

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

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CWP-3757-2004 (O&M)
Date of decision:12.05.2017

Tara Dutt and others

....Petitioners

Versus

Haryana Vidyut Prasaran Nigam Limited and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Ravinder Malik, Advocate for the petitioners.

Mr. Hitesh Pandit, AAG, Haryana.

P.B. Bajanthri, J. (Oral)

Petitioners are Class IV employees in the respondent-Nigam. They have sought for quashing notification dated 26.02.2004 in respect of prescription of qualification for the post of LDC with reference to promotion method and further sought for a direction to consider petitioners name for promotion to the post of LDC.

2. The post of LDC is governed by the promotion policy issued under the Electricity Supply Act, 1948 vide notification dated 19.10.1990 (Annexure P5). Method of recruitment to the post of LDC is 80% by direct

recruitment and 20% by promotion amongst various Class IV posts with certain conditions stipulated in Para 1.2 of the promotion policy. Para 1.2 of promotion policy, 1990 came to be amended on 26.02.2004 by which two criteria have been changed. One is promotion to the post of LDC shall be determined from the date of passing the Matriculation or 10+2 Examination subject to the condition that the employee has completed 5 years service on Ist July, preceding to the date of filling up of the post to that of seniority-cum-fitness subject to the condition that the employee has passed 10+2/10+2 (vocational) examination with working knowledge of computer and has completed 5 years of service. In this background, whether the petitioners are entitled for promotion with reference to 1990 promotion policy or as per the amended promotion policy dated 26.02.2004 is the subject matter. Vide memorandum dated 22.01.2004 (Annexure P10) names of the petitioner were under active consideration for the purpose of promotion to the post of LDC from Class IV. Abruptly, it was stalled on the score that there is a proposal for amendment of the existing promotion policy relating to Class IV employee to that of LDC. It is undisputed that petitioners were fully eligible and vacancies were available as on 01.07.2003 itself which is evident from memorandum dated 22.01.2004. Therefore, amendment of promotional policy to the post of LDC which was notified on 26.02.2004 would not come in the way of considering the petitioners' name for promotion to the post of LDC as per the promotion policy issued in the year 1990 on the score that vacancies were available before amendment of promotion policy. Supreme court in the case titled as

Y.V.Rangaiah and others versus J.Sreenivass Rao and others reported in 1983(1) SLR 789 held as under:-

9. *Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”*

3. Having regard to the principle laid down by the Supreme Court in the above case petitioners are entitled for consideration of their names for promotion to the post of LDC with reference to unamended promotion policy of the year 1990. Hence concerned respondent is hereby directed to consider the petitioners name for promotion to the post of LDC with

reference to 1990 policy read with vacancies which are occurred prior to 26.02.2004.

4. Above exercise shall be completed by the respondents within a period of 2 months from today and further petitioners be paid the difference of pay in the promotion post and consequential service benefits be effected.

12.05.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No