

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Appeal Nos.1135, 1139 and 1184 of 2016

Between

The Telangana State Power Generation Corpn.,
Rep. by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad;
and others

... Appellants/Respondents

and

Naidipati Damodar
and others

... Respondents/Petitioners

DATE OF JUDGMENT PRONOUNCED: 30-11-2016

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

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- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
 - 2 Whether the copies of judgment may be marked to Law Reports/Journals Yes/No
 - 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

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The Telangana State Power Generation Corpn.,
Rep. by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad;
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... Appellants/Respondents

Vs.

\$ Nandipati Damodar
and others

... Respondents/Petitioners

! Counsel for the Appellants: Sri G.Vidyasagar,
Senior Counsel, representing Smt. K.Udaya Sri

Counsel for Respondents: Sri C.V. Mohan Reddy,
Senior Counsel, representing Sri G.V. Shivaji;
and Sri J.Sudheer

< Gist:

> Head Note:

? Cases referred:

1. (1983) 3 SCC 284
2. (1997) 3 SCC 59
3. (1983) 3 SCC 33
4. 1988 (Supp) SCC 740
5. (1993) 2 SCC 340
6. (1990) 3 SCC 157
7. (1997) 10 SCC 419
8. (1998) 9 SCC 223
9. (2011) 6 SCC 725
10. (2015) 3 SCC 177
11. (1996) 2 SCC 168
12. (1998) 4 SCC 202

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Appeal Nos.1135, 1139 and 1184 of 2016

Common Judgment: (per V.Ramasubramanian, J.)

Challenging an amendment to the Regulations of the Telangana State Power Generation Corporation by which one of the modes of recruitment viz., Recruitment by Transfer to the post of Chemist was deleted, the respondents in these writ appeals, filed a batch of writ petitions. By a final order dated 22-08-2016, a learned Judge of this Court allowed the writ petitions in part, by rejecting the challenge to the amendment, but by holding that the vacancies that arose before the impugned amendment to the Regulations, should be filled up only with reference to the unamended Regulations in force at the time when the vacancies arose. Aggrieved by the said order, the Telangana State Power Generation Corporation has come up with the present writ appeals.

2. Heard Mr. G.Vidyasagar, learned Senior Counsel appearing for the appellants, Mr. C.V. Mohan Reddy, learned Senior Counsel and Mr. J.Sudheer, learned counsel appearing for the respondents.

3. The facts on which there are no disputes are as follows:

- a) In exercise of the powers conferred by the relevant provisions of the Electricity Supply Act, 1948, the Andhra Pradesh State Electricity Board had issued a set

of Regulations known as Andhra Pradesh State Electricity Board Service Regulations. Under the original Regulations issued way back on 02.02.1970, two methods of recruitment viz., direct recruitment; and recruitment by transfer were prescribed for appointment to the post of Chemist. But by an amendment issued under BPMs.No.253, dated 28.08.1990, the Board deleted the provision for recruitment by transfer.

- b) However, by another amendment under G.O.Ms.No.73, dated 17-05-2008, the Board reintroduced the method of recruitment by transfer once again.
- c) The respondents were appointed in the Telangana State Power Generation Corporation as Junior Plant attendants. They claim that they were qualified for recruitment by transfer to the post of Chemist, as per the amended Regulations introduced with effect from 17.05.2008.
- d) By a circular memo dated 30.09.2015, the Chief General Manager of the Corporation appears to have sought particulars of candidates who were willing to be considered for recruitment by transfer to the post of Chemist. The respondents appear to have expressed willingness;
- e) But, it appears that the Board took a decision on 03.11.2015 to fill up the vacancies only through direct recruitment. However, without reference to the Board's

decision, the particulars of the candidates were collected on 09.11.2015 and a list of candidates eligible for recruitment by transfer was forwarded by the Chief Engineer on 21.01.2015.

f) However, the process of recruitment by transfer was not completed for nearly 6 months. While so, the Board passed a resolution on 16.05.2016, to dispense with the method of recruitment by transfer. Accordingly, an amendment was issued to the Service Regulations under T.G.O.O.No.63, dated 16.05.2015 deleting the method of appointment by transfer from the service Regulations, in so far as the post of Chemist is concerned.

