

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

LPA No. 960 of 2013
Decided on : 16.10.2018

Ramesh Chand Yadhuwanshi

..... Appellant

Versus

Sandeep Kharab and others

..... Respondents

2.

LPA No. 961 of 2013

Umesh Pehal

..... Appellant

Versus

Vikash and others

..... Respondents

3.

LPA No. 16 of 2014

Sunil Kumar

..... Appellant

Versus

Sandeep Kharab and others

..... Respondents

4.

LPA No. 262 of 2017

Rahish Ahmed

..... Appellant

Versus

Sandeep Kharab and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr.R.K.Malik, Sr. Advocate with
Mr. Sunil Hooda, Advocate
for the appellant (in LPA Nos.960 & 961 of 2013).

Mr. Anurag Goyal, Advocate
for respondent No.1 (in LPA No.960 of 2013).

Mr. Y.P.Malik, Advocate
for respondent No.1 (in LPA No.961 of 2013).

Mr. Randhir Singh, Addl.A.G., Haryana.

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AVNEESH JHINGAN, J.

This order shall dispose of four Letter Patent Appeals under Clause X of letter patent against the judgment dated 03.05.2013 passed by learned Single Judge. All the appeals raise a common issue. Three appeals i.e. LPA Nos.960 of 2013, 16 of 2014 and 262 of 2017 have been filed by different parties in CWP No.5965 of 2011 and LPA No.961 of 2013 arises from an order passed in CWP No.7031 of 2011. Learned Single Judge disposed of both the writ petitions by a common order.

2. For the sake of convenience, the facts are being extracted from LPA No.961 of 2013.

3. The writ petitions were filed challenging the promotion of the private respondents (in the writ petition) to the post of Senior Lecturer on the ground that they were not eligible under the Haryana Technical Education Department (Group A) Service Rules, 1986 (for short, 'the Rules'). Rule 9 prescribing the qualification of Senior Lecturer in Computer Engineering was amended on 11.11.2008 by adding an explanation. Prior to the amendment, experience for appointment was

8 years as lecturer in Computer Engineering. The amendment vide notification dated 11.11.2008 added an explanation, in which it was stated that the term experience shall mean, service rendered in the Department of Technical Education, Haryana after regular appointment on the post.

4. The relevant part of the Rules providing for qualification and experience required for promotion to the post of Senior Lecturer and the amendment carried out on 11.11.2008 adding explanation, are extracted below:

“ Rule 9 of the Rules
9. xx xx xx

The qualifications prescribed for promotion as Senior Lecturer in Computer Engineering is as under:

Designation of the post	Academic qualification & experience if any for appointment other than by direct recruitment

Senior Lecturer in Computer Engineering	i) 8 years experience as Lecturer in Computer Engineering.

Amendment carried out vide notification dated 11.11.2008

“Explanation: The term experience as used here in shall mean service rendered in the Department of Technical Education, Haryana after regular appointment in the post.”

5. The Departmental Promotion Committee meeting was held on 21.03.2011 i.e. much after the amendment of the Rules. Earlier to the amendment of the Rule, 8 years experience was required for promotion to the post of Senior Lecturer. The private respondents (in the writ petition) did not possess the said experience. It was further not disputed that neither the appellant nor the respondents were eligible for promotion as

per the amended Rule.

6. In the writ petition, a legal issue was raised as to whether a vacancy, which arose prior to the amendment of the Rules, is to be filled in terms of the rules existing at that time or rules existing at the time of consideration for the promotion.

7. The learned Single Judge held that none of the private respondents were eligible for promotion even under the un-amended rules at the time when rule was amended and further that the private respondents were wrongly considered for promotion on 21.03.2011 in terms of the un-amended rules.

