

Court No. - 29

Case :- WRIT - A No. - 5290 of 2023

Petitioner :- Dal Chand And 143 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Alok Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Donadi Ramesh,J.

1. The short question that arises for our consideration in the facts of the present case is, as to whether petitioners are entitled to salary for the period during which they had undergone training for the post of Sub-Inspector (Civil) Police/Platoon Commander, PAC or not.

2. Shorn of unnecessary details, the controversy lies in a narrow campus. 144 petitioners in the present writ petition had applied for appointment to the post of Sub-Inspectors pursuant to an advertisement issued by the respondents on 19.5.2011. The process of recruitment began in accordance with the statutory rules, which governed the recruitment then i.e. U.P. Sub-Inspector and Inspector (Civil Police), Service Rules, 2008 (hereinafter referred to as the Rules of 2008). The procedure for recruitment under the Rules of 2008 is specified in Part V of the Rules of 2008. The process begins with determination of vacancy under Rule 14 to be followed with the procedure for direct recruitment to the post of Sub-Inspectors. Applications are required to be filled by the candidates for appointment under Rule 15 (a). Call letters are then issued to the candidates, who have applied for the post under Rule 15 (b). The candidates are subjected to physical efficiency test as

per the procedure laid down. Those who qualify the physical efficiency test are then required to appear in the preliminary written test under Rule 15 (d). Rule 15 (e) provides for physical efficiency test followed with main written examination under Rule 15 (f). Group discussions are then to be held under Rule 15 (g) and tentative select list is prepared under Rule 15 (h). The candidates are required to be screened in the medical test, whereafter their character verification etc. is to be made. The candidates, who have successfully cleared such processes are to be then send for basic training under Rule 18. Rule 18 (1) and (2) of 2008 Rules are relevant and are reproduced hereinafter:

***"18. Training-** (1) The candidates finally selected for appointment under Rules 15 and 16 to the post of Sub-Inspector shall be required to successfully undergo such training as prescribed by the Police Head Quarters from time to time prior to their appointment. The prescribed training shall be organized by the Head of the Department. After the successful completion of training, the Head of the Department shall forward the required number of names to the concerned appointing authorities.*

(2) The candidates finally selected for appointment under Rule 17 to the post of Inspector shall, after their appointment, be required 10 undergo a course regarding modern aspects of Police investigation."

3. It is thereafter that under Rule 19, appointment is offered to the selected candidate, who has successfully undergone training. This broadly is the scheme of recruitment. It is undisputed that the petitioners had participated in the recruitment exercise initiated vide advertisement dated 19.05.2011, but their candidature was deferred on account of certain disputes which arose from time to time. The process was concluded only in the year 2019. On 20.06.2019, the petitioners were sent for training. The petitioners have completed one year training and after such successful completion of training, they have been appointed to the post of Sub-Inspector on various dates in the year 2020. The petitioners have already received stipend for the period during which they

have undergone training. Regular salary has been released to the petitioners only after they have been appointed under Rule 19. All the petitioners have joined and are working as such.

4. It transpires that representations were made by the petitioners stating that Rules of 2008 stood superseded and substituted by U.P. Sub-Inspector and Inspector (Civil Police) Service Rules, 2015 (hereinafter referred to as the Rules of 2015). These rules came to be made under Section 46 (2) (c) of the Police Act, 1861. The Rules of 2015 are to regulate the selection, promotion, training, appointment, determination of seniority and confirmation etc. of Sub-Inspectors and Inspectors of Civil Police in the U.P. Police Force. In the Rules of 2015, a different scheme for recruitment is contemplated. The initial process of recruitment is somewhat similar to the procedure stipulated under the Rules of 2008. However, as per Rules of 2015, a candidate, who has successfully qualified various stages of selection and whose character verification is without blemish, is to be appointed under Rule 18. Rule 18 (1) of the Rules of 2015 is reproduced hereinafter:

"18. Appointment - (1) *Subject to the provisions of Rules 15 and 16 the appointing authority shall make appointment by taking the names of the candidates in the same order in which they stand in the list prepared under clause (6) of Rule 15. The appointing authority shall issue the appointment letter to the candidates with the direction that they should report for service/training within one month of the date of issue of the letter or any date specified for this purpose in the appointment letter. If a candidate does not do so his selection/appointment shall be cancelled:*

Provided that any person appointed to a post in the service prior to the commencement of these rules and is working on the post, shall be deemed to have been substantively appointed under these rules.]

