

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1463 of 2016 (O&M) in
CWP No.883 of 2015
Date of decision: 01.03.2018

Joginder Singh and others.

... Appellants

Versus

State of Haryana and others.

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Arvind Seth, Advocate
for the appellants in LPA No.1472, 1618 of 2016..

Mr. Kuldeep Khandelwal, Advocate
for the appellants in LPA No.1463 of 2016.

None for the appellants in LPA No.2369 of 2016.

Mr. Naveen S. Bhardwaj, Advocate
for the appellants in CM No.2738 of 2017
in LPA No.1463 of 2016.

Mr. S.P. Chahar, Advocate
for the petitioner in CWP No.1628 of 2015.
for the appellant in LPA No.1463 of 2016.

Mr. Ramesh Goyat, Advocate
for the petitioners in CWP No.20899 of 2015.
for respondent No.4 in LPA No.1463 of 2016.
for respondent Nos.4 to 6 in LPA No.1472 of 2016 and

Mr. Vikas Singh, Advocate for
Mr. Amit Khatkar, Advocate
for respondent No.3 in LPA Nos.1472 and
respondent No.4 in LPA No.1618 of 2016.

Mr. Pardeep Solath, Advocate
for respondent No.3 in CWP No.1628 of 2016.

LPA No.1463 of 2016 (O&M)

Mr. Manvender Rathi, Advocate
for respondent Nos.5 to 7 in LPA No.1618 of 2016.

Mr. Kiran Pal Singh, Advocate
for respondent Nos.8 and 9 in LPA No.1618 of 2016.

Ms. Amandeep Kaur, Advocate for
Mr. Ramesh Sharma, Advocate
for respondent No.3 in LPA No.2369 of 2016.

Mr. Kuldeep Sheoran, Advocate
for respondent Nos.3 to 14 in CWP No.20899 of 2015.

Mr. Samarth Sagar, Addl. AG, Haryana.

B.S. Walia, J.,

1. This order will dispose of LPA Nos.1463, 1472, 1618, 2369 of 2016 and CWP Nos.1628 & 20899 of 2015, as identical questions of law are involved in all the cases namely whether “Principle of Old Vacancy Old Rule” would apply.

2. Facts of the case are as under :-

LPA Nos.1463, 1472 and 2369 of 2016 :-

i) CWP Nos. 883 and 16282 of 2015 were filed by the private respondents / petitioners praying for the issuance of a writ to declare decision dated 25.06.2014 (Annexure P-5) to the extent of amendment in the Haryana State Central Co-op Bank Staff Service Rules (Common Cadre) Rules, 1975 imposing condition of graduation for promotion from the post of a Clerk / Secretary Grade-A to the post of Junior Accountant to be effective prospectively as also for the issuance of a writ directing the respondents to implement order dated 01.08.2006/02.04.2007 (Annexure P-4) containing similar condition of requirement of graduation for promotion with prospective effect.

ii) Private respondents/petitioners were appointed on different posts as per the Haryana State Central Co-op Bank Staff Service Rules (Common Cadre) Rules, 1975(hereinafter referred to as the 1975 Rules). As per aforesaid rules, Secretaries were entitled to be promoted as Clerks who in turn were entitled to be promoted to the post of Junior Accountant. On account of grant of selection grade w.e.f. 01.03.1981, pay scale of respondent No.4-Vijay Kumar (petitioner in CWP No.883 of 2015) became equivalent to the pay scale of a clerk whereupon he was absorbed as Clerk. Since, the cadre of Secretary was lower to the cadre of Clerk on 05.05.1995, therefore, in terms of instructions dated 29.04.1995 (Annexure P-3), seniority of “A” grade Secretaries was kept at the tail end of Clerks as on 05.05.1995. Accordingly, combined final seniority list of Secretaries Grade “A” and Clerks was prepared on 21.08.2010, wherein respondent No.4-Vijay Kumar was shown at Sr. No.128.

iii) On amendment of the 1975 Rules, condition of graduation from a recognized university was made requisite vide order Annexure P/4 (Collectively) dated 01.08.2006 for promotion to the post of Secretary Grade “A”. However, vide Annexure P/4 (Collectively) dated 02.04.2007, it was also clarified that amendment dated 01.08.2006 was effective from 01.08.2006, meaning thereby that officials who were appointed on the post of Secretary Grade “B” prior to 01.08.2006 were to be governed by old rules in terms of experience and qualification and candidates entering into service after 01.08.2006 were to be governed by amended rules.

