

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 883 of 2015
Date of decision : 13.06.2016**

Vijay Kumar

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ramesh Goyat, Advocate
for the petitioner.

Mr. Ravi Pratap Singh, A.A.G. Haryana

Mr. C.R. Dahiya, Advocate
for respondent No. 3

Mr. Kuldeep Khandelwal, Advocate
for respondent Nos. 4 to 8.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI, J.

The present petition is for issuance of writ in the nature of certiorari quashing decision dated 25.06.2014 (P-5) to the extent of imposing the condition of being graduate for promotion to the post of Junior Accountant from the post of Clerks and Secretaries Grade-A by amending the Rule of the Haryana State Central Co-op Bank Staff Service Rules (Common Cadre) Rules, 1975 (for short 'Rules 1975') will be effective prospectively and not retrospectively and further prayer is for issuance of direction to the respondents to implement order dated 01.08.2006/02.04.2007 (P-4) containing the same condition of being graduate with prospective effects and not retrospective effect.

Petitioner was appointed as Secretary Grade-A on 23.10.1982 on regular basis, as per appointment letter dated 08.10.1982 (P-1). The services of the petitioner is governed by Rules 1975 and as per these Rules, secretaries are entitled to be promoted as Clerks and Clerks are further entitled to be promoted as Jr. Accountant. The petitioner was appointed in the year 1982 and was granted selection grade w.e.f 01.03.1981 and after granting the selection grade, his pay scale became equivalent to the pay scale of Clerk. So after absorbing as Clerk, petitioner became Clerk.

Respondent No. 2 vide decision dated 05.05.1995 (P-2) has upgraded certain posts of Secretaries as Secretary Grade'A' and pay grade of Secretary Grade'A' was made equivalent to Clerk. Respondent No. 2 thereafter issued directions to frame a combined seniority list of Clerks and Secretaries Grade 'A'. Further it has been decided to keep the Secretaries Grade 'A' at the tail of Clerks on the day i.e 05.05.1995, as the cadre of Secretary was lower to that of Clerk as on 05.05.1995. The copy of detail instruction dated 29.04.1995 is Annexure P-3.

In the light of the above instructions, a combined final seniority list of Secretaries Grade 'A' and Clerks was prepared on 21.08.2010 and petitioner was shown at Sr. No. 128. Respondent No. 2 issued letter dated 01.08.2006 vide which condition of being Graduate was made but it was also clarified vide letter dated 02.04.2007 that amendment circulated vide letter dated 01.08.2006 will be effective from 01.08.2006 meaning thereby that Secretary Grade 'B' who were in the cadre prior to 01.08.2006 will be governed by old Rules in terms of experience and qualification and the candidate entering into service after 01.08.2006 will be governed by the above amendment (Annexure P-4 colly).

Thereafter, vide letter dated 25.06.2014, respondent No. 2 has decided that the minimum qualification for promotion to the post of Junior Accountant will be Graduate (P-5).

Petitioner filed CWP No. 20529 of 2014 challenging the above said order and vide order dated 09.12.2014 this Court permitted the petitioner to withdraw the petition with liberty to challenge the alleged retrospectivity of amendment as and when necessity arises (P-6).

Now in compliance of order dated 25.06.2014, respondent No. 3 is going to call the meeting of Board of Directors on 19.01.2015 to fill up the post of Junior Accountant/Stenographer/Executive Officer. The copy of Agenda is Annexure P-7. Hence the present petition.

Learned counsel for the petitioner contends that the vide impugned order 25.06.2014, a condition cannot be now imposed upon the petitioner to be a Graduate for promotion to the post of Junior Accountant, as petitioner is governed by old Rules and as per old Rules, for promotion to the post of Junior Accountant, an employee should be a matriculate with three years experience as Clerk/ Supervisors/Godown Keeper/Selection Grade Secretary.