g) After the amendment of the Regulations, the Corporation issued a notification dated 23.05.2016 inviting applications for direct recruitment to the post of Chemist. Immediately, the respondents approached this Court by way of writ petitions, challenging the very validity of the amended regulations. The learned Judge found no merit in the challenge to the amendments and hence, he upheld the validity of the same. However, the learned Judge granted relief to the respondents following the decisions of the Supreme Court right from *Y.V. Rangaiah v. J.Sreenivasa Rao* [(1983) 3 SCC 284], which took a view that the vacancies arising at a particular point of time may have to be filled up only

with reference to the rules existing as on the date of arising of the vacancies. Aggrieved by the said order of the learned Judge, the State Power Generation Corporation has come up with the present intra-court appeals.

4. The main contention of Mr. G. Vidyasagar, learned senior counsel for the appellant Corporation is that even as per the Service Regulations in force before the amendment, no quota was fixed for direct recruitment and recruitment by transfer. Though both the methods of the recruitment were prescribed under the unamended Regulations, no quota rota was fixed and hence, no vested right was created in favour of the respondents. It is further contended by the learned senior counsel for the appellant that once an amendment is made to the Rules and such an amendment is also upheld by the Court, no recruitment can take place under the old Rules.

5. In response to the above contentions, it is submitted by Mr. C.V. Mohan Reddy, learned senior counsel for some of the respondents that the law laid down by the Supreme Court in *Y.V. Rangaiah* to the effect that the vacancies that arose prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules, has not undergone a change in the past over 30 years and that therefore, the learned Judge was right in following the same. According to the learned senior counsel, the very fact that a circular memo was issued on 30.09.2015 and the very fact

that the names of the respondents were considered would tantamount to a right being created in their favour. It is his further contention that once the process of filling up the existing vacancies by the method of recruitment by transfer had commenced in September 2015, the appellants are not entitled to change the rules of the game midway.

6. Supplementing the aforesaid contentions, Mr. J.Sudheer, learned senior counsel appearing for some of the respondents contended that the ratio laid down in *Y.V. Rangaiah v. J.Sreenivasa Rao*¹ underwent a small refinement only in the decision in *Dr K.Ramulu v. Dr S.Suryaprakash Rao*². In that case, the Supreme Court held that if the Government takes a conscious decision not to make any appointment till the amendment of the Rules, then the ratio laid down in *Y.V. Rangaiah* may not have any application. Since the case on hand, does not fall under the said category, it is submitted by Mr. J.Sudheer, learned counsel that once the process of recruitment commences, certain rights are created in favour of persons participating in the process of recruitment. The expanse of the rights so created, would vary from stage to stage of the entire process of recruitment and hence, the rights so created, according to the learned counsel, cannot be taken away by the amendment of the Rules. The amendment of the Rules, have not been given retrospective effect despite the Board having a power to

¹ (1983) 3 SCC 284

² (1997) 3 SCC 59

do so. Therefore, the contention of the learned counsel for the respondents is that so long as the amendment issued on 16.05.2016 has not been given retrospective effect, the amended Regulations can have no application to the vacancies that arose before the amendment.

7. We have carefully considered the above submissions.

8. Before dealing with the legal issues raised by the learned counsel for the respondents, it may be necessary to take note of two important factual aspects. They are as follows:

a) It appears that the notification for direct recruitment was issued on 23.05.2016, for filling up 42 vacancies. This was in accordance with the decision taken in the 16th meeting of the Board of Directors held on 14.03.2016. Therefore, the learned Judge came to the conclusion that as on the date of the amendment, 42 posts of Chemist were lying vacant. Before the amendment of the Rules with effect from 16.05.2016, the Regulations read as follows:

Chemist	By Direct Recruitment	(a) Must not have completed 28 years of age on the first day of July of the year in which the selection for appointment is made. (b) M.Sc. First Class with Chemistry preceded by B.Sc. with Chemistry as one of the subjects from a recognised University.
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		Note: The Board employees who are fully qualified for appointment to the post of chemist under “Direct recruitment” not exceeding the age of 45 years as on last date of submission of application for the post of Chemist are eligible to be considered for direct recruitment along with other open candidates. They will have to appear at the common examination. They will be eligible for protection of pay only if selected and for all purposes including seniority in the category of chemist they should be treated as “direct recruitee”. (c) Preference shall be given for the experience in a power station or a chemical plant where a large demineralization plant is in use.
	Recruitment by transfer	(a) For in service candidates (b) M.Sc. with Chemistry preceded by B.Sc. with Chemistry or Environmental Sciences as one of the subjects from a recognized University. (c) Must pass in the screening test to be conducted by the department once in a year.