(2) *If more than one order of appointments are issued in respect of any one selection under Rule 17, then a combined order shall also be issued, mentioning the name of the persons in order of seniority as determined in the selection or, as the case may be, as it stood in the cadre from which they are promoted.*

Provided that any person appointed before the commencement of these rules to a post under the service and working on that post shall be deemed to have been substantively appointed under these rules and such substantive

appointment shall be deemed to have been made under these rules."

5. It is after the selected person is appointed under Rule 18 that he is then required to undergo training under Rule 19 of the Rules of 2015. Rule 19 (1)(a) of the Rules of 2015 is reproduced hereinafter:

"19. Training - (1)(a) The candidates finally selected to the post of b inspector under Rules 15 and 16 shall be required to pass the training prescribed by the Head of the Department. Provisions of Police Training College Manual shall be effective on the cadets during the basic training. If the candidate finally selected for basic training does not report for training within the stipulated time limit then his selection/candidature shall be cancelled."

6. The petitioners, therefore, submit that on the date they were sent on training or were appointed, the statutory Rules of 2015 had already intervened and therefore, the training undergone by them ought to be considered as on job training after issuance of appointment, such that they become entitled to salary for the period during which they have undergone training. It is urged that the authorities arbitrarily and illegally treated their appointment to be made only after completion of training. It is therefore argued by the petitioners that since the statutory Rules would prevail, as such the denial of salary for the period of training would be arbitrary.

7. Sri Alok Mishra, learned counsel for the petitioners places heavy reliance upon judgment of Supreme Court in **State of Himanchal Pradesh and Others Vs. Raj Kumar and Others** reported in **(2023) 3 Supreme Court Cases 773**. Our attention has been invited to the observations of the Court in paragraph 9 of the report, which is reproduced hereinafter:

"9. The solitary argument advanced on behalf of Respondents 1 to 3, which was accepted by the Division Bench was that the vacancies which arose prior to the promulgation of new Rules were to be filled only as per the 1966 Rules and not as per the new Rules. The High Court formulated the issue and proceeded to allow the writ petition on the ground that it is covered by the decision of this Court in Y.V. Rangaiah V. J. Sreenivasa Rao. The operative portion of the judgment is extracted herein for ready reference: (Raj Kumar case, SCC OnLine HP)

"The question whether the vacancies occurring before the amendment to the Recruitment and Promotion Rules are to be filled up as per the old Recruitment and Promotion Rules or by way of new Recruitment and Promotion Rules is no more res integra in view of the law laid down by their Lordships of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao."

8. Sri Alok Mishra has also placed reliance on paragraph 13 as well as 85 and 87 of the report, which are reproduced hereinafter:

"13. The real question is whether the vacancies which arose prior to the promulgation of the new Rules are to be filled only as per the old Rules and not as per the amended Rules? It is argued that this principle is no more res integra as the Supreme Court recognised such a right in Rangatah case and it has been followed in a large number of subsequent decisions. A list of such judgments was forwarded to the Court by the respondents. On the other hand, while submitting that there is no such right, an even larger list of decisions of this Court that distinguished Rangaiah was forwarded to us on behalf of the State."

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 d 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.

87. We have already held that there is no right for an employee outside the rules governing the services. We have also followed and applied the Constitution Bench decisions in [Union of India v. Tulsiram Patel](#) (supra) and more particularly the decision in [Roshan Lal Tandon v. Union of India](#) (supra) that the services under the State are in the nature of a status, a hallmark of which is the need of the State to unilaterally alter the rules to subserve the public interest. The 2006 rules, governing the services of the respondents came into force immediately after they were notified. There is no provision in the said rules to enable the respondents to be considered as per the 1966 Rules. The matter must end here. There is no other right that Respondents no. 1 to 3 can claim for such consideration."