Learned counsel for the petitioner further contends that no service condition can be changed with retrospective effect and reference has been made to letter dated 01.08.2006 vide which condition of being Graduate was made but it was also clarified vide letter dated 02.04.2007 that amendment circulated vide letter dated 01.08.2006 will be effective from 01.08.2006 and thus, the petitioner who joined before 01.08.2006 will be governed by old Rules. The qualification of being Graduate cannot be imposed against the petitioner with retrospective effect. The letter dated

02.04.2007 has never been withdrawn nor been cancelled.

To give force to its contentions, reference has been made to Division Bench judgments of this Court in cases of ***Nitinkhanna and others vs. CAT, Chandigarh Bench, Chandigarh and others, 2011(3) SCT 373, Dropdi Devi and others vs. Miss Shashi Sharma and others, 2011(3) SCT 685 and Madhumati Sharma and others vs. Government of India and others, 2013(3) S.C.T 485***

On the other hand, learned counsel appearing for respondent No. 3 has relied upon a judgment of this Court in a case of ***Ashok Chauhan and others vs. State of Haryana and others, passed in CWP No. 9333 of 2007, decided on 01.05.2009*** and LPA filed against the above said judgment has also been dismissed. This case relates to the existing Rules and for becoming eligible for promotion to the post of Accountant, the employee should be graduate with five years experience as Junior Accountant/Stenographer. The petitioners were not possessing the qualification of Graduation and this Court held that they were not eligible for consideration to be promoted as Accountants until and unless they acquire the degree of graduation.

Learned counsel for respondent No. 3 further contends that the petitioner has not challenged order dated 30.05.2014 passed by Principal Secretary Government of Haryana Cooperation Department letter No. 6710 and in pursuance of the same alleged impugned order dated 25.06.2014 has been passed, therefore only a partial order containing the amendment in promotion has been challenged whereas impugned order dated 25.06.2014 and order dated 30.05.2014 has been merged into each other.

Learned counsel for respondent Nos. 1 and 2 on the other hand

contends that the proposal for existing and proposed amendment inserting additional clause (x) in Rule 5 and for making amendment in Annexure II of Rule 6.1 of Rules 1975 was forwarded to Additional Chief Secretary to Government of Haryana for approval vide memo dated 21.02.2014 (R-1/2) and the Government has accorded approval to amend the said Rules vide memo dated 30.05.2014 (R-2/2) and respondent No. 2 was directed to take further action for approving the Rules and getting the same published as per the powers conferred upon Respondent No. 2 under Section 37 of the Haryana Cooperative Societies Act, 1984. Respondent No. 2 amended Rules 1975 by way of order dated 25.06.2014 whereby 45% quota to the clerks and 30% to the Secretaries Grade-A for promotion to the post of Junior Accountant was provided. This decision was withdrawn later on vide letter dated 28.11.2014 (R-3/2). However, qualification for both the categories i.e Clerks and Secretaries Grade-A was ordered to remain the same.

Learned counsel for respondent Nos. 1 and 2 contends that the promotion cannot be claim as a matter of right.

Petitioner filed replication to the written statement filed by respondent Nos. 1 and 2 stating therein that as per Rule 6.1 of Common Cadre Rules, 1975, the Board of Apex Bank may revise the qualification with the prior approval of the Registrar, Co-op Societies from time to time. In the present case, respondent No. 2 itself has amended the qualifications without prior approval or consent of the Board of Apex Bank. Board of Directors of Apex Bank in its meeting held on 19.02.2015 has passed resolution No. 24 to the effect that the up-gradation of minimum educational qualification vide amendment dated 25.06.2014 shall be made applicable prospectively and not retrospectively. This resolution has also been

forwarded to respondent No. 2 vide endorsement dated 25.02.2015 to accord necessary approval but respondent No. 2 has neither given the necessary approval nor rejected the same till date (P-8).