(b) Though two methods of the recruitment were prescribed by the Regulations before its amendment, no quota was fixed for the two different streams of recruitment. Therefore, it follows that the Corporation was entitled (1) either to fill up all the posts by direct recruitment; (2) or to fill up all those 42 posts by recruitment by transfer;

(3) or to fill up all the 42 posts partly by direct recruitment and partly by recruitment by transfer. No question could have been raised if the Board had filled up 41 out of 42 posts by direct recruitment and the remaining one post by recruitment by transfer, as the unamended Regulations were silent about the quota for both these streams.

9. Keeping these two fundamental factual and legal aspects in mind, let us now look at the legal position as it unfolds in the various decisions of the Supreme Court.

10. In *Y.V. Rangaiah* a rule providing for promotion of Lower Division Clerks to the post of Sub Registrars Grade-II was deleted on 22-3-1977, as a consequence of which 2 persons were adversely affected. Their contention was that as per Rule 4 of the Andhra Pradesh Registration Department Subordinate Service Rules, the Government was obliged to prepare a list of approved candidates for appointment by transfer, in the month of September every year and that since the preparation of such a list was prolonged, the amendment to the rule that came into effect on 22-3-1977 could not be put against them. The consequence of the amendment was that persons who were juniors in the category of Lower Division Clerks to those 2 candidates, but who belonged to other zones where such a panel was prepared on time, got promoted to the post of Sub Registrar Grade-II. The Tribunal granted relief to those 2 persons on the ground that only those vacancies relating to

the panel years subsequent to the amendment of the rules may have to be prepared in accordance with the amended rules. When the order of the Tribunal landed up before the Supreme Court, the Supreme Court found on facts that the failure of the Department to prepare a panel in accordance with the rules and the promotion of juniors in other zones, where the panels were prepared in time, deprived the chances of those 2 candidates for promotion. It is in this context that in the penultimate paragraph of its decision, the Supreme Court said that the vacancies that arose prior to the amended rules would be governed by the old rules and not by the amended rules.

11. Therefore, a careful look at the entire decision in *Y.V. Rangaiah* would show that the decision rendered therein revolved around the facts of the case where two things had happened namely (a) there was a failure on the part of the Government to prepare panels in accordance with the statutory rules and (b) such a failure led to persons who were juniors to the claimants in the same category of post getting promoted under the unamended Rules. ***Therefore, Y.V. Rangaiah cannot be taken to have laid down a proposition of universal application that in all departments, the filling up of any vacancy should only be in accordance with the rules existing on the date on which the vacancy arose.***

12. In *A.A. Calton v. Director of Education*³, the appointment of a Principal of an Intermediate College was in issue. The process of selection of a qualified person commenced in 1973 and the selection in the 1st round was disapproved by the Regional Deputy Director of Education. The selection on the 2nd occasion was set at naught by the Deputy Director. The selection on the 3rd occasion was set aside by the High Court. In the meantime, an amendment came into effect on 18-8-1975, by which the power of the Director to make an appointment was taken away in respect of Minority Institutions. In such an event, the question that arose before the Supreme Court was whether the amendment to the Statute would apply to pending proceedings or not. While dealing with such a contention, the Supreme Court pointed out that at every stage in the process of selection, certain rights are created in favour of one or the other of the candidates. Since the dispute had already seen 3 rounds of litigation, the Supreme Court held in *A.A. Calton* that the amendment, not having been given retrospective effect cannot apply to the proceedings which had already commenced 3 years before the amendment.

13. The decision in *A.A. Calton* did not lay down as a proposition of law that any vacancy arising in any establishment, can be filled up only in accordance with the Rules prevailing on the date on which the vacancy arose and

³ (1983) 3 SCC 33

not in accordance with the Rules in existence as on the date of issue of Notification.

