

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

(1) CWP No. 21882 of 2013 (O&M)
Date of decision: May 3, 2017

Rajinder Singh and others

...Petitioners

Versus

Guru Nank Dev University

...Respondent

(2) CWP No. 19871 of 2015 (O&M)

Rajinder Singh and others

...Petitioners

Versus

Guru Nank Dev University

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Raman Sharma, Advocate,
for the petitioners in both the cases.

Mr. Amrit Paul, Advocate,
for the respondent in both the cases.

JAISHREE THAKUR, J.

1. By this common order, this Court proposes to dispose of the above titled two writ petitions filed. The petitioners herein, who are working as Junior Engineers with Guru Nanak Dev University, Amritsar, are seeking promotion to the post of Assistant Engineer. CWP 21882 of 2013 has been filed with the prayer that posts of Assistant Engineers which became vacant prior to the amendment of the rules should be filled up as per the unamended Rules of 2012, whereas CWP 19871 of 2015 seeks to quash the

advertisement issued inviting applications to fill up two posts of Assistant Engineers through direct recruitment.

2. In brief, the facts are that the petitioners came to be appointed as Junior Engineers with Guru Nanak Dev University, Amritsar. There are 10 post of Junior Engineers in the respondent University, out of which 7 are of Civil Engineers and 3 of Electrical Engineers. The next higher post from Junior Engineers would be to the post of Assistant Engineers. In all, there are 4 posts of Assistant Engineers and thereafter the next higher promotion would be to the post of Executive Engineer, which is to be filled up by promotion from the Assistant Engineers. Since there were no Rules framed by the University for promotion of engineers in the Engineering Department, Rules were framed on 18.06.2012 called Promotion Rules for Executive Engineers and Assistant Engineers. As per the Rules of 2012, promotion to the post of Assistant Engineer in Civil, Public Health, Design, and Electrical were to be 50% by promotion from amongst Junior Engineers through Screening Committee on the basis of seniority-cum-merit and 50% by promotion through selection from amongst the Junior Engineers by selection. The eligibility qualifications as laid down was that a person was required to have 10 years experience as well as Diploma in Civil/Electrical Engineering and those having AMIE degree required 8 years experience and those having Bachelor Degree in Civil/Electrical Engineering were required to have 6 years experience as Junior Engineers. After the Rules were framed, by letter dated 5.2.2013, the respondent University constituted a Selection-cum-Screening Committee for considering candidates for promotion to the post of Assistant Engineer but for some reason the

scheduled meeting did not take place. Eventually, new Rules came to be framed by which a new criteria for promotion was laid out by amending the Rules framed in the year 2012 and as per the new amended Rules 50% posts of Assistant Engineers were to be filled by promotion through Screening Committee on the basis of seniority-cum-merit of Junior engineers and 50% by way of direct recruitment by advertisement from the open market. Aggrieved against denial of promotion and non-consideration under the unamended Rules of 2012 the instant writ petition has been filed

3. Mr. Raman Sharma, learned counsel appearing on behalf of the petitioners, contends that the petitioners are eligible for promotion to the post of Assistant Engineers, as per the unamended Rules of 2012. It is contended that the vacancies arose in the year 2012 and Screening Committee was constituted to consider the case of the petitioners for promotion, however, the Screening Committee did not meet. In fact, the Rules of 2012, which were subsequently amended by the University in its meeting held on 23.10.2013, would not be applicable to the petitioners, since vacancies had arisen prior to the amendment and, therefore, those vacancies ought to be filled up by the unamended Rules of 2012 which provided for promotion to the post of Assistant Engineers by 50% from Junior Engineers on the basis of merit and 50% from Junior Engineers on the basis of seniority.

4. Mr. Amrit Paul, learned counsel appearing for the university, on the other hand, argues that the petitioners would be entitled to promotion on the basis of the amendment made to the Rules as approved by the Syndicate in its meeting held on 23.10.2013, whereby the existing Rules of

2012 were amended to provide for promotion to the post of Assistant Engineers by way of 50% amongst Junior Engineers through Screening Committee on the basis of seniority-cum-merit and the rest 50% to be filled up by direct recruitment through advertisement. It is contended that the amendment was challenged in this Court in CWP No. 9507 of 2015 by the petitioner Rajindar Singh, which was dismissed on 14.05.2015.

5. I have heard the counsels for the parties and with their assistance have gone through the case law relied upon.

6. The only question that arises for consideration by this court is, whether the petitioners, who are Junior Engineers and working with the University since long, would be entitled for promotion to the post of Assistant Engineers under the Rules that had been formulated in the year 2012, the date when vacancies arose, or would they be filled under the new Rules which came into existence after due approval by the Syndicate?