Reference has been made to letter dated 16.03.2016 stating therein that aforesaid amendment shall be applicable prospectively in terms of Government instructions dated 21.05.2014 and thus the respondents have made eligible such matriculate Daftri/Peon/Driver and Gunmen for promotion to the post of Clerk, who were recruited before 07.11.2013. Thus the action of the respondents is discriminatory as respondent No. 2 had not issued such clarification for promotion to the post of Junior Accountant from the post of Clerks/Secretaries Grade A. The copy of office letter dated 16.03.2016 along with government instructions dated 21.05.2014 are annexed as Annexure P-9 colly.

Heard learned counsel for the parties at length and gone through the contents of the writ petition and replies filed by the respondents.

This Court vide order dated 04.05.2016 had directed the learned State counsel to get some information, which reads as under:-

“After hearing the learned counsel for petitioners, there are two clarifications, which have been issued by the Registrar Cooperative Societies Haryana, Panchkula i.e. letter dated 01.08.2006 (Annexure P-4) to the amendment for promotion to the post of Secretary ‘A’ in which it has been clarified that the amendment of qualification will be applicable to the direct recruits, who are appointed after the amendment i.e. 01.08.2006 and instructions (Annexure P-9) whereby the amendment of minimum qualification for promotion to the post of clerk is to take effect prospectively to those Group-D employees, who are recruited after 07.11.2013.

Learned State counsel shall get information whether such

clarifications have been issued with regard to the promotion to the post of junior accountant or not.

In compliance of order dated 04.05.2014, learned State counsel has only informed the Court that such clarification issued vide letter dated 16.03.2016 are not applicable to the post of Junior Accountant of DCCBs in State of Haryana.

The question for consideration now before this Court would be whether the amendment of qualification from Matric to Graduate for promotion to the post of Junior Accountant is to take effect prospectively or retrospectively once the Registrar Cooperative Societies Haryana vide its letter dated 16.03.2016 directed all Deputy Registrar of Co-op Societies Haryana to comply with Government instructions dated 21.05.2014 and allow minimum educational qualification as matriculate in case of Group D employees recruited after 07.11.2013 for promotion to the post of Clerk.

The judgments cited by learned counsel for respondent Nos. 4 to 8 i.e ***State of Punjab and others v. Ashok Kumar Aggarwal and others, 2007(5) SLR 237, Hardev Singh v. Union of India and another, 2012(1) RSJ 298, Deepak Aggarwal and another vs. State of Uttar Pradesh and others, 2011(6) SCC 725*** will not come to their rescue.

In ***Ashok Kumar Aggarwal's case (supra)***, State of Punjab went in SLP against the judgment and order dated 18.10.2015 passed by this Court. The respondents were diploma holder Junior Engineers. 20 Junior Engineers Diploma Holders (outstanding category) were given current duty charge to look after the charge of SDO's, which was subsequently withdrawn, which was impugned by the diploma holders by filing writ petitions. Hon'ble the Supreme Court set aside the order passed by this Court and Government was directed to fill up the vacant posts in accordance with

2004 Rules.

In *Hardev Singh's case (supra)*, appellant retired on the post of Major General and was seeking promotion to the rank of Lieutenant General but was denied to him, he went up to the Hon'ble Supreme Court but all in vain. Hon'ble the Supreme Court dismissed his appeal and held that no employee has a right to get promotion. The case of the appellant to the post of Lieutenant General was placed before SSB on two different occasions but he failed to get himself empanelled in the list of selected officers available for limited number of posts available in the higher rank. In the absence of any allegation with regard to mala fides Court would not like to look in to the assessment of the SSB in relation to the appellant's performance.

In *Deepak Aggarwal's case (supra)*, one of the appellant was Statistical Officer and other was Technical Officer. The earlier Rules provides for their promotion to the post of Deputy Excise and Taxation Commissioner but the Government took a decision to amend the Rules because considering the work, experience duties and qualifications of Statistical Officer and Technical Officer, they could not have been considered fit for promotion to the post of DEC which only Inspectors of Excise Department were fit.