14. The rights that the Supreme Court spoke about in paragraph 5 of its decision in *A.A. Calton* are actually *inter se* rights between the candidates who participate in the process of selection. Take for instance a case where a screening test is held at the 1st stage of the process of selection. The candidates qualifying in the screening test acquire a right as against those who do not qualify. The candidates who have qualified in the screening test go to the 2nd stage and take the main examination. The candidates who are short-listed in the main examination acquire a right to be called for interview, as against those who do not come within the zone of consideration in the main examination. This is how the opinion expressed by the Supreme Court in para 5 of its decision in *A.A. Calton* has to be understood.

15. In *P.Ganeshwar Rao v. State of Andhra Pradesh*⁴, what was in issue before the Supreme Court was whether an amendment to the Special Rules for Andhra Pradesh Panchayat Raj Engineering Service which made available 37½ percentage of substantive vacancies arising in the category of Assistant Engineers to be filled up by direct recruitment, would also apply to the vacancies that arose before the amendment. Before the amendment, the percentage was to be calculated on the total number of

⁴ 1988 (Supp) SCC 740

vacancies, both substantive and temporary. Therefore, the Chief Engineer had already sent proposals both to the Government and to the Public Service Commission for the recruitment years 1978 and 1979 and the Government also took a decision to notify only certain vacancies. Without taking action on those proposals, the Public Service Commission published a Notification in September, 1980, after the amendment of the Rules. It is in that context that the Supreme Court relied upon the observations in para 9 of the decision in *Y.V. Rangaiah* and remitted the matter back to the Tribunal for a fresh consideration, after holding that the amendment would not apply to the vacancies which had arisen prior to the date of amendment.

16. The decision in *P.Ganeshwar Rao* is not also on a general proposition that any vacancy arising in any department should be filled up only in accordance with the Rules prevailing on the date of arising of the vacancies. The Supreme Court was concerned in *P.Ganeshwar Rao* with the question as to the actual number of vacancies available for direct recruitment and for promotion and as to whether the percentage of quota related to substantive vacancies or to both substantive and temporary vacancies.

17. In *P.Murugesan v. State of T.N.*⁵, the Supreme Court was concerned with a challenge to certain amendments made to the Madras Corporation Engineering Service Rules. One of

⁵ (1993) 2 SCC 340

the contentions raised in connection with the said challenge was that under Section 87 of the Madras City Municipal Corporation Act, a time schedule was stipulated within which vacancies in certain posts had to be filled up and that therefore the vacancies that arose 3 months prior to the date of coming into force of the amendment should be filled up according to the unamended Rules which prescribed a quota. Since there was a statutory prescription, the Supreme Court held in para 27 of its decision in *P.Murugesan* that the vacancies that arose at the time before the amendment was made to the Rules, were bound to the unamended Rules by virtue of a Statutory prescription. ***Therefore, unless there is a rule similar to Rule 4 of the Andhra Pradesh State and Subordinate Services Rules (with which the decision in Y.V. Rangaiah was concerned) or a Statutory prescription similar to Section 87 of the Madras City Municipal Corporation Act (with which the decision in P.Murugesan was concerned) it is not possible to hold that the vacancies freeze in point of time.***

18. In *N.T. Devin Katti v. Karnataka PSC*⁶, the Supreme Court was concerned with a case where the Karnataka Public Service Commission issued a Notification on 23-5-1975 inviting applications from in-service candidates for appointment to the post of Tahsildars. Many persons applied, all of whom were subjected to written examination and viva

⁶ (1990) 3 SCC 157

voce. After the select list of candidates was published in the Karnataka Gazette on 18-3-1976, the Government refused approval on the basis of a Government Order dated 09-7-1975 which altered the percentage of reservation as well as the procedure for making reservation. This was a clear case where by a Government Order, a process of recruitment which had already commenced and concluded, was sought to be set at naught. It is in that context that the Supreme Court made a reference to the decision in *Y.V. Rangaiah* as well as the decisions in *A.A. Calton* and *P.Ganeshwar Rao*. Hence the decision in *Devin Katti* may not be any assistance to the respondents herein.