iv) Thereafter, 1975 Rules were amended on 25.06.2014, vide Annexure P/5. As per, the Haryana State Central Cooperative Banks Staff Service (Common Cadre) Amendment Rules, 2014, minimum qualification of Graduation was stipulated for promotion to the post of Junior Accountant. The

LPA No.1463 of 2016 (O&M)

Haryana State Central Cooperative Banks Staff Service (Common Cadre) Amendment Rules, 2014, were challenged on the ground that in compliance of aforementioned rules, the Hisar District Central Cooperative Bank Ltd. Hisar, was going to call a meeting of its Board of Directors on 19.01.2015 to fill up the post of Junior Accountants, Stenographers and Executive Officers.

v) The Writ Court allowed the writ petition by holding that “Principle of Old Vacancy Old Rule” would apply since the government had taken a conscious decision vide letter dated 01.08.2006-Annexure P/4 (Collectively) and Annexure P/9 (Collectively) i.e. office letter dated 16.03.2016 to make the rules prospective in nature. It would be relevant to note here that letter dated 16.03.2016 mentions that the amendment would be applicable prospectively in terms of government instructions dated 21.05.2014 for promotion to the post of Clerk from matriculate *daftri* / peon / driver and gunman who were recruited prior to 07.11.2013. The Writ Court held that the action of the respondents was discriminatory as similar clarification was not issued for promotion to the post of Junior Accountant, Secretary Grade “A” etc.

3. LPA No.1618 of 2016:-

CWP No.11020 of 2015 was filed by respondent Nos.5 to 7 seeking quashing of Rule 9 (1) of the Primary Agriculture Cooperative Societies Staff Service/Primary Cooperative Credit and Service Societies Rules, 2014, imposing condition of graduation for promotion to the post of *Parbandhak* from amongst Clerks, Cashiers, Salesmen as also to hold the aforementioned rule to be applicable prospectively and further for quashing order Annexure P/5 dated 23.04.2015 promoting respondent Nos.5 to 11 to the post of *Parbandhak*.

4. CWP No.1628 and 20899 of 2015:-

Aforementioned writ petitions were filed seeking quashing of The Haryana State Central Cooperative Banks Staff Service (Common Cadre) Amendment Rules, 2014, dated 25.06.2014, to the extent that joint 75% promotion quota had been bifurcated i.e. 45% from amongst Clerks/Supervisors/Godown Keepers and 30% from amongst the Secretaries Grade "A" beside qualification of at least graduation had been stipulated whereas the earlier Rules i.e. The Haryana State Central Cooperative Banks Staff Service (Common Cadre) Rules, 1975 provided qualification of matriculation for promotion.

5. As has been noted above, vide judgment dated 13.06.2016, CWP No.883 of 2015 was allowed and decision dated 25.06.2014 (Annexure P-5) was quashed to the extent of imposing condition of requirement of graduation for promotion to the post of Junior Accountant from the post of Clerk and Secretary Grade "A" and a direction was issued to the official respondents to consider the case of the writ petitioners for promotion to the post of Junior Accountant in terms of old rules while holding that the amended rules would be prospective in nature and not retrospective.

6. Learned counsel for the appellants contended that admittedly the post of Secretary Grade "A" and "B" had been placed at the tail end of seniority list of Clerks vide (Annexure P-2) dated 05.05.1995 and as per amendment in the common cadre rules made vide The Haryana State Central Cooperative Banks Staff Service (Common Cadre) Amendment Rules, 2014, on 25.06.2014, the requirement of graduation for direct recruitment and promotion had already been made on 30.01.1989 but the same had not been challenged by the writ petitioners. Learned Counsel further contended that the Writ Court wrongly

LPA No.1463 of 2016 (O&M)

applied the rule of 'old vacancy old rule' without taking into account that the vacancies for the post of Junior Accountant had arisen after the amendment of the rules providing for graduation for promotion, that the Haryana State Central Co-op Bank Staff Service Rules (Common Cadre) Rules, 1975 which stipulated qualification of matriculation and three years experience as Clerk/Supervisor/Godown Keeper and Selection Grade Secretary for promotion to the post of Junior Accountant had been amended vide The Haryana State Central Cooperative Banks Staff Service (Common Cadre) Amendment Rules, 2014 on dated 25.06.2014, after a gap of 40 years and during the aforementioned period, a lot of change had come about in the working on the post of Junior Accountant and the amendment was made not on account of discrimination but to keep abreast with the need of the times.

