

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.1062 of 2019**Decided on: 22.08.2026**

Jeet Ram Sharma and others

...Petitioners

Versus

State of H.P. and others

...Respondents

*Coram***Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge***Whether approved for reporting?*¹

For the petitioners:Mr. Shivom Vashista, Advocate vice Mr.
Adarsh K. Vashista, Advocate.

For the respondents:

Mr. Hemant Kumar Verma, Deputy
Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners by way of present petition have prayed
for following reliefs:

- “(i) That a writ in the nature of certiorari may kindly be issued and the on going recruitment process for recruitment to the post of Shastri on batch wise basis in Distt. Shimla may kindly be struck down and set aside as violative of part III of The Constitution of India and the policy decision of the Govt. of H.P.
- (ii) A writ in the nature of mandamus may kindly be issued directing the respondents to consider the petitioners for batch wise recruitment to the post of Shastri as per the R&P Rules which were in vogue when the petitioner acquired the essential qualification for the said post in view of the one

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

time relaxation granted to the similarly placed persons by the Govt. of H.P.

- (iii) A writ in the nature of prohibition may kindly be issued restraining the respondent No.3 from going ahead with the on going recruitment process to the post of Shastri on batch wise basis in District Shimla."

2. The facts as emerge from the pleadings are that the petitioners had passed their Prak Shastri examination from H.P. University and thereafter, Shastri examination from H.P. University. They were fully eligible and qualified to be considered for appointment as Shastri Teacher and had got themselves registered with the concerned Employment Exchanges. As per the Recruitment and Promotion Rules (in short 'R&P Rules') for the post of Shastri, which are called the Himachal Pradesh Education Department Class-III (School and Inspection Cadre) Services Rules, 1973, the petitioners were eligible to be considered for their appointment as Shastri Teacher in the respondent-Department. However, the State Government had amended Clause 7 of Annexure-A of the R&P Rules and as per the amended Rules, which have been termed as the H.P. Elementary Education Deptt./Shastri/ Sanskrit/O.T. (Class – III, Non Gazetted) Recruitment and Promotion Rules, 2010, the eligibility criteria and essential qualification was a Degree in Shastri from a recognized University/ Institution with 50% marks. This amendment

in the R&P Rules was carried out vide Notification dated 17.05.2010 (Annexure P-5) and on account of this, the petitioners became ineligible by bringing in to operation the impugned Rules.

3. It has been averred that the respondents had initiated the process for filling up the post of Shastri on batch wise basis and the names of eligible candidates were called from the employment exchanges, but the names of the petitioners were not sponsored due to the amendment in the R&P Rules, which is operating adverse to their interest. It has further been averred that the petitioners thereafter made representations to grant them one time relaxation as that of similarly placed persons from the newly amended R&P Rules in the on going recruitment process and the said request of the petitioners was accepted and they were permitted to participate in the recruitment process, but they have not been issued the appointments since they were ineligible under amended Rules.

4. The petitioners feeling aggrieved by the action on the part of the respondents to initiate process on the amendment of R&P Rules, approached this Court inter alia on the grounds that the amendment carried out in the Rules is highly arbitrary and unjust as well as discriminatory, violative of Articles 14, 16 and 21 of the Constitution of India, since as per the amendment carried out in the Rules their rights have been prejudiced. The impugned recruitment

process is also contrary to the policy decision taken by the respondents to allow one time relaxation to the similarly placed persons from the amended R&P Rules.

5. The respondents filed reply to the petition and raised preliminary submissions that the petition is not maintainable on facts and law and deserves dismissal. It has been averred that the Right of Children to Free and Compulsory Education Act, 2009, (in short Act) has come into force w.e.f. 01.04.2010, to bring uniformity in educational qualification of teachers. As per Section 23 of the Act, any person possessing such minimum qualification as laid down by the academic authority authorized by the Central Government shall be eligible for appointment as a teacher. Due to enforcement of the Right of Children to Free and Compulsory Education Act, 2009, the Recruitment and Promotion Rules for various categories of teachers have been amended in consonance with the National Council for Teachers Education Rules, 2001 and accordingly, the Government of Himachal Pradesh, Elementary Education Department formulated new R&P Rules for the post of Shastri. The new R&P Rules have been formulated by repealing the earlier Rules issued vide Notification dated 28.12.1973 pertaining to the post of Shastri. As per the new R&P Rules, the essential qualification to hold the post of Shastri with at least 50% marks from University/Institution

recognized by H.P. Government and to pass TET Shastri examination conducted by HPSSSB, Hamirpur. As per the note appended in the Rules, relaxation up to 5% was allowed in minimum educational qualification and also in minimum qualifying marks for TET to the candidates belonging to SC/ST/OBC/PH category.

6. It has further been averred that as per the judgment dated 19.08.2011 passed in CWP No.7188/2010, titled, ***Naresh Kumar and others vs. State of H.P. and another***, it was ordered that appointments in the State are to be made strictly as per the Recruitment and Promotion Rules. The State cannot take any policy decision contrary to Constitution or the Recruitment and Promotion Rules framed under Article 309 of the Constitution of India. As such, a prayer has been made for dismissal of the petition.

7. I have heard the learned counsel for the parties and also gone through the record carefully.

8. It is the case of the petitioners themselves that as per the amendment carried out in the Rules, they are rendered ineligible for the post of Shastri. Once, the petitioners are not eligible as per the R&P Rules, framed by the State under Article 309 of the Constitution of India, this Court cannot ask the State to fill up the posts as per the unamended Rules. Admittedly, the appointments have to be made strictly as per the R&P Rules as existed on the date

of recruitment. The Hon'ble Supreme Court has held that the vacancies, which were even existing prior to the amendment carried out in the Rules, have to be filled as per the amended Rules and the candidates cannot claim that the same have to be filled as per the unamended Rules. Reference in this regard is to be made on the judgment passed by three-Judge Bench of Hon'ble Supreme Court in **State of H.P. vs. Raj Kumar** (2023) 3 SCC 773. The relevant paras of the said judgment are reads 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's 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's 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 (supra) is a complete departure from the principle in Rangaiah, in as much 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 (supra). 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's 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 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 aforementioned dictum of the Hon'ble Supreme Court, it is crystal clear that the vacancies are to be filled up as per the Rules, which are in existence on the date of advertising the posts and no employee has any vested right to be considered in accordance with repealed Rules in view of the policy decision of the Government. Not only this, there is no obligation on the Government to make appointment as per the Rules, which were existing prior to the amendment in the Rules.

10. Therefore, keeping in view the principles laid down by

the Hon'ble Supreme Court, no case is made out to give directions to the respondents to consider the petitioners for batch wise recruitment as per the unamended Rules. Consequently, I don't find any merit in the present petition and the same is accordingly dismissed with no order as to costs. Pending applications, if any, also stand disposed of.

22th August, 2026

(sk)

**(Jiya Lal Bhardwaj)
Judge**