The facts of the the present case are totally different to the facts in the above said three judgments, as in the present case, the petitioners are working in the department for the last about 32 years and vide letter dated 01.08.2006, the condition of being Graduate was made but it was also clarified vide letter dated 02.04.2007 that amendment circulated vide letter dated 01.08.2006 will be effective from 01.08.2006. Thereafter, vide letter dated 25.06.2014, respondent No. 2 has decided that the minimum

qualification for promotion to the post of Junior Accountant will be Graduate (P-5). However, Registrar Co-op Societies, Haryana vide letter dated 16.03.2016 directed all Deputy Registrar of Co-op Societies Haryana to comply with Government instructions dated 21.05.2014 and allow minimum educational qualification as matriculate in case of Group D employees recruited after 07.11.2013 for promotion to the post of Clerk.

The judgment cited by learned counsel for the petitioners are directly applicable to the facts of the present case where the consistent view of this Court is that Principle of old vacancy old rule would apply, as held by ***Y.V. Rangaiya vs. State of Andhra Pradesh, AIR 1983 SC 852***.

In ***Nitin Khanna's case (supra)***, petitioners joined service as Data Entry Operator 'A'. The grievance of the petitioners was that there was no vacancy of Tax Assistant (Pre-structured Cadre) and thus, no need to hold any DPC to consider promotion in the light of restructured policy dated 19.07.2001 as they were apprehending reversion. This Court dismissed the petitioner by relying upon ***Y.V. Rangaiya's case (supra)*** and held that vacancies in fact were in existence in terms of the old Rules, prior to coming into force of new Rules in 2003 and 48 posts had fallen vacant due to promotion of Tax Assistants in pre-structured grade to the post of Inspector and thus the vacancies prior to enforcement of new Rules were in existence and they were accordingly filled up keeping in view the eligibility of respondents. The principle of old vacancy old rule would apply.

In ***Dropadi Devi's case (supra)***, petitioners were claiming promotion to the vacant posts of 'Principal Tutor' on the basis of fulfilling the prescribed qualifications as per Rule 9 of the 1998 Rules, which was denied to them by the State on the ground that now promotions would be

governed by the Draft Rules, 2009 as per which they do not fulfill qualifications. This Court dismissed the LPA and upheld the judgment passed by learned Single Judge by relying upon **Y.V. Rangaiya's case (supra)** . In para No. 7 and 8, it has been observed as under:-

7. A perusal of the aforesaid Section would show that the Council has been given the power to prescribe the standard curricula for the training of nurses, midwives and health visitors, for training courses for teachers of nurses, midwives and health visitors, and for training in nursing administration. According to clause (h), the Council can also prescribe the conditions for admission to courses of training as prescribed in clause (g) and also it could prescribe the standards of examination and other requirements to be satisfied to secure recognition under this Act. From the aforesaid provision, we are not able to read any power that the Nursing Council could prescribe qualifications for appointment either for direct recruitment or for promotion to the post of Principal Tutor or any other nursing staff and, therefore, it would not lie in the mouth of the appellants to claim that the Parliament has enacted the law by exercising the powers as per Entries 65 and 66 of the Union List of 7 the Schedule of the Constitution and consequently the 1998 Rules framed by the State, are in conflict with the aforesaid provisions. Moreover, the Council itself has not been conferred with any power to prescribe any qualification. Reliance of Mr. Malik, on the judgment of Hon'ble the Supreme Court in the case of University of Delhi v. Raj Singh, 1994 (5) SLR 286 and a Division Bench judgment of this Court rendered in the case of Neeraja Malik v.

State of Haryana, 1997(1) RSJ 246, would have no application and is thus distinguishable because in both the cases there was Central Legislation which was found to be conflict with State enacted law.