7. Appellants in LPA No.1618 of 2016, on the other hand, challenged the impugned judgment on the ground that the post of *Parbandhak* was created for the first time under the rules vide the Primary Agriculture Cooperative Societies Staff Service/Primary Cooperative Credit and Service Societies Rules, 2014, therefore, the question of applying the principle of old rules qua old vacancies did not arise. In short, while the stand of the writ petitioners is that old vacancies are to be filled up as per old rules in terms of decision of Hon'ble the Supreme Court in **Y.V. Rangaiah and others vs. J. Sreenivasa Rao and others (1983) 3 SCC 284**, stand of the appellant's is that aforementioned judgment is not applicable in the facts of the case, rather it is the principle laid down in **Deepak Agarwal and another vs. State of Uttar Pradesh and others (2011) 6 SCC 725** which was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976 in **P. Gagneshwar Rao vs. State of Andhra Pradesh** case, 1988 (supp) SCC 740.

Aforementioned rule provided for preparation of a panel for the eligible candidates every year in the month of September as a annual statutory duty, whereafter only promotion were to be made but of no panel having been prepared in the year 1976 and subsequently, the rule getting amended rendering the petitioners therein ineligible to be considered for promotion. It was in the aforementioned circumstances that it was held by Hon'ble the Supreme Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment and said vacancies would be governed by old rules and not the amended rules. However, in Deepak Agarwal's case (supra), no statutory duty was cast upon the respondents either to prepare a yearwise panel of the selected candidates for promotion and the proviso to Rule 2 enabled the State to keep any post unfilled. In the aforementioned circumstances, Hon'ble the Supreme Court held that there was no statutory duty cast on the respondents under the applicable rules. It was further held that the requirement to identify the vacancies in a year or to take a decision as to how many posts were to be filled up under Rule 7 could not be equated with not issuing promotion orders to candidates duly selected for promotion and in the circumstances, the appellants therein had not acquired any right to be considered for promotion.

8. The aforementioned decision of Hon'ble the Supreme Court was followed in CWP No.5965 of 2011, decided on 03.05.2013, by this Court, in case titled as Sandeep Kharab versus State of Haryana and others, wherein it was held that private respondents therein were not eligible to be considered for promotion for the post of Senior Lecturers on the date when the rules were amended on 11.11.2008 as none of them was having 8 years experience including *Adhoc* service. Therefore, consideration of the case of private respondents for promotion to the post of Senior Lecturer on 21.03.2011 in terms

LPA No.1463 of 2016 (O&M)

of unamended rules was erroneous when rules had already been amended on 11.11.2008. Reliance was placed by the Writ Court in the aforementioned matter inter alia on the decision in Deepak Agarwal's case (supra), Punjab National Bank vs. Union of India and other 2012(4) SCT 91 and CWP No.5771 of 2012, titled Shobha Rani Vs. The Board of Governors and others, decided on 06.03.2013. Relevant extract of the decision in Sandeep Kharab's case (supra) is reproduced as under:-

“12. An identical issue came up for consideration before this Court in Shobha Rani's case (supra), wherein while dealing with the same, this court opined that when a candidate was not eligible for consideration for promotion in terms of the un-amended Rules upto the date of amendment, no right vests in him for consideration of his case later on in terms of the un-amended Rules, as in that case the Rules in force on the date of consideration shall be applicable.”

9. In the aforementioned background the writ court held in Shobha Rani's case (supra) as under:-

“10. In the present case, the petitioner was appointed as Lecturer in Computer Engineering in All India Jat Heroes Memorial College, Rohtak on ad hoc basis and worked as such from 12.12.2003 to 16.12.2008. From 17.12.2008 onwards, she is working as Lecturer in Computer Science in the respondent-College after having been appointed on regular basis. The Rules were amended on 11.11.2008. As on the date of amendment of the Rules, even if considered as per un-amended Rules, the petitioner did not have

eight years' experience as Lecturer in Computer Engineering, hence, the contention that she had got vested right to be considered for promotion in terms of the un-amended Rules is totally misconceived. Upto the date of amendment of the Rules, the petitioner merely had less than 5 years' service to her credit. Even if the vacancy was there when the Rules were amended, in terms of the un-amended Rules, the case of the petitioner could not possibly be considered as she was not eligible. As per the amended Rules, the requirement is 8 years regular service on the post as rendered in the Department of Technical Education, Haryana. If considered in the light of the Amended Rules, as the petitioner joined the Department of Technical Education only on 17.12.2008, she did not possess 8 years' regular service to be eligible for consideration for promotion to the post of Senior Lecturer on 27.2.2012, when the cases were considered.”

