

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23927 of 2016

Date of decision: 21.11.2016

Dalbir Singh

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. SK Malik, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

1. The claim in this petition by a single petitioner is that vacancies in the post of Lecturer School Cadre, Haryana, existing prior to coming into force of the Haryana State Education School Cadre (Group B) Service Rules, 2012 should be filled by applying old rules. These vacancies are in thousands. The argument rests on the principle that old vacancies should be filled as per old rules of 1998. The 1998 rules were repealed and replaced by the 2012 Rules which make the petitioner ineligible for promotion. See ruling in Y.V. Rangaiah and ors. vs J. Sreenivasa Rao and ors., 1983 AIR (SC) 852. The ruling in *Y. V. Rangaiah* has been explained in various judgments delivered by this Court and the Supreme Court that the principle therein cannot be applied blindly in cases, where the rules have been amended creating new rights and obligations. The mode of promotion to higher posts has been altered. While *Y. V. Rangaiah* was a case dealing with the Andhra Pradesh Rules which require the department to draw a panel of promotion against vacancies arising during the year ahead, thereby offering promotions as vacancies arise for filling from the names approved and

placed in the panel during the course of year. Where panels have been drawn rights are created and therefore, the principle of 'old vacancies, old rules' was applied by the Supreme Court.

2. In the present case, there is no legal obligation on the authorities to draw a panel in advance to fill up current and future vacancies arising within the period of one year or even in the future. Where promotions are made time-bound, then the relevant date of consideration for promotion from feeder category to the post of Lecturer would be governed by the law on the date of consideration by convening Department Promotional Committee meetings to make its recommendations to the Government for according promotion and not from the date of occurrence of vacancies lying unfilled. This principle has been accepted as the one to apply by the Supreme Court in Deepak Aggarwal vs. State of U.P. & ors., (2011) 6 SCC 725, after noticing and distinguishing *Y. V. Rangaiah*. In the case of amendment to the rule altering eligibility criteria the material is date of consideration and not the date when the vacancies occurred prior to the amendment of the rules.

3. By applying the principles in *Deepak Aggarwal's case*, I find no rule to rely on to intervene in this case to invalidate the process of promotions initiated through measures vide memos dated May 28, 2015 and June 19, 2015 (Annex P-6 & P-7) respectively regarding promotion of Masters/Mistresses and C& V Teachers of different subjects in Lecturer cadre. For these reasons, I find no merit in this petition and would consider dismissing the same in limine as not presenting a triable issue worth any further consideration.

4. Moreover, no person junior to the petitioner has been promoted to the post of Lecturer/PGT and ordinarily a writ of mandamus will not issue to the State to fill promotional vacancies or to stall, nullify or re-modulate the stage presently set by the two impugned memos to consider cases of promotion in a cadre consisting of thousands of teachers and require the department to offer old vacancies to the petitioner, who is no longer qualified person by operation of the amended rules of service repealing the old rules. If it were allowed to be done as the sole petitioner complaining suggests then the policy in rules of 2012 will take a long time to become effective which could never be the intention or be disregarded by the court. It is well settled that promotion is not a vested or fundamental right, the right is only of consideration. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation”; See, for observation, Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529. The rights of the petitioner will be governed by the amended Rules, 2012.

4. The petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

21.11.2016

monika

Whether speaking/reasoned
Whether reportable

Yes
No