

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.4301 of 2013

Date of Decision: 22.12.2015

Sartaj Singh Dhanda and othersPetitioners

Versus

State of Haryana and othersRespondents

CWP No.10223 of 2013

Ramesh Chander and othersPetitioners

Versus

State of Haryana and othersRespondents

CWP No.6134 of 2013

Yashwanti and othersPetitioners

Versus

State of Haryana and othersRespondents

CWP No.8105 of 2013

Omvati and othersPetitioners

Versus

State of Haryana and anotherRespondents

CWP No.8184 of 2013

Anil Kumar and othersPetitioners

Versus

State of Haryana and othersRespondents

CWP No.23444 of 2013

Manoj KumariPetitioner

Versus

State of Haryana and othersRespondents

CWP No.2884 of 2014

Anju Kumari Sharma and anotherPetitioners

Versus

State of Haryana and othersRespondents

CWP No.10922 of 2014

Gursharan Kaur and othersPetitioners

Versus

State of Haryana and othersRespondents

CWP No.12949 of 2014

Paramjit Sharma and anotherPetitioners

Versus

State of Haryana and othersRespondents

CWP No.2872 of 2014

Virender Kumar and othersPetitioners

Versus

State of Haryana and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Girish Agnihotri, Sr. Advocate
with Mr. Saroj Malakar, Advocate
for the petitioners in
CWP No.4301 of 2013.

Mr. Sunil Kumar, Advocate
for Mr. Minderjeet Yadav, Advocate
for the petitioners in
CWP No.8105 of 2013.

Mr. Vikram Sharma, Advocate
for Mr. I.P. Goyat, Advocate
for the petitioners in
CWP No.6134 of 2013.

None for petitioner(s) in
CWP Nos.23444, 8184 and 10223 of 2013
CWP Nos.2872, 12949, 10922, 2884 of 2014

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

Mr. R.K. Malik, Sr. Advocate
with Mr. Kuldeep Sheoran, Advocate
for respondents No.3, 8 and 9.
CWP No.4301 of 2013.

Mr. Ashok Kumar Khubbar, Advocate
for respondents No.4, 5, 7, 9, 12, 15, 19, 22, 26 and 28
in **CWP No.10922 of 2014.**

Mr. M.S. Yadav, Advocate
for Mr. R.S. Hooda, Advocate
for respondents No.6, 10 and 13 in
CWP No.10922 of 2014.

DAYA CHAUDHARY, J.

By this judgment of mine, ten writ petitions bearing
CWP Nos.4301 of 2013, 10223 of 2013, 6134 of 2013, 8105 of 2013,
8184 of 2013, 23444 of 2013, 2884 of 2014, 10922 of 2014, 12949 of
2014 and ***2872 of 2014*** shall be disposed of as common question of law
and issues are involved. However, for the sake of convenience, the facts
are being extracted from ***CWP No.4301 of 2013.***

This petition has been filed for quashing of impugned order

dated 20.02.2013, whereby, the private respondents have been promoted to the post of Elementary School Headmasters, whereas, they are not fulfilling the eligibility conditions as prescribed under Rule 9(a) of Haryana School Education (Group-C) State Cadre Services Rules, 2012 (hereinafter called as "the Rules, 2012). A further prayer has also been made for issuance of a direction to the official respondents to consider the case of the petitioners to the post of Elementary School Headmasters as they are fulfilling all the eligibility conditions prescribed under the Rules from the date, the private respondents have been promoted.

Learned counsel for the petitioners submits that the new rules called the "Haryana School Education (Group C) State Cadre Service Rules, 2012" were notified on 11.04.2012 and the private respondents were not possessing the essential qualifications prescribed under the said Rules, still they have been promoted. He further submits that though the petitioners were possessing the requisite qualifications as prescribed under the Rules, 2012 still, their case has not been considered. The impugned order of promotion of private respondents has been passed by considering the requisite qualifications/experience prescribed under the **old rules of 1998**.

Learned counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in case ***State of Punjab and others vs Arun Kumar Aggarwal and others 2007(10) SCC 402*** as well as judgments of this Court in cases ***Satish Kumar vs State of Haryana and others*** passed in ***LPA No.1121 of 2014, decided on 10.09.2014*** and ***Vikas Sharma vs State of Haryana and others*** in ***CWP No.19263 of 2012 decided on 20.01.2014***, in support of his contentions.