*8. We have asked a pointed question to Mr. Malik as to the date of occurrence of vacancy. It has been stated that the vacancy of the post of Principal Tutor had arisen in the year 1999. If that be so, then any proposal or direction of the Council even if it is presumed that it has the power to prescribe the qualification, would not govern the qualification for a vacancy which has arisen in the year 1999. It is well settled that a vacancy which is to be filled up by promotion and has arisen prior to the amendment of the rules, has to be filled up in accordance with the old rules. The principle of 'old vacancy old rules' was laid down by Hon'ble the Supreme Court in the case of **Y.V. Rangaiya v. State of Andhra Pradesh, AIR 1983 SC 852**. Those who have been waiting for their right of consideration for promotion to the post of Principal Tutor and was fulfilled the qualification laid down by the 1998 rules would certainly entitled to be considered in accordance with the qualifications prevalent at the time of occurrence of vacancy. Their right to be considered for promotion cannot be snatched by subsequent amendment provided that before the date of the amendment they were eligible. It has been found by the learned Single Judge that they were fully eligible much prior to 2009 as they had the experience as well as the qualification prescribed by 1998 rules. Therefore, we do not find any exception legal or factual in the view taken by the learned Single Judge warranting interference in*

the appeal. There is no merit in the appeal warranting its admission, which is dismissed.

In ***Madhu Mati Sharma's case (supra)***, validity of circular dated 12.09.2000 was challenged by te Junior Clerks-cum-Cashiers working in the Shivalik Kshetriya Gramin Bank whereby 11 promotional vacancies from Clerical Cadre to Officer Cadre (JMG Scale I) were sought to be filled up on the basis of Rules, 1988 and prayer was made to fill up these posts as per the Regional Rural Bank (Appointment and Promotional of Officers and other Employees) Rules, 1998. This Court allowed the appeals and held that since the vacancies had occurred prior to the enforcement of 1998 Rules and the posts of Senior Clerks-cum-Cashiers and Field Officers have not been abolished but merged/re-designated, the 1988 Rules would apply for the purpose of filling up those posts by way of promotion in which the criteria is only seniority-cum-merit and the 1998 Rules would not apply where the criteria was written test, interview and 5 years performance appraisal.

In the present case, the case of the petitioner is on better footing, as his service is governed by Rules 1975 and as per these Rules, secretaries are entitled to be promoted as Clerks and Clerks are further entitled to be promoted as Jr. Accountant. Further respondent No. 2 issued letter dated 01.08.2006 vide which condition of being Graduate was made but it was also clarified vide letter dated 02.04.2007 that amendment circulated vide letter dated 01.08.2006 will be effective from 01.08.2006 meaning thereby that Secretary Grade 'B' who were in the cadre prior to 01.08.2006 will be governed by old Rules in terms of experience and qualification and the candidate entering into service after 01.08.2006 will be governed by the above amendment (Annexure P-4 colly). Thereafter,

Registrar Co-op Societies, Haryana vide letter dated 16.03.2016 directed all Deputy Registrar of Co-op Societies Haryana to comply with Government instructions dated 21.05.2014 and allow minimum educational qualification as matriculate in case of Group D employees recruited after 07.11.2013 for promotion to the post of Clerk.

In the present case as well, the 'Principle of old vacancy old rule' would apply. The Government has taken a conscious decision vide letter dated 01.08.2006 (P-4 colly) and office letter dated 16.03.2016 to make Rules prospective in nature. Once respondent No. 2 has taken a conscious decision that the condition of being graduate is to be with prospective effects and not retrospective effect, the same has to be implemented.

Accordingly, the present writ petition is allowed and the decision dated 25.06.2014 (P-5) is hereby quashed to the extent of imposing the condition of being graduate for promotion to the post of Junior Accountant from the post of Clerks and Secretaries Grade-A. A direction is given to the respondents to consider the case of the petitioner for promotion to the post of Jr. Accountant in terms of old Rules, in accordance with Rules/law and the amended Rules will be prospective in nature and not retrospective. The exercise shall be completed within a period of six months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

13.06.2016
G Arora