

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No. 257 of 2017

Date : 04.07.2017

Between :

G Anjaneyulu S/o Narasimha
Executive Officer Grade I
O/o Extension Training Centre, Rajendranagar
R R District

Petitioner

And

The Commissioner for Panchayat Raj and Rural Employment
A.P., Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner is working as Executive Officer Grade-I. He was aspiring for promotion as Extension Officer (Panchayat Raj & Rural Development) Grade-I. The said post is governed by the recruitment rules called as A.P. Panchayat Raj & Rural Development Service Rules, 2001. While so, Government issued notification, published vide G.O.Ms No. 253 Panchayat Raj and Rural Development (E.VII) Department dated 29.8.2012 amending the recruitment rules. By this amendment, the post of 'Extension Officer (PR & RD) Grade-I' was redesignated as Extension Officer (PR & RD) and cycle of source of recruitment to the said post is also modified. It is claimed that in the Rules prior to amendment, channel was provided to Executive Officer (PR & RD) Grade I for promotion as Extension Officer Grade I and by virtue of the amendment, the channel of Executive Officer Grade-I (PR) is totally excluded from consideration. Contending that there were vacancies of Extension Officer Grade I prior to amendment carried out in the year 2001 and those vacancies have to be filled up in accordance with the Rules obtaining prior to the amendment and not filling up the vacancies as per the old Rules and seeking to fill up vacancies as per the amended Rules is arbitrary and discriminatory, O.A. No. 977 of 2013 was filed before the A.P. Administrative Tribunal, now transferred to this Court. Petitioner challenges the memo dated 28.1.2013 wherein Government directed to fill up the vacancies of Extension Officer (PR & RD) from the feeder categories of Senior Assistants as per the Rules in force.

2. According to learned counsel for petitioner, this direction of the Government would amount to applying the amended Rule to the existing

vacancies and same is illegal. By placing reliance on the judgment of the Supreme Court in **Sri Y V Rangaiah and others Vs Sri J Sreenivasa Rao and others**¹, it is contended that as per the principle laid down by the Supreme Court, the Rules as obtaining on the date of arising of the vacancies should alone be followed to fill those vacancies and in the instant case, since vacancies were available prior to amendment of the Rules, the same ought to have been filled up by following the un-amended Rules.

3. Elaborate counter affidavit is filed on behalf of the State.

4. By placing reliance on the averments made in the counter affidavit, learned Government Pleader contends that the post of Extension Officer (Panchayats) was abolished by order of the Government in G.O.Ms No. 303 Panchayat Raj dated 4.10.2001. As the post itself was abolished, the question of effecting promotions to those posts does not arise merely because a provision was made in the Rules. It is further contended that there is no cadre of Extension Officer (PR & RD) Grade I for the post and as per Note 5 (a) of the amended Rules, the post of Extension Officer (PR & RD) Grade I becomes dead cadre after retirement of the existing officers. Therefore, the question of filling up such vacancies by following Old Rules does not arise. It is further contended that there is interse seniority dispute among the Secretaries Grade I and claim of the petitioner would be considered after finalization of the seniority in the said cadre. It is further assured that no injustice is caused to the existing personnel/ existing Executive Officers (PR) and they were adjusted in the vacancies and post of Executive Officer for RD is redesignated as Extension Officer (PR & RD).

4.2 Learned Government Pleader therefore contends that as the post is abolished, the question of applying the principle of filling up of the

¹ 1983(3)SCC 284

vacancies as per the Old Rules, does not arise. In support of the said contention, he placed reliance on the decision of Supreme Court in **State of Punjab Vs. Arun Kumar Agarwal**².

5. In substance, contention of the learned counsel for petitioner is that the vacancies which were in existence prior to amended Rules are to be filled up as per the pre-amended Rules.

6. It is appropriate to note at this stage that there is no challenge to the amendment of recruitment Rules; what is challenged is only the direction of the Government to fill up the vacancies. It is also appropriate to note at this stage, as stated in the counter affidavit, the Government memo impugned in the writ petition only concerns filling up of the vacancies earmarked for Senior Assistants.

7. As asserted by the Government in their counter affidavit, the post of Extension Officer Grade I which petitioner seeks consideration stood abolished and does not exist. The re-designated post of Extension Officer (PR&RD) alone exists. As per note 5 (a) appended to the Rules, the existing personnel are allowed to continue in the re-designated post of Extension Officer Grade I, till they retire from service. Thus, the cadre does not exist as of now. Therefore, the issue of applying the old Rules to fill up the vacancies does not arise.

8. In the facts of this case, the principle laid down in **Y.V.Rangaiah** has no application. In **Arun Kumar Agarwal**, this aspect was considered by the Supreme Court. Supreme Court held as under:

“26. He has also referred to J.N. Goel v. Union of India MANU/SC/0174/1997MANU/SC/0174/1997 : [1997]1SCR237 at para 14:

We may now come to the proviso to Rule 21(3) which was inserted in 1972. As noticed earlier, the proviso permits relaxation in the matter of educational qualifications for promotion of Assistant Engineers to the cadre of Executive Engineers and an Assistant Engineer though not a graduate could be promoted provided he had "outstanding ability and record". The said criterion of "outstanding ability and record"

² 2007 (6) SCALE 593

prescribed by the proviso cannot be regarded as vague or arbitrary. In service jurisprudence "outstanding merit" is a well-recognised concept for promotion to a selection post on the basis of merit. Such assessment of outstanding merit is made by the DPC on the basis of the record of performance of the employee. It cannot, therefore, be said that the proviso to Rule 21(3) which enabled a diploma-holder Assistant Engineer to be promoted as Executive Engineer if he had "outstanding ability and record" suffers from the vice of arbitrariness....