7. Mr. Sharma has relied upon judgments rendered in the case of **State U.P. and others Versus Mahesh Narain Etc. 2013 (2) SCT page 671**, wherein the Apex Court was seized of a similar situation, to contend that the vacancies which arose prior to the amendment in 2013 have to be filled up under the Rules of 2012. In **Mahesh Narain Etc case** (supra), the High Court of Allahabad, Lucknow Bench, held that the respondents were to be considered for promotion on the post of Assistant Director Forensic Science as they had acquired the requisite years of experience for promotion under the old Rules. Rules 5 and 16 of the U.P. Forensics Science Laboratory Technical Officers Service Rules 1987 were amended w.e.f. 20.10.1990. As per the new amendment, all posts of Assistant Directors

were to be filled up by direct recruitment. The respondents, who had acquired the necessary experience and were eligible for promotion to the post, had challenged denial of their promotion on the ground that amendment in the rule cannot be retrospective and work to the prejudice of an employee who was eligible prior to the enactment and enforcement of the amendment of Rules 1990. The Apex Court held that since the respondents were eligible and entitled to promotion for the post of Scientific Officers in terms of Rules of 1997, their experience could not have been ignored on the said post so as to deny them the benefit of consideration to the subsequent post of Assistant Director on the basis of the new Rules of 1990 which could be made effective for the vacancies which arose after the amendment. It was held as under:-

“10. We however have no hesitation in holding that this contention is fit to be rejected outright as the rules cannot be held to be made effective from the date of its preparation but will attain legal sanctity and hence capable of enforcement only when the rules are made effective and the date on which it is to be made effective would obviously be the date when the rules are published vide the gazette notification. In that view of the matter, we find no infirmity in the Respondents plea that they possessed the requisite experience of five years on the post of Scientific Officer as they had already put in five years of service from the publication of the amended Rules of 1990 and, therefore, they were rightly held eligible for consideration of promotion to the next post of Assistant Director. We are thus pleased to approve and uphold the view taken by the High Court on this count.

11. But even if we were to hold that the reasons assigned by the High Court in the impugned judgment suffered from some

aberration since the respondents had joined on the post of Scientific Officer in the year 1989 due to which in 1990, they did not acquire the requisite experience, it cannot be overlooked that the respondents had been promoted on the post of Scientific Officers on 16.9.1985 on ad hoc basis which had to remain effective for a period of one year only but it had also ordered that the incumbent would be entitled to continue on the promoted post till the service rules of 1987 were published. Thus the respondents had a right to continue on the promoted posts when the Rules of 1987 were finally published and made effective in 1987 which earmarked that 25% of total posts were to be filled by promotion from amongst the permanent Scientific Officers having experience of five years of service and further added a proviso which laid down that:

“where permanent Scientific Officers are not available, such temporary and officiating personnel may also be considered for promotion to the said posts as may be permanent on the next lower post.”

Rules of 1987 were amended thereafter in the year 1990 which was published in the U.P. Government Gazette dated 20.10.1990 laying down that the subsequent promotion would be made only by direct recruitment. But this amendment cannot be allowed to affect the respondents' claim for promotion as a rule cannot work to the prejudice of an employee who was holding the post of his eligibility prior to the enactment and enforcement of the Amended Rules of 1990. Since the respondents were eligible and entitled to the promotion for the post of Scientific Officer in terms of the Rules of 1987, their experience could not have been ignored on the said post so as to deny them the benefit of consideration for the subsequent post of Assistant Director on the basis of Rules of 1990 which could be made effective for the vacancies which arose after 1990.”

8. On the other hand, Mr. Paul relies upon judgments rendered in **Union of India and others Versus N.C Murali and others 2017 (3) Scale 187, Nirmal Chandra Sinha Versus Union of India and others (2008) 14 SCC 29, State of Tripura and others Versus Nikhil Ranjan Chakraborty 2017 (2) S.C.T. 131, State of Haryana Versus Subash Chander Marwah 1973 AIR (Supreme Court) 2216, Deepak Aggarwal and another Versus State of Uttar Pradesh and others (2011) 6 Supreme Court Cases 725**, to contend that a candidate does not have a vested right for promotion and it is rules which are prevalent at time when consideration takes place for promotion which would be applicable.