10. As regards the post of *Parbandhak*, it needs noticing that the said post was created for the first time under the Primary Agriculture Cooperative Societies Staff Service/Primary Cooperative Credit and Service Societies Rules, 2014. Therefore, there is no question of applying the principle of old rules for old vacancy, as the competent authority framed the above said rules whereby the post of *Parbandhak* was created for the first time in the year 2014 under which the appellants were promoted. Rule 9 of the aforesaid rules lays down qualifications and mode of recruitment interalia for the post of *Parbandhak*. Relevant extract of the same is as under:-

Aforementioned rule lays down, the qualification and mode of recruitment inter alia for the post of Parbandhak under Rule-9. Relevant extract of the same is reproduced as under:-

Sr.No.	Designation of Post	Academic qualification and experience, if any for direct recruitment and promotion	Mode of Recruitment
1.	Parbandhak	For Direct:- i) M.Com./MA with Mathematics or Economics or B.Com/BA with Mathematics or Economics/ BBA/MBA/B.Sc./B.Sc. (Agriculture) with 50% marks OR Graduate with 10 years experience as Clerk/Salesman/Cashier in PACs/PCCS. ii) Preference will be given to the Diploma holders from RICM, Chandigarh or Junior Basic Course CCM Rohtak. For Promotion:- i) 10 years experience as Clerk/Cashier/Salesman in PACS/PCCS having qualificaion of Bachelor of Arts/Commerce/Economics. ii) Preference will be given to the Diploma Holders from RICM, Chandigarh or Junior Basic Course, CCM, Rohtak.	i) By Direct Recruitment-70% ii) By promotion 30% amongst PACS/PCCS employees. iii) By transfer or deputation or an official already in service of any Cooperative Institutions/Cooperative Department

11. A perusal of Rule-9 reveals that employees working in the PACS/PCCS are entitled to be promoted as *Parbandhak* and their qualification have been prescribed as 10 years experience as Clerk/Cashier/Salesman in PACS/PCCS besides having qualification of Bachelor of

LPA No.1463 of 2016 (O&M)

Arts/Commerce/Economics. What is of significance is that the post of *Parbandhak* was created under the rules of 2014. A perusal of qualifications stipulated for the post of Junior Accountant as well as *Parbandhak* as contained in the rules amended in the year 2014/framed in the year 2014 reveals that one of the qualifications for promotion to the aforementioned posts is graduation.

12. Consideration for promotion having been made after the amendment of the rules, it is the amended rules which will apply in terms of decision of Hon'ble the Supreme Court in Deepak Agarwal's case (supra). Qua the plea that amendment in the qualification had not been made retrospective in view of communication dated 02.04.2007 and 16.03.2016 in terms of instructions issued by the government, it needs mention that it is settled law that an executive order cannot override rules besides the impugned order (Annexure P-5) dated 25.06.2014, containing amendment to Haryana State Central Co-op Bank Staff Service Rules (Common Cadre) Rules, 1975 which was made by the Registrar Cooperative Societies, Haryana, in exercise of the powers conferred to him under Section 37 of the Haryana Cooperative Societies Act, 1984. Besides the aforementioned letters dated 02.04.2007, 16.03.2016 and instructions dated 21.05.2014 pertain to promotion upto the post of Clerk and not to the post of Junior Accountant/*Parbandhak*.

13. Accordingly, we are of the considered view that the impugned judgments being contrary to law laid down in Deepak Agarwal's case (supra) are unsustainable as in the instant case there is no such requirement as was the requirement in Y.V. Rangaiah's case (supra) for preparation of a panel of eligible candidates every year and of such panel not having prepared and in the meantime rules having been amended. Accordingly, the Letters Patents Appeal Nos.1463, 1472, 1618 and 2369 of 2016 are allowed while CWP Nos.1628 of

LPA No.1463 of 2016 (O&M)

2015 and 20899 of 2015 are dismissed. Judgment passed by the learned Single Judge is set aside and it is directed that promotions shall be made strictly in accordance with the law laid down by Hon’ble the Supreme Court in Deepak Agarwal’s case (supra) namely rules applicable at the time of consideration would be the rules governing the promotions to be made.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

01.03.2018
rajesh.k.khurana

Whether speaking/reasoned:	Yes/No.
Whether reportable :	Yes/No.