

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.Nos. 8575, 8588 & 9081 of 2013

Date of Decision : January 19, 2016

Mahender Singh Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Umesh Narang, Advocate
for the petitioner(s).

Ms. Shruti Jain Goyal, AAG, Haryana.

* * *

DEEPAK SIBAL, J. :

These three petitions being **C. W. P. Nos. 8575, 8588 & 9081 of 2013**, involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, facts are being extracted from **C. W. P. No. 8575 of 2013**.

On 19.08.1993, the petitioner was appointed as a Science Master. The service and further promotion of the petitioner from the post of

Science Master to the post of Lecturer was governed by the Haryana State Education Lecturer School Cadre (Group-C) Service Rules, 1998 (hereinafter referred to as – the 1998 Rules). The petitioner's case for further promotion as Lecturer, on his possessing the prescribed qualifications under the 1998 Rules, was recommended on 30.07.2009. However, since the Government was already contemplating amendment to the 1998 Rules, the promotion case of the petitioner was never considered and before it could actually be considered, the State replaced the 1998 Rules by the Haryana State Education School Cadre (Group-B) Service Rules, 2012 (hereinafter referred to as – the 2012 Rules), which would now govern promotion from the post of Science Master to the post of Post Graduate Teacher (PGT) instead of Lecturer.

Relying on the law laid down by the Apex Court in the case of **Y. V. Rangaiah and others vs. J. Sreenivasa Rao and others – AIR 1983 SC 852**, the petitioner has filed the present petition seeking a direction to the respondents to consider the case of the petitioner for promotion to the post of Lecturer under the 1998 Rules as the vacancies, against which he seeks consideration of his promotion, were in existence prior to the promulgation of the 2012 Rules.

Counsel for the State argued that the case of the petitioner for promotion to the post of Lecturer, though recommended in the year 2009,

was never considered, as at that time, the Government was contemplating to introduce the 2012 Rules in place of the 1998 Rules and that the petitioner's promotion from the post of Science Master was considered only in the year 2013 i.e. when the 2012 Rules had come into existence. The petitioner, being ineligible under the 2012 Rules, was not promoted. In support of her submission, learned Assistant Advocate General, Haryana places reliance on a judgment of the Apex Court in the case of **Deepak Aggarwal and another vs. State of Uttar Pradesh and others** – **2011 (6) SCC 725** and also two judgments of this Court being **Dalip Kumar and others vs. State of Haryana and another** – **2014 (4) S. C. T. 500** and **Darshan Singh and another vs. State of Punjab and others** – **2013 LIC 236**.

After hearing counsel for the parties and perusing the record, I am of the opinion that the present petition must fail.

Learned counsel for the petitioner solely relies on the judgment of the Apex Court in **Y. V. Rangaiah's** case (*supra*) to urge that the case of promotion of the petitioner be considered under the 1998 Rules as the petitioner had become eligible for such consideration before the promulgation of the 2012 Rules and that the vacancies had also arisen then.

The aforesaid submission, though attractive at first blush, does not stand deeper scrutiny as **Y. V. Rangaiah's** case (*supra*), in a later judgment of the Apex Court in **Deepak Aggarwal's** case (*supra*), has been distinguished on the ground that in **Y. V. Rangaiah's** case (*supra*), statutory

Rules provided for preparation of a panel of eligible candidates every year in the month of September. As this was a statutory duty cast upon the State, the exercise was required to be conducted each year and thereafter, only promotion orders were to be passed. In the facts of that case, no panel was prepared for the year 1976 and subsequently, the Rules were amended, which rendered the petitioners therein ineligible to be considered for promotion. The Apex Court in **Deepak Aggarwal's** case (*supra*) held that it was in those circumstances that it was observed by the Apex Court in **Y. V. Rangaiah's** case (*supra*) that the amendment to the Rules would not apply to the vacancies, which had arisen prior to the amendment. In the facts of the present case, no statutory duty is cast upon the State to make a panel as in **Y. V. Rangaiah's** case (*supra*). Therefore, the case of **Y. V. Rangaiah's** case (*supra*) would not apply to the case in hand. Rather, the law laid down in **Deepak Aggarwal's** case (*supra*) would be applicable, wherein it was settled that a candidate has a right to be considered for promotion in the light of the existing Rules, which implies the Rules in force on the date the consideration takes place. It was held that the right to be considered for promotion accrues on the date of consideration of eligible candidates. In this regard, the following paragraphs of the judgment in **Deepak Aggarwal's** case (*supra*) can usefully be referred to :-

“22. 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 or absolute application that vacancies are to be filled invariably 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's case (supra) 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 can not be accepted that any accrued or vested right of the appellants have been taken away by the amendment. The judgments cited by learned counsel for the appellants namely **B.L. Gupta Vs. MCD** (supra), **P. Ganeshwar Rao Vs. State of Andhra Pradesh** (supra) and **N.T. Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors** (supra) are reiterations of a principle laid down in Y.V. Rangaiah's case (supra).

23. All these judgments have been considered by this Court in the case of **Rajasthan**

Public Service Commission Vs. Chanan Ram & Anr. (supra). In our opinion, the observations made by this Court in paragraphs 14 and 15 of the judgment are a complete answer to the submissions made by Dr. Rajiv Dhawan. In that case, this Court was considering the abolition of the post of Assistant Director (Junior) which was substituted by the post of Marketing Officer. Thus the post of Assistant Director (Junior) was no longer eligible for promotion, as the post of Assistant Director had to be filled by 100% promotion from the post of Marketing Officer. It was, therefore, held that the post had to be filled under the prevailing rules and not the old rules.

24. In our opinion, the matter is squarely covered by the ratio of the judgment of this Court in the case of Dr. K. Ramulu (supra). In the aforesaid case, this Court considered all the judgments cited by the learned senior counsel for the appellant and held that Y.V. Rangaiah's case (supra) would not be applicable in the facts and circumstances of that case. It was observed 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. It was also held that when the Government takes a conscious decision and amends the Rules, the promotions have to be made in accordance with the rules prevalent at the time when the

consideration takes place. [Emphasis supplied]”

The law laid down in **Deepak Aggarwal's** case (*supra*) has been followed by this Court in **Darshan Singh's** case (*supra*) and **Dalip Kumar's** case (*supra*).

Neither could the counsel for the petitioner distinguish **Deepak Aggarwal's** case (*supra*) nor did he cite any law to the contrary.

It may be noticed that the vires of 2012 Rules already stands upheld by a Division Bench of this Court in **Shivani Gupta and others vs. State of Haryana and others – 2013 (1) S. C. T. 545.**

In view of the aforesaid facts and the settled position of law, finding no merit in all these three petitions being **C. W. P. Nos. 8575, 8588 & 9081 of 2013**, the same are hereby ordered to be dismissed, with no order as to costs.

A photocopy of this judgment be placed on the files of other two connected cases.

(DEEPAK SIBAL)
JUDGE

January 19, 2016

monika