9. On the strength of the above observations, learned counsel for the petitioners submits that following of the rules of recruitment till appointment is made, is not an inflexible rule, inasmuch as the

judgment of the Supreme Court in the case of **Rangaiah, (1983) 3 SCC 284** has been substantially whittled down. Learned counsel for the petitioners further submits that the statutory intent is absolutely clear, inasmuch as the enforcement of Rules of 2015 had superseded the Rules of 2008 and even if the appointment under Rule 18 was to be made prior to the commencement of these Rules, and one is working on the post, it shall be deemed that such person is substantially appointed under the Rules of 2015. It is therefore contended that the State has acted arbitrarily in denying salary during the period of training to the petitioners and the order passed by the State, rejecting their representation, is arbitrary.

10. Sri Pankaj Rai, Advocate appearing for the State, on the other hand places reliance upon the Constitution Bench judgment of the Supreme Court in **Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors., 2024 INSC 847**, wherein the issue relating to impermissibility of the change of Rules of the game during the currency of recruitment fell for examination. On the strength of the observations made in the judgment in **Tej Prakash Pathak (supra)**, it is urged by the respondents that the process of recruitment having commenced under the Rules of 2008, it would continue to be applicable upon the petitioners till making of appointment which is the time when the recruitment itself concludes. It is submitted that the plea of the petitioners seeking benefit of the Rules of 2015 is in teeth of the law laid down by the Constitution Bench in case of **Tej Prakash Pathak (supra)**.

11. Sri Alok Mishra, learned counsel for the petitioners in rejoinder submits that the ratio of the Supreme Court in **Tej Prakash Pathak (supra)** has no applicability to the facts of the present case, inasmuch as the recruitment though commenced in 2011, but the appointment has been made after the enforcement of the Rules

of 2015.

12. We have heard learned counsel for the parties and have perused the materials on record.

13. The undisputed fact remains that the process of recruitment commenced on 19.5.2011, when the Rules of 2008 were applicable. The process of recruitment commenced under the Rules of 2008. One of the questions, which arose for consideration before the Constitution Bench judgment in **Tej Prakash Pathak (supra)** was as to when the recruitment process commences and comes to an end?

14. The answer to the above question is contained in paragraph 42 (1) of the judgment based upon the discussions held in paragraph 13 of the judgment. Paragraph 13 of the judgment in **Tej Prakash Pathak (supra)** is reproduced hereinafter:

"13. The process of recruitment begins with the issuance of advertisement and ends with the filling up of notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment."

15. In paragraph 42 (1), the Court has held as under:

"42 (1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies. "

16. In the facts of the present case, we find that the recruitment process had commenced under the Rules of 2008 with issuance of advertisement. The recruitment process has come to an end with filling up of the vacancies by issuance of appointment to the petitioners in the year 2020. It is noticeable that the respondents had required the petitioners to undertake training prior to their appointment. The petitioners also undertook training before their appointment in the year 2019. It is only on the strength of successful completion of training of one year under the Rules of

2008 that the appointments came to be finally offered to the petitioners in the year 2020. It is therefore apparent that the recruitment process having commenced under the Rules of 2008 concluded with the issuance of appointment to the petitioners for the year 2020.

17. Once we hold so, there would be little difficulty in rejecting the argument raised by the petitioners. The petitioners' contention that on account of introduction of the Rules of 2015 and the consequential supersession of the earlier Rules of 2008, they would become entitled to the applicability of the Rules of 2015 and therefore, their training ought to be treated as on job training, would virtually mean that the rules of recruitment are altered midway. This has to be so as acceptance of the petitioners claim would mean that they become entitled to on job training, after appointment, as contemplated in 2015 Rules.

18. Firstly, we may note that petitioners' appointment is after successful undergoing of training. The plea that their appointment be treated prior to training would be only permissible under the Rules of 2015. This would clearly go contrary to the Constitution Bench dictum in the case of **Tej Prakash Pathak (supra)**. Such argument therefore, cannot be accepted.

19. Even otherwise, we may note that petitioners raised no challenge to their being sent on training prior to their appointment. The petitioners acquiesced to the applicability of Rules of 2008 and only after they have successfully undergone training that they have been appointed and such appointment has been accepted by them. It would be too late in the day for the petitioners, thereafter, to question the applicability of Rules of 2008 upon them for the purposes of undergoing training.

20. The above discussion leads us to an inescapable conclusion that the petitioners' claim for salary during the period of training has no force and consequently, the petition lacks merit and is, accordingly, dismissed. No order is passed as to costs.

Order Date :- 19.3.2025

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