8. The intra court appeal has been filed against the judgment of the learned Single Judge.

9. Learned counsel for the appellant argued that the learned Single Judge erred in holding that the vacancies which arose earlier to the amendment would not be governed by the un-amended rules. Reliance was placed on the Division Bench judgment of this Court in **CWP No.21663 of 2008 titled as "Geeta Devi vs. State of Haryana and others" decided on 03.07.2009.** It was argued that the Division Bench relying upon the decision of Supreme Court in the case of **Y.V.Rangaiah vs. J. Sreenivasa Rao, AIR 1983 SC 852** held that post which fell vacant prior to the amendment of Rule will be governed by old Rule and not by the amended Rule.

10. On the other hand, learned counsel for the respondents rebutted by arguing that the appellant was not eligible for promotion. Further, it was contended that Supreme Court in **Deepak Aggarwal and another vs. State of Uttar Pradesh and others, 2011 (6) SCC, 725**

distinguished the decision of Y.V.Rangaiah's case (supra) and laid down that the legal principles enunciated in Y.V.Rangaiah's case (supra) has no universal or absolute application. Rather, the vacancies are to be filled invariably by law existing on the date when the matter is considered for promotion.

11. The contention raised by learned counsel for the appellant lacks merits. The learned Single Judge tabulated the total experience gained by respondents No.5 to 7 in the Civil Writ Petition No. 5965 of 2011. The same are summarised below in tabulated form:

	Date of joining	Total experience gained prior to regular appointment	Experience gained upto the date of amendment of the Rules after regular appointment	Total experience gained upto amendment of Rules
Respondent No. 5	21.8.2007	6 years, 6 months and 2 days.	One year, 2 months and 21 days	7 years, 8 months and 23 days.
Respondent No. 6	10.8.2007	4 years, 5 months and 25 days.	One year, 1 month and 3 days months	5 years, 6 and 28 days.
Respondent No.	7 7.8.2007	6 years, 8 months and 22 days.	One year, 3 months and 5 days	7 years, 11 months and 27 days.

12. The only issue involved is that the amendment of Rule 9 changed the requirement of 8 years experience as a Lecturer to 8 years experience after regular appointment for the post. From the table, it is evident that none of the candidate had 8 years experience even after considering the experience gained by them prior to regular appointment at the time when Rule 9 was amended. The issue whether the amended Rule or un-amended Rule was to be applied did not affect the outcome of the writ petition as no vested right accrued to the appellant by the time Rule was amended.

13. Reliance of the appellant on the decision of Division Bench of this Court in Geeta Devi's (supra) does not enhance his case. In that case, there was a requirement of 12 years experience as the Lecturer which included 2 years at least spent as a Senior Lecturer for seeking promotion as Head of Department. The rule was amended and by adding explanation the term 'experience' was explained to mean service rendered in the Department of Technical Education after regular appointment on the post. This Court relying upon the decision of the Supreme Court in Y.V.Rangaiah's case (supra) held that the vacancy which has arisen before amendment of the Rule has to be filled in accordance with the un-amended Rule as per provisions of amended Rule.

14. Supreme Court subsequently in Deepak Aggarwal's case (supra) distinguished its earlier decision in Y.V.Rangaiah's case (supra) while considering the issue as framed in para 18 of the judgment, which is reproduced below:-

“18. The short question that arises for consideration is as to whether the appellants were entitled to be considered for promotion on the post of Deputy Excise Commissioner under the 1983 Rules, on the vacancies, which occurred prior to the amendment in the 1983 Rules on 17.05.1999.

15. It was further held that when a conscious decision is taken and rules are amended, the promotion will be made as per the amended rule. The relevant paras of the judgment are reproduced below:-

21. The un-amended and the amended Rule 5(3) of the 1983 Rules are as under:

COLUMN 1	COLUMN 2
Existing sub-rule (3) Deputy Excise Commissioner :- By promotion from amongst substantively appointed Assistant excise Commissioners, Technical Officers and Statistical Officers who have completed two years' service as such, on their respective posts, on the first day of the year of recruitment.	Existing sub-rule (3) as hereby substituted Deputy Excise Commissioner :- By promotion from amongst substantively appointed Assistant excise Commissioners who have completed two years' service as such, on the their first day of the year of recruitment.