19. In the next decision, namely the one in *Dr K.Ramulu*, a 3-member bench of the Supreme Court even while not expressing any dissent from the view taken in *Y.V. Rangaiah*, took a small deviation. In paragraph 13 of its decision, the Supreme Court pointed out in *Dr K.Ramulu* that once a conscious decision is taken by an employer not to fill up any vacancies when steps are taken for the amendment of the Rules, the Government cannot be compelled to fill up the vacancies in accordance with the Rules in existence on the date on which the vacancies arose. As a matter of fact, the Supreme Court, after referring to a series of decisions including that of the Constitution Bench of the Court in *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47], pointed out that **“for reasons germane to the decision, the**

Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date”.

The 1st part of paragraph 13 of the decision in *Dr K.Ramulu* reads as follows:

“The same ratio was reiterated in *Union of India v. K.V. Vijeesh* [(1996) 3 SCC 139]. Thus, it could be seen that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date.”

20. In *State of Rajasthan v. R.Dayal*⁷, a Departmental Promotional Committee was convened on 13-4-2005 and 9 candidates were selected. The selection was challenged on the basis of an amendment by which Rule 24-A was introduced in Rajasthan Service of Engineers (Building and Roads Branch) Rules, 1954, which came into effect on 24-7-1995. Therefore, the Supreme Court invoked *Y.V. Rangaiah*. As a matter of fact, the selected candidates need not even have relied upon the decision in *Y.V. Rangaiah*, for the reason that by the time the amendment was introduced on 24-7-1995, 9 candidates had already been selected and orders of appointment had also been issued. It was their orders of appointments which were impugned in the writ petition before the High Court. There can be no doubt that once a person is appointed in accordance with the Rules, any subsequent amendment to the Rules cannot be applied to

⁷ (1997) 10 SCC 419

his prejudice. Therefore, the decision in *R.Dayal* has no application to the facts on hand.

21. In *B.L. Gupta v. M.C.D.*⁸, the Supreme Court was concerned with a case where no examination was held for a number of years, for filling up a particular post, leading to *ad hoc* arrangements being made. Some employees approached the Civil Court and obtained a decree in 1979, directing the Municipal Corporation of Delhi to fill up the posts on the basis of the 1978 Rules. The decree was confirmed by the 1st appellate Court and it attained finality. Therefore, in 1993, an advertisement was issued for recruitment followed by an examination held in December, 1993. After the results of the examination were declared, 79 candidates were appointed. At around that time, writ petitions were filed challenging the appointments. During the pendency of the writ petitions, the Corporation amended the Rules. Therefore, the Supreme Court relied upon *Y.V. Rangaiah*, *A.A. Calton*, *P.Ganeshwar Rao* and *N.T. Devin Katti*. *B.L. Gupta* is also a case where the selection and appointments were already over before the amendment. Therefore, the candidates before the Supreme Court in *B.L. Gupta* need not even have invoked the decisions in *Y.V. Rangaiah* and others.

⁸ (1998) 9 SCC 223

22. In *Deepak Agarwal v. State of U.P.*⁹, the Supreme Court pointed out even at the threshold that what was sought to be invoked in that case by the appellants was the mantra that old vacancies have to be filled up under the old Rules. Interestingly, the decision in *Deepak Agarwal* arose out of a judgment of the High Court that relied entirely upon *Y.V. Rangaiah* and *Dr K.Ramulu*. But the Supreme Court held in para 24 of its decision in *Deepak Agarwal* that the opinion expressed in *Y.V. Rangaiah* had to be considered in the context of a Statutory duty imposed upon the Government and the failure of the Government to perform the said duty. In para 25, the Supreme Court pointed out that in that case there was no Statutory duty cast upon the respondents to prepare a year-wise panel. **Therefore, the Supreme Court held that in the absence of a Statutory duty and a failure on the part of the Government to perform a Statutory duty, the proposition laid down in *Y.V. Rangaiah* cannot be invoked.** Paragraph 26 of the decision in *Deepak Agarwal* is a complete answer to all the contentions of the learned counsel for the respondents revolving around *Y.V. Rangaiah*. Hence, para 26 of the decision in *Deepak Agarwal* is extracted as follows:

“26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the “rule in force” on the date the consideration took place. There is no rule of universal

⁹ (2011) 6 SCC 725

or absolute application that vacancies are to be filled in variably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in *Y.V. Rangaiah* case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.”