.....

28. We are gravely concerned with the manner in which the certificates of outstanding merit categories were obtained by diploma-holders (respondents herein). It is disclosed in the impugned order of 22nd June, 2005 that the certificates of outstanding merit categories were obtained by tempering/stage managing and manipulation by diploma-holders Junior Engineers for getting CDC of the post of S.D.O. This has casted a serious doubt of the credibility of their outstanding merit categories. It is also disclosed that enquiry No. 28/2002 was also registered by Vigilance Bureau, Punjab. We found ourselves extremely difficult to sift the grain from the chaff. This is one of the reasons that persuaded the appropriate authority for taking conscious decision not to fill up the post under 1941 Rules.”

9. In **State of Tripura and others Vs. Nikhil Ranjan Chakraborty and others**³ same principle is reiterated by the Supreme Court.

10. It is pertinent to note what is said by Supreme Court in paragraphs 8 to 10:

8. In *Deepak Agarwal* [*Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725 : (2011) 2 SCC (L&S) 175] the appellants were Technical Officers who along with Assistant Excise Commissioners were eligible to be considered for promotion to the post of Deputy Excise Commissioner. Two days before the DPC was scheduled to meet to consider the cases of all eligible officers for promotion, the Rules concerned were amended and Technical Officers stood excluded as the feeder post for the next promotional post of Deputy Excise Commissioner. The challenge to such exclusion having been negated [*Deepak Agarwal v. State of U.P.*, 2002 SCC OnLine All 1279 : 2002 All LJ 1701] by the High Court, the matter reached this Court and the relevant paragraphs of the decision were: (*Deepak Agarwal case* [*Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725 : (2011) 2 SCC (L&S) 175] , SCC pp. 728 & 734-35, paras 2 & 23-26)

³ (2017) 3 SCC 646

“2. The old vacancies have to be filled under the old rules is the mantra sought to be invoked by the appellants in support of their claim that the vacancies arising prior to 17-5-1999, ought to be filled under the 1983 Rules as they existed prior to the amendment dated 17-5-1999. The claim is based on the principle enunciated by this Court in *Y.V. Rangaiah v. J. Sreenivasa Rao* [*Y.V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] .

23. Could the right of the appellants, to be considered under the unamended 1983 Rules be taken away? The promotions to the 12 vacancies have been made on 26-5-1999 under the amended Rules. The High Court rejected [*Deepak Agarwal v. State of U.P.*, 2002 SCC OnLine All 1279 : 2002 All LJ 1701] the submissions of the appellants that the controversy herein is squarely covered by the judgment of this Court in *Y.V. Rangaiah* [*Y.V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] . The High Court has relied on the judgment of this Court in *K. Ramulu v. S. Suryaprakash Rao* [*K. Ramulu v. S. Suryaprakash Rao*, (1997) 3 SCC 59 : 1997 SCC (L&S) 625] .

24. We are of the considered opinion that the judgment in *Y.V. Rangaiah* case [*Y.V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] would not be applicable in the facts and circumstances of this case. The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the month of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976. Subsequently, the Rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules.

25. In the present case, there is no statutory duty cast upon the respondents to either prepare a yearwise panel of the eligible candidates or of the selected candidates for promotion. In fact, the proviso to Rule 2 enables the State to keep any post unfilled. Therefore, clearly there is no statutory duty which the State could be mandated to perform under the applicable Rules. The requirement to identify the vacancies in a year or to take a decision as to how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to the candidates duly selected for promotion. In our opinion, the appellants had not acquired any right to be considered for promotion. Therefore, it is difficult to accept the submissions of Dr Rajeev Dhavan that the vacancies,

which had arisen before 17-5-1999 had to be filled under the unamended Rules.

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 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 case* [*Y.V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] 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.”

9. The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in *Deepak Agarwal* [*Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725 : (2011) 2 SCC (L&S) 175] in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24-11-2011.

10. In our view, the instant case is fully covered by the law laid down by this Court in *Deepak Agrawal* [*Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725 : (2011) 2 SCC (L&S) 175] and the High Court was completely in error in allowing the writ petition and in dismissing the writ appeals. We, therefore, allow these appeals, set aside the judgment [*Nikhil Ranjan Chakraborty v. Brajendra Tripura*, 2012 SCC OnLine Gau 806 : (2013) 5 Gau LR 898] under appeal and dismiss Writ Petitions (Civil) Nos. 104, 105, 106, 153 and 181 of 2012.

11. Thus, the question of applying the Rules as applicable on the date of arising of the vacancy depends on the given facts of the case and such principle has no uniform application. Having regard to the specific stand of the Government that the post in issue stood abolished and there was no feeder channel existing any more, in the absence of challenge to the amendments carried out to the recruitment Rules, the relief as sought for cannot be granted. I see no merit in the contentions urged by the learned counsel for petitioner. Writ petition is accordingly dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 4.7.2017
TVK



P NAVEEN RAO,J

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