From the above, it is evident that under the existing sub-rule (3), substantively appointed Assistant Excise Commissioners, Technical Officers and Statistical Officers, who had completed two years of service as such on their respective posts were entitled to be considered for promotion on the post of Deputy Excise Commissioner. By substitution of sub-rule (3), only Assistant Excise Commissioners, who had completed two years' service as such were made eligible for consideration for promotion as Deputy Excise Commissioner.

XX XX XX XX

“24. We are of the considered opinion that the judgment in Y.V. Rangaiah's case (supra) 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 amendment 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 year-wise panel of the eligible candidates or 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 how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to 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 Dhawan that*

the vacancies, which had arisen before 17th May, 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's case (supra) 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 can not be accepted that any accrued or vested right of the appellants have been taken away by the amendment.*
27. *The judgments cited by learned counsel for the appellants namely B.L. Gupta Vs. MCD (supra), P. Ganeshwar Rao Vs. State of Andhra Pradesh (supra) and N.T. Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors (supra) are reiterations of a principle laid down in Y.V. Rangaiah's*

case (supra). All these judgments have been considered by this Court in the case of Rajasthan Public Service Commission Vs. Chanan Ram & Anr. (supra). In our opinion, the observations made by this Court in paragraphs 14 and 15 of the judgment are a complete answer to the submissions made by Dr. Rajiv Dhawan. In that case, this Court was considering the abolition of the post of Assistant Director (Junior) which was substituted by the post of Marketing Officer. Thus the post of Assistant Director (Junior) was no longer eligible for promotion, as the post of Assistant Director had to be filled by 100% promotion from the post of Marketing Officer. It was, therefore, held that the post had to be filled under the prevailing rules and not the old rules.

28. *In our opinion, the matter is squarely covered by the ratio of the judgment of this Court in the case of Dr. K. Ramulu (supra). In the aforesaid case, this Court considered all the judgments cited by the learned senior counsel for the appellant and held that Y.V. Rangaiah's case (supra) would not be applicable in the facts and circumstances of that case. It was observed that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. It was also held that when the Government takes a conscious decision and amends the Rules, the promotions have to be made in*

accordance with the rules prevalent at the time when the consideration takes place.”

16. Further, it was held that the rule provided for preparation of a panel for the eligible candidates every year in the month of September. A statutory duty was cast upon the State. Thereafter, only promotion orders were to be issued. There was no panel prepared for the year 1976. Subsequently, the Rule was amended rendering the petitioners therein ineligible for consideration for promotion. In those circumstances it was laid down that the vacancies which occurred prior to the amendment Rule would be governed by the old Rule and not by the amended Rule.

17. The Division Bench judgment of this Court in **CWP No.22406 of 2011, titled as “Darshan Singh and another vs. State of Punjab and others, decided on 05.10.2012** following the decision of Supreme Court in **Deepak Aggarwal's case (supra)** held that the candidate would be considered for promotion on the basis of the Rule existing at the time of consideration for promotion.

18. In the case in hand, there is no statutory requirement that for the purpose of promotion, panel would be prepared every year. No vested right has been taken away by the amendment of the Rule. It would be pertinent to note that the appellant could not claim any right for promotion as he was not even eligible for promotion at time of amendment of Rule.

19. The operative part of learned single judge's order is quoted below:-

“If the cases of the private respondents are considered in view of the enunciation of law, as referred to above in Shobha Rani's case (supra),

they were not eligible to be considered for promotion to the post of Senior Lecturer on the date when the Rules were amended on 11.11.2008, as none of them was having 8 years' experience including ad-hoc service. Therefore, it can safely be opined that consideration of cases of the private respondents for promotion to the post of Senior Lecturer on 21.3.2011 in terms of the un-amended Rules is erroneous, when the Rules had already been amended on 11.11.2008, hence, liable to be set aside."

20. No error is found in the conclusion arrived at by the learned
Single Judge

21. The appeals are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 16, 2018
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Whether speaking/reasoned: Yes

Whether reportable : Yes