Learned counsel for the respondent-State submits that the posts of High School Headmasters were notified by the Government of

Haryana vide Notification dated 02.04.1998, whereby, 60% posts were to be filled up by promotion from amongst the Headmasters of Middle School/Master, as per roster given in Appendix 'E', 7% posts were to be filled up by promotion from amongst the Sanskrit Teachers as per roster given in Appendix 'E', 7% posts were to be filled up by promotion from amongst the Hindi Teachers as per roster given in Appendix 'E', 1% post was to be filled up by promotion from amongst the Punjabi Teachers, as per roster given in Appendix 'E' and 25% posts were to be filled up by direct recruitment, as per roster given in Appendix 'E'. In notification dated 12.05.1998, different qualifications and experience were mentioned. Rules were amended in the year, 2012 and promotions were made on the basis of old rules as the posts were created prior to coming into existence of the amended Rules, 2012.

Mr. R.K. Malik, learned senior counsel for respondents No.3, 8 and 9 submits that total 5548 posts of Headmasters of Middle Schools were sanctioned on 06.03.2012 and the process of filling up the posts was initiated by the concerned department prior to coming into existence of the amended rules. Learned counsel also submits that a writ petition titled as ***Karan Singh vs State of Haryana and another*** decided on **20.03.2012** was filed by some employees with a grievance that the posts of Headmasters, Government Middle Schools were lying vacant and the respondent-State be directed to sanction and fill up those posts. The said petition came up for hearing and was disposed of in view of the averments made in the affidavit filed by the State, wherein, it was mentioned that the process for filling up the posts has been taken up and the same was likely to be completed within a period of three months. It was also mentioned in the order that any major departure from the stand of the State will be construed by the Court to be a violation of the present directions for which

the concerned authority/department will be held liable if the occasion so arises.

Mr. Malik, learned senior counsel also submits that the posts, in question, were created on 06.03.2012 and the new Rules came into force w.e.f 11.04.2012 and the process of selection was almost complete before coming into existence of the amended Rules, 2012. Learned counsel for respondents No.3, 8 and 9 has relied upon the judgments of Hon'ble the Apex Court in cases ***Y.V. Rangaiah and others vs J. Sreenivasa Rao and others 1983(1) SLR 789, State of U.P and others vs Mahesh Narain etc. 2013(3) RSJ 371, Hemani Malhotra vs High Court of Delhi 2008(2) SCT 736***, judgment of Calcutta High Court in cases ***Basudeb Paul vs State of West Bengal and others 2011(3) SLR 151, The Coal India Limited vs Akshaya Kumar Jena and others 2012 (2) SLR 739***, judgment of Allahabad High Court in case ***Sri Krishna Rai and others vs Banaras Hindu University and others 2012(7) SLR 135*** and the judgment of Madras High Court in case ***C. Govindasamy vs The Principal (incharge) Government Poly Technic College, Krishnagiri and others 2011(2) SLR 531***, in support of his contentions.

Learned counsel appearing for the other private respondents have also reiterated the arguments raised by learned senior counsel- Mr. R.K. Malik, appearing on behalf of respondents No.3, 8 and 9.

Heard the arguments of learned counsel for the parties and have also perused the impugned order(s) as well as other documents available on the file.

The grievance of the petitioners is that the private respondents have been promoted to the post of Elementary School Headmasters vide impugned order dated 20.02.2013 on the basis of the Rules 1998, whereas, the amended rules came into existence in 2012 and the

petitioners were entitled to be considered as they were fulfilling the requisite academic qualifications/experience as per the Rules 2012. The process of promotion shall be considered to be initiated when letters were issued to all concerned departments for asking the details of the candidates, who were fulfilling the requisite qualifications/experience meant for the posts as per rules prevalent at that time. It is also the argument of learned counsel for the petitioners that when new rules came into existence, the promotion should have been made on the basis of qualifications/experience as prescribed under the amended rules, whereas, promotions have been made by considering the old rules. The stand of private respondents, who have been promoted by the department, is that the posts were created prior to notification of amended rules and an affidavit was also filed before this Court in Public Interest Litigation, which was disposed of by considering the affidavit filed by the State.