23. Drawing our attention to the decision of the Supreme Court in *Kulwant Singh v. Daya Ram*¹⁰, especially to the observations in paragraphs 38 to 41, it was contended by Mr. J.Sudheer, learned counsel appearing for some of the respondents, that the decision in *Y.V. Rangaiah* has been quoted with approval even as late as in 2014 and that the law laid down in *Y.V. Rangaiah* has now almost become settled.

24. But we do not think so. As a matter of fact, there are at least 4 decisions which have explained the manner in which the ratio in *Y.V. Rangaiah* has to be understood. The 1st was the decision in *Dr K.Ramulu* where the Supreme Court pointed out that once a conscious decision is taken not to fill up the vacancies till an amendment was made, the vacancies arising before the amendment, cannot be directed to be filled up under the unamended Rules.

¹⁰ (2015) 3 SCC 177

25. The 2nd was the decision in *Union of India v. S.S. Uppal*¹¹. In that case, the claimant who was working as Joint Director of Industries was considered suitable in August, 1988 for absorption in Indian Administrative Service as against the quota of Non-State Civil Service Officers under Rule 8(2). Actually a panel of 4 suitable officers was prepared, after taking into account the vacancies that were due to arise on 01-10-1988, 01-12-1988 and 01-02-1989. Since the officer was eligible to be appointed against the 4th vacancy that was due to arise on 01-02-1989, he was appointed to the Indian Administrative Service on 15-02-1989, instead of 01-02-1989. But in the meantime the Indian Administrative Service (Regulation of Seniority) Rules, 1987 were amended with effect from 03-02-1989. Therefore, the officer could not get seniority as of 01-02-1989, as per the unamended Rules but got a seniority only as per the Amended Rules. When he approached the Tribunal for appropriate placement in the seniority, on the basis of the unamended Rules, the Tribunal applied the ratio in *Y.V. Rangaiah* and granted relief. But the said decision was reversed by the Supreme Court, after pointing out that the decision in *Y.V. Rangaiah* had to be seen in the context of a statutory duty cast upon the department to prepare year-wise panels and the failure of the Government to perform that duty. In para 14 of its decision in *S.S. Uppal*, the Supreme Court pointed out that in the facts and

¹¹ (1996) 2 SCC 168

circumstances of *Y.V. Rangaiah* it was held that the posts which fell vacant prior to the Amended Rules would be governed by the old Rules.

26. The 3rd decision was the one in *Rajasthan Public Service Commission v. Channan Ram*¹². In that case, a Notification for direct recruitment to 23 posts of Assistant Directors was issued on 05-11-1993. The last date for submitting the applications was 31st December, 1993. On 28th December, 1993, the Government/State of Rajasthan requested the Public Service Commission not to go ahead with the recruitment, as the relevant rules were sought to be amended. The Rules were subsequently amended and a fresh Notification for filling up of 26 posts of Marketing Officers was issued. The posts for which the original Notification was issued, were carried forward and merged with the newly created posts. Still the proposition laid down in *Y.V. Rangaiah* was sought to be pressed into service. But the Supreme Court pointed out in para 16 of its decision in *Channan Ram* that *Y.V. Rangaiah* was distinguishable as the case concerned a statutory obligation and the failure of the State to fulfil the obligation. Every one of the decisions now cited before us namely *A.A. Calton*, *P.Ganeshwar Rao* and *B.L. Gupta* was distinguished by the Supreme Court in *Channan Ram*. Towards the end of paragraph 17 of its decision in *Channan Ram*, the Supreme Court relied upon the

¹² (1998) 4 SCC 202

decision of a 3-member bench of the Supreme Court in *Jai Singh Dalai v. State of Haryana*, where the Supreme Court held that when a process of recruitment had not been finalised and culminated into a select list, the candidates do not acquire any right to appointment. The observation made by the Supreme Court in the last line of para 17 in *Channan Ram* is of importance and hence it is quoted as follows:

“A candidate has no vested right to get the process completed and at the most the Government could be required to justify its action on the touchstone of Article 14 of the Constitution of India.”