9. In the latest ruling, in **Nikhil Ranjan Chakraborty's case** (supra), the Apex Court was seized of a matter where the State of Tripura was desirous of amending Schedule IV of the Tripura Civil Services Rules 1967, by including certain other posts as feeder posts in “Group A” and “Group B” and a proposal to that effect was forwarded to Tripura Public Service Commission on 23.8.2011. The Commission accepted the proposal, vide its communication dated 26-9-2011. On 24-11-2011, in pursuance of Rule 13 of the Rules, a Selection Committee was constituted for considering cases of eligible officers holding feeder posts in “Group A” and “Group B” of Schedule IV of the Rules for appointment to the post of Tripura Civil Service Gr. II against promotional quota. On 24-12-2011, a Notification dated 19-12-2011 was published in the Gazette amending the Rules including additional posts in Group A and Group B of Schedule IV to the Rules, which was in conformity with the proposal accepted by the Commission. The action on part of the State of Tripura in relying upon the

amended Rules and thereby expanding the feeder posts was immediately challenged. It was submitted that the instant selection ought to be governed by pre-amendment situation and as such a direction be issued to the State to confine the selection to those categories which were mentioned in Schedule IV to the Rules as they existed before the amendment. It was argued that old vacancies have to be filled under the old Rules . It was held as under:-

*“In **Deepak Agarwal** (supra) 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 concerned Rules 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 by the High Court the matter reached this Court and the relevant paragraphs of the decision were:*

*“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** (1983) 3 SCC 284.*

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 the submissions of the appellants that the controversy herein is squarely covered by the judgment of this Court in **Y.V. Rangaiah**. The High Court has relied on the judgment of this Court in **K. Ramulu (Dr.) v Dr.S. Suryaprakash Rao 1997 (1) S.C.T. 763: (1997) 3 SCC 59.***

*24. We are of the considered opinion that the judgment in **Y.V. Rangaiah** case 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 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.”*

10. In the case in hand, there were no service Rules in force for

promotion to the post of Junior Engineers/Assistant Engineers/Executive Engineers in the Engineering Department of the University prior to 2012. The Rules only came into effect after the resolution dated 25.06.2012 was passed granting approval to the Rules called 'Promotion Rules for Executive Engineer and Assistant Engineer' which gave the qualifications and mode of promotion to the post of Assistant Engineer which was to be in the ratio of 50:50 by promotion from Junior Engineers on the basis of seniority-cum-merit and promotion on the basis of selection by the Screening Committee. A meeting was scheduled which was ultimately deferred. Thereafter, an amendment came into being by which it was decided that 50% appointment to the post of Assistant Engineer would be by way of direct recruitment. This was the same situation as in the case of **Nikhil Ranjan Chakraborty** (supra) where a challenge was made to the amended Rules expanding the zone of consideration by including certain other Group A and Group B posts in the feeder cadre. Here an amendment has been made to the Rules formulated in 2012, to include persons from the open market to be considered for appointment to the post of Assistant Engineer as well as to fill in the post of Assistant Engineer by way of promotion as well.

11. The petitioners herein can have no grievance. It is the prerogative of the employer to fill up the vacancies. Admittedly, there were no service Rules prior to 2012 and no promotions were made under the Service Rules which came into effect on 25.6.2012. Even though Selection Committee was constituted to meet on 5.2.2013 to consider the case of the petitioners for promotion, the said meeting was never held and it was decided by the Committee constituted by the Vice Chancellor to review the

Rules regarding selection of candidates for promotion of Junior Engineers as Assistant Engineers to bring it on par with Rules of the Punjab Government. By way of the amendment, out of the 4 posts available for Assistant Engineers, 2 are to be filled up by Direct Recruitment, and the other 2 by way of seniority-cum-merit basis from amongst Junior Engineers. There is nothing available on the record or from the Rules available, that there were vacancies which had to be filled up on yearly determination since the Rules only came into effect in 2012 and were not acted upon. In judgment rendered in **Union of India and others Versus N.C Murali and others** (supra), it has been held as *“in view of the law laid down in the above mentioned cases, it is clear that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallize on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually affected”*.

11. The judgment rendered in **State U.P. and others Versus Mahesh Narain Etc.** (supra), as relied upon by the counsel for the petitioner, did not take note of the judgment rendered in the **Deepak Aggarwal and another Versus State of Uttar Pradesh and others (2011) 6 Supreme Court Cases 725**, wherein it was held that there is no rule of universal or absolute application that vacancies are to be filled up invariably by law existing on the date when vacancies arise. It was further held that the Rules which are prevalent at the time when consideration takes place for promotion, would be applicable.

12. Moreover, the petitioners herein have not been put to any great

disadvantage, as no person junior to them have been promoted nor have the unamended Rules of 2012 been applied to any person in the Department.

13. Therefore, by relying upon the ratio of the judgments as cited above, it is held that the petitioner has no right to be considered for promotion to the post of Assistant Engineer on the basis of the unamended Rules of 2012.

14. Consequently, the writ petitions are dismissed.

May 3, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No