Now the question for consideration by this Court is as to whether the posts/vacancies, which were available before the amended Rules of 2012 were to be filled up as per un-amended Rules of 1998 or amended Rules of 2012.

Undisputedly, total 5548 posts of Headmasters of Government Middle Schools were sanctioned on 06.03.2012 and thereafter, the process for filling up the said posts was taken up. A statement was also made by the respondent-State in **Karan Singh's** case (supra) that process of filling up the said posts has been taken up and the same was likely to be completed within a period of three months. The said Public Interest Litigation was disposed of by considering the affidavit filed by the State. The same is reproduced as under :-

“ This Public Interest Litigation has been filed seeking appropriate orders from the Court interfering with the alleged inaction of the respondents for not

sanctioning and filling up 1542 posts of Headmasters of Government Middle Schools despite the approval of the Chief Minister. A further direction for creation of the required number of posts of Headmasters in the Government Middle Schools so as not to leave any school without a Headmaster has also been prayed for.

On the strength of several orders passed by the Court from time to time, the Director Secondary Education, Government of Haryana has filed an affidavit dated 20.3.2012 in Court today. A reading of the said affidavit would go to show that, according to the Director, with the coming into force of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'the Act') a total of 5548 posts of Headmasters of Government Middle Schools are required to be filled up so as to comply with the provisions of the Act. In para-2 of the affidavit, it has been stated that the Finance Department has sanctioned the creation of 5548 posts of Headmasters on 6.3.2012 and the said posts will be filled up by promotion from the category of Masters. In the affidavit it is further stated that the process for filling up the posts has been taken up and the same is likely to be completed within three months.

In view of the aforesaid stand taken in the affidavit filed by the Director Secondary Education, Government of Haryana we are of the view that no further order or direction from the Court will be called for as the State has worked out the number of posts that are required to be filled up so as to comply with the provisions of the Act and has taken steps to fill up the said posts. The State should abide by the said statement made before the Court which really partakes the character of an undertaking to the court.

We, therefore, close this writ petition by directing the State to adhere to its stand indicated in the affidavit and to complete the process within the time frame

mentioned therein. We also make it clear that any major departure from the aforesaid stand of the State will be construed by the Court to be a violation of the present directions for which the concerned authority/department will be held liable if the occasion so arises.

The Public Interest Litigation stands disposed of in the above terms.”

Undisputedly, the posts were created on 06.03.2012 and the **amended Rules of 2012** came into force with effect from 11.04.2012, which were notified on that very day i.e 11.04.2012. A letter was sent on 11.09.2012 by the Director, Elementary Education, Haryana to all the Elementary Education Officers of the State and other concerned departments to send the cases for promotion to the post of Elementary School Headmasters from the posts of TGT, Hindi Teachers, Sanskrit Teachers and Punjabi Teachers, who were fulfilling all the educational qualifications as prescribed under the Rules. When the communication was sent by the Director, Elementary Education, Haryana, the new Rules of 2012 were in existence and accordingly, the names of the candidates, who were fulfilling the qualifications for the promoted posts, were called for. Only on the basis of statement made before this Court in **Karan Singh's** case (supra) that posts were lying vacant and process was likely to be completed within a period of three months, it cannot be said that the posts were to be filled up in view of un-amended rules. The process started from the date of notifying the vacancies and further by sending of communication dated 11.09.2012. Moreover, as per **amended Rules**, the promotions were to be made by considering the qualifications/experience, whereas, the promotions were made under the **un-amended Rules of 1998**. A statement was also made before this Court that the process had **already** been started and total 5548 posts were available. Said process

was likely to be completed within a period of three months.

Vide letter dated 11.09.2012 sent by Director, Elementary Education, Haryana to all the Elementary Education Officers of the State and other concerned departments, it was mentioned that Government has created 5548 posts of Middle Headmasters and even the educational qualifications and experience was also mentioned therein. It was also mentioned that after preparing the cases in the prescribed form and after considering the educational qualifications of suitable teachers and personal file of C&V category and the certificate that no departmental proceedings were pending, be sent to the directorate by 21.09.2012.

