

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

**CWP No. 11414-2016.
Date of decision : 12.09.2018**

Manoj Kumar **...Petitioners**

versus

State of Haryana and others **...Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana

RITU BAHRI , J. (Oral)

In the present writ petition, the petitioner is seeking issuance of a writ in the nature of certiorari for quashing impugned order dated 05.01.2016 (P-1).

Petitioner was appointed as JBT teacher on 25.11.1997 through proper selection process. On 30.07.2010, the petitioner sent his case for promotion to the post of D.P.E but the department did not consider his claim and promoted 16 J.B.T teachers on the post of D.P.E and out of 16, 07 persons are junior to the petitioner. Vide order dated 05.01.2016, the claim of the petitioner was rejected on the ground that he has no experience of the post of D.P.E and as per new Rules, he is not entitled of such promotion.

Learned counsel for the petitioner, *inter alia*, contends that as per the rules prevalent in the year 1998, persons juniors to the petitioners

have been promoted from the post of JBT to DPE in the year 2010. As per information (Annexure P-6) received under the Right to Information Act, 2005, before amendment of the rules, 105 posts were there and after promoting the juniors in 2010, 59 posts are still lying vacant. He further contends that the petitioner has a right to be promoted from the date when his juniors were promoted.

Learned State counsel submits that it is true that the persons junior to the petitioner have been promoted but the promotion order was wrongly passed and a departmental action was taken against delinquent officer. Learned State counsel further submits that there is no provision for promotion from the post of JBT to DPE.

Learned counsel has referred to promotion order dated 11.10.2010 whereby 16 persons have been promoted from the post of JBT to DPE and out of 16 persons, seven persons were junior to the petitioner. The operative part of order dated 11.10.2010 reads as under:-

“The above promotions are subject the following terms and conditions:-

- 1. That these promotions are subject to review/cancellation in case of any discrepancy regarding eligibility is found at later stage.*
- 2. That these promotion orders are without prejudice to the right of the seniors if any whose promotion cases may be decided at later stage.*
- 3. That their promotions are subject to the condition that no adverse remarks against integrity are found in their ACRs mentioned against their names.*
- 4. That their seniority in the Master cadre will be determined*

lateron as per instructions/Rules issued from time to time by the Government/Department.

The only ground taken by the written statement in the reply filed by the respondent is that the Punjab Educational Services Class III School Cadre Rules, 1995 were repealed by "The Haryana State Education School Cadre (Group-C) Service Commencement Rules, 1998 and these rules have further been repealed by Haryan School Education Group C State Cadre Services Rules , 2012. As per Rules 2012, no person shall be appointed to any post in service, unless he is in possession of qualification and experience specified in column No. 3 of Appendix B of these rules in the case of direct recruitment. Only PTI's are eligible for promotion to the post of PT Master or TGT (Physical Education)

Learned State counsel has further argued that the petitioner has approached this Court after a gap of 05 years, as order was passed on 11.10.2010.

This argument is liable to be rejected as the claim of the petitioner was rejected vide order dated 05.01.2016(P-1). The respondents should have promoted to the petitioner from the date his juniors were promoted.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***Y.V. Rangaiah and others v. J. Sreenivasa Rao and others 1983 (3) SCC 284*** wherein it has been held that the principle of old vacancy old rule has to be followed by the department. In para 9, it has been observed 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-Registrar 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 rights 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 Statewide 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.

This judgment is directly applicable to the facts of the present case, as it has been held that if junior is promoted in the old rules, the petitioner who is senior should also have to be promoted as per old rules. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended Rules. The petitioner in the present case, has thus every right to be promoted to the post of D.P.E from the date his juniors were promoted. The respondents cannot deny him promotion on the ground that he is not entitled to promotion as per new Rules.

Applying the ratio of law laid down in ***Y.V. Rangaiah's case***

(*supra*), the writ petition is allowed and order dated 05.01.2016 (P-1) is quashed . The respondent shall promote the petitioner to the post of D.P.E from the date his juniors were promoted, keeping in view order dated 11.10.2010 (P-4). The petitioner is entitled to all consequential benefits.

(RITU BAHRI)
JUDGE

12.09.2018
G Arora

Whether speaking/reasoned	Yes
Whether reportable	No