

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.17613 of 2013

Radhey Shyam and others ... Petitioners

Versus

State of Haryana and another ... Respondents

2. CWP No.10606 of 2013

Dinesh Chander and others ... Petitioners

Versus

State of Haryana and another ... Respondents

Date of Decision: 30.01.2018

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of CWP No.17613 of 2013, *Radhey Shyam*

and others v. State of Haryana and another & CWP No.10606 of 2013, *Dinesh Chander and others v. State of Haryana and another*.

2. No one has appeared for the petitioners nor pass over is sought.
3. Heard Ms. Goyal on the interplay between the old and new rules and their effect on the claim.
4. The Haryana State Education (School and Inspection Cadre) (Group-B) Service Rules, 1998 ("1998 Rules") have been replaced by the Haryana State Education School Cadre (Group B) Service Rules, 2012 ("2012 Rules") notified on April 11, 2012. The channel of promotion has been altered by the new rules making the petitioners in these two cases ineligible for promotion because in the hierarchy to the post of Headmaster High School the promotion is to be made from the Elementary School Headmasters and Trained Graduate Teachers (TGT).
5. The new rules define Trained Graduate Teachers (TGT) as per Clause (g) of Rule 2 as "Trained Graduate Teacher in the relevant subject" appointed after notification of these rules and shall include Masters appointed before the notification of 2012 Rules.
6. Under the 1998 Rules the position was as reproduced in para.4 of the writ petition. The petitioners' case under the old rules would have fallen in Rule 9 (d) and (III), i.e. 7% by promotion from amongst the Hindi Teachers as per roster given in the Appendix E.
7. The petitioners claim promotion to the post of Headmaster High School on the strength of their qualifications under the old Rules of 1998 the relevant extract of which is reproduced below:-

Sr. No.	Designation of Posts	Academic Qualifications and experience, if any, for direct recruitment	Academic, qualification and experience if any, of appointment other than by direct recruitment
1	2	3	4
4.	Headmaster of High School/Junior Specialist/ Programmer Assistant	i) BA/B.Sc/B.Com or equivalent qualification recognized by Haryana Education Department. Preference will be given to M.A/M.Sc./M.Com., or equivalent Post Graduate qualifications recognised by the Department ii) B.T/B.Ed./SSTC/SAV/LT /Diploma in Basic Education or One Year Teachers Training for Graduate at University or Post-Graduate Training College. iii) Eight years teaching experience as Master in Govt. recognised Senior Secondary/High Middle Schools/Teachers Training Institution relaxable for four years for Emergency Commissioner Officer but the total teaching experience and service in the Army should be Eight years. iv) Hindi upto Matric Standard.	i) Three years experience as Block Education Officer; Knowledge of Hindi upto Matric Standard. <u>By Promotion</u> (i) Eight years experience as Headmaster of Middle School or Master; OR. (ii) B.T/B.Ed., and eight years experience as Sanskrit Teacher/Hindi Teacher or Punjabi Teacher. By Transfer or deputation. (i) Two years experience as Head Master of High School. (ii) Knowledge of Hindi upto Matric Standard

8. The petitioners have not disclosed the fact in the writ petition that the consideration for promotion took place under the 2012 Rules, as per which the petitioners are found not eligible since they do not possess the

requisite qualification as prescribed under the 2012 Rules. Therefore, the principle of 'old vacancies- old Rules' cannot be attracted to and applied to case of the petitioners.

9. In Deepak Aggarwal v. State of UP and others, (2011) 6 SCC 725 the Supreme Court has explained the principles of Y.V. Rangaiah and others v. J. Sreenivasa Rao and others, AIR 1983 SC 852 which has been confined to rules where cases for promotion are considered in advance on an annual basis for filling the present and future vacancies and promotions accorded from the select list by the Departmental Promotion Committee as and when the vacancies arise during the year. In *Deepak Aggarwal*, it has been indicated that when new rules are enforced and they change the method of promotion then in case consideration has not taken place of candidates by the department under the old rules they would have no right to promotion on the strength of the old rules. In case, their rights of promotion have been diminished or extinguished by virtue of the new rules then this is an incidence of service. The well accepted principle that no one has a right to promotion will apply. The right is only of consideration. Only in cases where the consideration has taken place by Departmental Promotion Committee etc. in advance of anticipated vacancies and the list select prepared to draw names, and then alone the old rules will apply to vacancies arising before promulgation of the new Rules. It is for this reason that the petitioners' cases cannot be considered under the old rules. The Court is unable to grant any relief to the petitioners either by way of certiorari or a mandamus to promote them to the higher post when they are ineligible.

10. Notwithstanding the argument based on old vacancies and old

rules there is an additional argument raised by the petitioners which is that their qualification of Language Teacher Course prescribed under the old rules deserves to be treated as equivalent to the enhanced qualification of B.Ed. degree prescribed in the 2012 Rules as essential, which contention I have considered but find that these two qualifications have not been declared as equal by the competent authority since no document in support has been placed on record. The writ Court is not the proper forum for declaration of equivalence of qualifications which is a matter for experts to reflect and decide.

11. Having said that, I find no merit in these petitions warranting interference and accordingly the writ is declined and the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

30.01.2018
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Whether speaking/reasoned Yes

Whether reportable No