27. It is needless to cite any authority for the proposition that ***no candidate acquires a vested right merely because of participation in a process of selection. If a process of selection is abandoned half way through and the rules are amended, it is not for the Court to find out whether a conscious, sub-conscious or unconscious decision was taken to stop the process for the purpose of amendment of the Rules.***

28. The 4th decision which played a different tune from the one in *Y.V. Rangaiah* was the one in *Deepak Agarwal*. We have already extracted para 26 of the decision in *Deepak Agarwal*. After dealing in paragraph 24, the facts out of which *Y.V. Rangaiah* arose and after analysing the facts of the case in *Deepak Agarwal* in para 25, the Supreme Court made it clear in para 26 that ***“a candidate has the right to be***

considered in the light of the existing rules, which implies the rule in force on the date the consideration took place". This observation was followed by an unequivocal statement to the effect that "***there is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arose***".

29. One important aspect which has been overlooked in these cases is that before the amendment to the rules, the post of Chemist could be filled up either by way of direct recruitment or by way of recruitment by transfer. Since no ratio was fixed between these 2 streams of recruitment, no candidate in the open market could have compelled the Corporation to proceed only with direct recruitment. As a corollary no in-service candidate could have compelled the Corporation to proceed only with recruitment by transfer.

30. The observations made in *Y.V. Rangaiah* have to be tested on the touchstone of several parameters, some of which can be as follows:

(1) What if an amendment to the rules is made increasing or decreasing the minimum or maximum age for recruitment? Would the candidates who were eligible before the amendment, be entitled to claim that the vacancies that arose before the amendment should be filled up only with persons who fulfil the eligibility criteria under the unamended Rules?

(2) What if the qualifications prescribed for a post are enhanced by way of amendment? Could candidates possessing lesser qualifications but who were eligible under the unamended Rules claim that the posts remaining unfilled on the date of the amendment should be filled up only in accordance with the unamended Rules?

31. Unless the proposition that the vacancies that arose at a particular time can be filled up only in accordance with the Rules existing as on that date, is tested on the above parameters, the observations made in *Y.V. Rangaiah* as pointed out by the Supreme Court in *Deepak Agarwal* cannot be taken to lay down a rule of universal or absolute application.

32. As we have pointed out earlier, the Corporation merely invited willingness on 30-9-2015 from candidates possessing M.Sc., with Chemistry. It would be useful to extract the Circular dated 30-9-2015 to see whether any semblance of right could have been conferred upon the respondents by the said Circular. Hence, it is extracted as follows:

“All the Chief Engineers/Superintending Engineers of Generating Stations and Chief General Manager (HR)/FA&CCAs are requested to obtain and furnish the willingness of the staff working under their control who possess M.Sc with Chemistry or Environment Sciences preceded by B.Sc with chemistry as one of the subject from a recognised University along with the following information in the pro forma as on 30.09.2015.

Sl. No.	Name of the candidate & Designation	Present place of working	DOB	Qualification	Community
1	2	3	4	5	6

Is he/she approved probationer in the present cadre or any cadre.	Date of entry into service	Any EOL available	Any disciplinary cases pending or contemplated
7	8	9	10

Performance report
11

They are also requested to furnish the following certificates.

- i. Xerox copies of above said qualification and SSC certificate.
 - ii. Caste certificate if belongs to SC/ST
 - iii. Bio-data of individual along with length of service rendered.
2. The information should reach this office on or before 15.10.2015.”

33. Except indicating in the subject column that the object of the Circular was to fill up the post of Chemist, there was no other indication, to raise any hopes in the minds of the respondents. **What the respondents had lost was actually not a right nor a vested right but only a chance or a hope. Unless a vested right had been created in favour of the respondents, they cannot seek a direction to bind the Corporation to the unamended Rules.**

Therefore, the claim of the respondents was not in accordance with law and the order of the learned Judge is not in tune with the law laid down in *Deepak Agarwal*. Hence, the writ appeals are allowed and the order of the learned Judge is set aside. The writ petitions shall stand dismissed.

The miscellaneous petitions, if any, pending in these writ appeals shall stand closed. No costs.

V.RAMASUBRAMANIAN, J

G.SHYAM PRASAD, J

30th November, 2016.
Ksn/Ak

Note:-
L.R. Copy to be marked.
(B/o)
Ak



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Appeal Nos.1135, 1139 and 1184 of 2016
(per VRS, J.)



30th November, 2016.
(Ak)