It is apparent from the letter dated 11.09.2012 that a conscious decision was taken by the official respondents to fill up the said posts under the **amended Rules of 2012**. Undisputedly, there was no provision or quota available for C&V category in the Punjabi and Sanskrit teacher under the un-amended Rules of 1998 as 100% promotion to the post of Middle School Headmasters was from the Master Cadre. The petitioners were eligible to be considered for promotion to the post of Elementary Headmasters under the **amended Rules of 2012**, whereas, the private respondents were not eligible for promotion as they were not fulfilling the eligibility conditions as provided under the **amended Rules of 2012**. The process is said to be started when the details of suitable/eligible candidates were sought vide letter dated 11.09.2012.

It is worth considering as to whether with the creation of posts, the petitioners got a vested right to be considered for promotion or not. It has been held in various judgments that merely by creation of posts, an automatic right of promotion does not accrue to the candidates. The process of promotion takes effect not from the date of occurrence of the vacancy but from the date of promotion. It has also been held in series of

decisions of Hon'ble the Apex Court as well as of this Court that the promotion takes effect from the date of being granted and not from the date of occurrence of the vacancy or creation of posts as has been held in the cases of **Union of India and others Vs. K.K. Vadera and others** 1989 (Sup2) SCC 625, **State of Uttaranchal and another Vs. Dinesh Kumar Sharma** 2007 (1) SCT 393, **K.V. Subba Rao Vs. Government of Andhra Pradesh** 1988 (2) SCC 201, **Sanjay K. Sinha II and others Vs. State of Bihar and others** 2004 (3) SCT 512. Similar controversy was there before Hon'ble the Apex Court in the case of **N.T. Devin Katti vs. Karnataka Public Service Commission** 1992 (2) SCT 578, wherein, it was held that in case the rules are amended after the advertisement with retrospective effect, the selection and appointments shall be governed with the amended Rules, otherwise the prevailing rules on the date of advertisement will regulate the same.

Similar controversy was also there before Hon'ble the Apex Court in the **Y.V. Rangaiah's case (supra)**, wherein, the question whether the promotion should be made in accordance with the rules, in force on the date of occurrence of vacancies or in accordance with the amended Rules. The Court observed as under:-

“The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State wide basis and, therefore, there was not question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

Similar view was taken in **P.Ganeshwar Rao and others Vs. State of Andhra Pradesh and others** 1988 (4) SLR 548 (SC), wherein, it has been held as under:-

“It is a well accepted principle of construction that a statutory rule or Government Order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. There proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government Orders and any amendment of the rules or the Government Order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections.”

Similarly Hon'ble the Apex Court in the case of **Md. Raisul Islam and others Vs. Gokul Mohan Hazarika and others** 2011 (1) SLR 69 has held that once a process of selection is started on the basis of existing Rules of recruitment, the said Rules will continue to govern the selection process notwithstanding any amendment which may have been effected to the said Rules in the meantime.

The process is stated to be initiated by issuing of an advertisement or by inviting applications. In the present case, a letter was issued to all the Heads of the Departments to send the names of the persons fulfilling the requisite qualification/experience but the private respondents were promoted under the unamended Rules of 1998, whereas, **amended Rules of 2012** came into existence w.e.f. 11.04.2012, meaning thereby, the process of promotion was initiated after coming into

existence of the amended Rules of 2012 but the promotions were made under the unamended Rules. Moreover, the promotions were subject to decision of the writ petition.

In view of the facts as well as law position as discussed above, the present petitions deserve to be allowed and the impugned orders dated 20.02.2013 (*in CWP No.4301, 23444, 8184, 8105, 6134 and 10223 of 2013*), 28.01.2014 (*in CWP No.2884 and 2872 of 2014*), 10.02.2014 (*in CWP No.10922 and 12949 of 2014*) are hereby quashed. A direction is also issued to the official respondents to consider the candidatures of all eligible candidates, who fulfil the requisite qualifications/experience as per amended Rules of 2012 within a period of three months from the date of receipt of certified copy of this order and pass necessary orders accordingly.

The petitions are allowed accordingly.

22.12.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE