondary Education, Assam, vide a communication dated 27.05.2022; wherein, it was held that there is no provision for promotion of Grade-IV employee to the post of Junior Assistant in the said Service Rules of 2020.

6. The petitioner, being aggrieved by the said communication dated 27.05.2022, has instituted the present proceeding, assailing the same with a further prayer for a direction upon the respondent authorities to consider his case for promotion against the post of Junior Assistant, lying vacant in the said school since 2011 and/or any other vacant post of Junior Assistant, against which his case for promotion can be considered.

7. Mr.M. Khan, learned counsel for the petitioner, by reiterating the facts as noticed herein above, has submitted that the petitioner was eligible for being promoted to the post of Junior Assistant, in terms of the said Service Rules of 1973, w.e.f, 02.01.2019 and there being a post of Junior Assistant lying vacant in the school since 2011, his case was required to be so considered for promotion against the said Service Rules of 1973.

8. Mr. M. Khan, learned counsel for the petitioner has further submitted that although the Government had enacted the said Service Rules of 2020, the provisions of the Service Rules of 1973 continues to apply, insofar as, promotion to the cadre of Junior Assistant from amongst the Grade-IV employees is so concerned. Mr. Khan, has alternatively submitted that even if, it is to be held that there being no provision for recruitment to the post of Junior Assistant by way of promotion from amongst the Grade-IV employees, the vacancies so arising before the said Service Rules of 2020 had come into force i.e., prior to 03.06.2020, should be considered to be so filled up in terms of the said Service Rules of 1973; and accordingly, the case of the petitioner is so required to be directed to be

considered against the vacant post of Junior Assistant available in the school and which had remained vacant since 2011.

9. Mr. Khan, learned counsel has further submitted that the consideration for promotion, having been elevated to status of a Fundamental Right, such Fundamental Right, vesting in the petitioner cannot be denied to him and his case is required to be so directed for consideration for promotion, at least, against the vacant post available in the school and which post is so lying vacant since 2011, i.e., prior to the coming into force of the said Service Rules of 2020.

10. Mr. B. Kaushik, learned Standing Counsel for the Secondary Education, Assam, has at the outset, placed before this Court, a speaking order dated 12.12.2023, issued by the Director of Secondary Education, Assam; wherein it was contended that in absence of a specific Service Rules to govern the service condition of Ministerial Staff of the Office of the Inspector of Schools, as well as the Non-Teaching Staff of the Govt. Secondary Schools, recruitment to the said posts were being so done adhering to the said Service Rules of 1973. The Government, had enacted the said Service Rules of 2020 to govern the service condition of Teaching and Non-Teaching Staff of Govt. Secondary Schools of Assam and therein, also providing the method of recruitment for both the Teaching and Non-Teaching Staff and the transfer, posting, as well as promotion in respect of employees of these cadres. The promotions of the employees in the said cadres before the enactment of the said Rules of 2020 were being made, considering the employees to belong to a common cadre. Accordingly, it was decided that Non-Teaching Staff of the Govt. Secondary Schools and Ministerial Staff in the Office of the Inspector of Schools, who were appointed prior to 03.06.2020, i.e. the date of coming into effect of the said Rules of 2020, shall continue as common cadre for promotion as per the Roster Register duly approved and communicated by the Government. Further, the said order

proceeded to hold that the Ministerial Staff in the Office of the Inspector of Schools and Non-Teaching Staff of the Govt. Secondary Schools, appointed on/or after 03.06.2020, shall be treated as separate cadre and their service conditions shall be governed by respective Service Rules, invogue. The said speaking order dated 12.12.2023, also proceeded to hold that the promotional exercise of Ministerial Staff of the said cadres shall be done, as per the provisions provided under the said Service Rules of 1973.

11. Mr. Kaushik, learned Standing Counsel, further submits that the speaking order dated 12.12.2023 was required to be so issued, in view of the fact that earlier there was no provision for promotion of the Ministerial Staff of the Office of the Inspector of Schools and Non-Teaching Staff of the Govt. Secondary Schools and accordingly, the Director of Secondary Education, Assam, was considering the cases for promotion by applying the provisions of the Service Rules of 1973. After coming into force of the said Service Rules of 2020, considering the fact that the employees in both the above establishments were so serving for long period of time, without an avenue of promotion, the speaking order dated 12.12.2023; came to be so issued and accordingly, it was contended that the case of the petitioner would be so considered in terms of the speaking order dated 12.12.2023, since he was appointed prior to 03.06.2020.

12. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

13. The service particulars of the petitioner, as noticed herein above is not disputed by the respondents. The issue arising in the present proceeding is, as to whether the petitioner is entitled to have his case considered for promotion to the post of Junior Assistant, either against the vacancy available in the school where he is serving and/or any other vacancy. The communication dated 27.05.2022, impugned in the present proceeding, provides that there is no provision for

promotion of Grade-IV employees to the post of Junior Assistant, under the provisions of the **Assam Secondary Education (Govt. Schools) Service Rules, 2020.**

14. The above being the position, it would be mandated to examine the provisions of the said Service Rules of 2020.

15. The Service Rules of 2020 had come into force w.e.f., 03.06.2020. The said Service Rules of 2020 applies to all Govt. Higher Secondary/High Schools. The provisions of Rule 2 (e) define "employee" means an employee who has been appointed in a Govt. Higher Secondary and High Schools. The Non-Teaching Staff in a Govt. School has been placed in Class-III and Class-IV. In Class-III, the cadres of Senior Assistant and Junior Assistant have been included; while in Class-IV, the cadres of Peon, Laboratory Bearer and Chowkidar came to be so included. The provisions of Rule 3 (3) mandate that the non-teaching Class-III and Class-IV cadres constitute a separate district cadres for the purpose of posting, transfer, seniority, promotion, disciplinary matter and other conditions of service and shall be under the direct control of the Inspector of Schools. However, the selection and appointment against the said post, belonging to the cadres included in Class-III and Class-IV shall be so done by the Director under the provisions of these rules. Recruitment to the cadre of Junior Assistant is so provided for under the provisions of Rule 4 (1) and it mandates that the post in the cadre of Junior Assistant shall be so filled up by direct recruitment, on the basis of a selection by the Selection Committee, constituted under Rule 16 (1) of the same Rules.

16. For the purpose of the present case, the provisions of Rule 4 (1) being relevant is extracted herein below:-

“Recruitment to the cadre of Junior Assistant, Peon, Laboratory Bearer and Chowkidar (Class-III and Class-IV) under Rule 3 (2) (a) (ii), (b) in the

office of the Government Higher Secondary/High School shall be made by direct recruitment on the basis of the selection of the selection committee constituted under Rule 16 (1) and in accordance with the guidelines provided by the State Government in Personnel Department in force at that time of appointment".

17. The provisions of Rule 4 (1) as extracted herein above would go to reveal that the post of Junior Assistant in a Govt. Higher Secondary/High School is to be filled up by way of direct recruitment only. No provision has been made in the said Rules for promotion of Grade-IV employees to the post of Junior Assistant.

18. At this stage, it is to be noted that the Hon'ble Supreme Court in the case of State **of Himachal Pradesh and Ors., Vs Raj kumar and Ors.,** reported in **2023 (3) SCC 773**, after discussing the earlier cases on the issue, more particularly, the decision of the Hon'ble Apex Court in the case of **Y. V. Rangaiah and Ors., Vs. J. Sreenivasa Rao &Ors.,** reported in **(1983) 3 SCC 284**, concluded as follows:-

"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 Rangaiah². 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 case² 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. 63 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. 49 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 I have distinguished Rangaiah case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished Rangaiah² 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 Rangaiah² 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 case² 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 Rangaiah² 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 Rao² 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."

19. By applying the decision of the Hon'ble Supreme Court in the case of **Raj kumar (supra)**, to the facts of the present proceeding, it is seen that the petitioner has a right to be considered for promotion, only, in accordance with the Rules governing his service, on the date of such consideration made in his case. The said Service Rules of 2020, having already come into force w.e.f., 03.06.2020, in the event any consideration for promotion in respect of the petitioner to the post of Junior Assistant is so made, it has to be made in terms of the provisions of said Service Rules of 2020. The provisions of the said Service Rules of 2020, having not provided for an avenue of promotion to the post of Junior Assistant from amongst the cadre of Grade-IV employees, no direction for consideration of the case of the petitioner for such promotion would be

permissible to be made, by this Court.

21. Having noticed the above position, this Court would examine the speaking order dated 12.12.2023, issued by the Director of Secondary Education, Assam and brought on record during the course of hearing of the present proceedings.

22. As noticed herein above, the Director of Secondary Education, Assam, had taken a decision to bifurcate the Non-Teaching Staff of Govt. Higher Secondary/High School and Ministerial Staff of the Office of the Inspector of Schools, into two different groups basing on the date of their initial appointments. Such employees, who were appointed prior to 03.06.2020, were decided to be treated as a common cadre for promotion by application of the provisions of the said Service Rules of 1973. The employees, appointed after 03.06.2020, was decided to be treated as a separate cadre and their services was directed to be governed by the Service Rule, in vogue, which is the Service Rules of 2020. Such bifurcation of the cadre of Class-III and Class-IV employees, whose service conditions are governed by the provisions of the Service Rules of 2020, which is a Rule, framed under the provisions of Article 309 of the Constitution of India, is clearly not permissible. Further, the prescriptions as made in the speaking order dated 12.12.2023, not being on account of any amendment carried out, to the provisions of the said Service Rules of 2020; bifurcating the cadre of Ministerial Staff basing on the date of appointments, the Director of Secondary Education, Assam, was not vested with the jurisdiction to arrive at any such decision.

23. It is to be further noticed that the Service Rules of 2020, having provided that the Non-Teaching Staff of Class-III and Class-IV cadres to constitute a separate district cadre for the purpose of posting, transfer, seniority, promotion, disciplinary matter and other conditions of service under the direct control of the Inspector of Schools in terms of the provisions of Rule 3 (3) of the said Service Rules of 2023, the Director of Secondary Education, Assam, by way of issuing the

speaking order dated 12.12.2023, as in effect, amended the provisions of Rule 3 (3) of the said Rules of 2020, for which, she was clearly vested with no jurisdiction. Accordingly, this Court, proceeds to hold that the speaking order dated 12.12.2023 was so issued by the Director of Secondary Education, Assam, without any jurisdiction and the same has the effect of supplanting the provisions of the said Service Rules of 2020, which is clearly impermissible. Accordingly, the decisions as contained in the speaking order dated 12.12.2023 would clearly be inapplicable and the same stands set aside.

24. Having drawn the above conclusions and following the decision of the Hon'ble Supreme Court in the case of Raj Kumar (*supra*), the right of the petitioner for consideration for promotion to the cadre of Junior Assistant, being required to be so processed by application of the Service Rules applicable to the service, wherein he is so figured and the same being the provisions of the Service Rules of 2020, this Court, proceeds to hold that in absence of a provision in the said school, providing for recruitment by way of promotion to the post of Junior Assistant from amongst the Grade-IV employees, more particularly, the employees placed in cadre consisting Class-IV of the service, no direction can be issued to the respondent authorities to consider the case of the petitioner for promotion to the post of Junior Assistant.

25. The plea of the learned counsel for the petitioner is that the said Service Rules of 2020, having only come into force w.e.f., 03.06.2020 only, and the vacancies so arising prior to coming into force of the said Service Rules of 2020 is required to be so filled up, by applying the said Service Rules of 1973, this Court, would only reiterate the conclusion of the Hon'ble Supreme Court in the case of **Raj Kumar (*supra*)** in reference to its earlier decision involved in **Y. V. Rangaiah (*supra*)**, that 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 States, under Part XIV of the Constitution of India. The prescription made in this connection, in the case of **Y. V. Rangaiah (supra)**, came to be overruled. Accordingly, the vacancies as existing in the cadre of Junior Assistant, covered by the provisions of the said Service Rules of 2020, shall only be so filled up as per the provisions of recruitment as provided there under to the post of Junior Assistant and all other methods of recruitment would be barred.

26. Accordingly, it is to held that the writ petition is devoid of any merit and the consequently, the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant