

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.2442 of 2016 (O&M) in
CWP No.23116 of 2016
Date of Decision : 01.03.2018

Jaswant Singh

...Appellant

Versus

The Managing Director, Haryana Vidhyut Parsaran Nigam Limited and
others.

...Respondents

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

Present: Mr. Pankaj Maini, Advocate for the appellant.

B.S.WALIA, J.

1. Intra court-appeal has been filed challenging order dated 08.11.2016, whereby writ petition filed by the appellant-petitioner was dismissed.

2. Brief facts of the case leading to the filing of the intra court appeal are that the appellant joined service in the Haryana Vidhyut Parsaran Nigam Limited (hereinafter referred to as 'Nigam') as Lower Division Clerk (hereinafter referred to as 'LDC') on 10.02.1998, as Upper Division Clerk (hereinafter referred to as 'UDC') on 21.07.2008 and as Circle Assistant on 09.09.2014. Last two appointments i.e. UDC and Circle Assistant were by way of promotion.

3. Record of employees eligible for promotion from the post of Circle Assistant to the Post of Head Clerk was forwarded to the competent authority on 27.01.2016. Thereafter, amendment was made to the

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Promotion Policies in respect of Ministerial Services (Field Cadre) laying down requirement of 5 years service as Circle Assistant for promotion to the post of Head Clerk. However, corrigendum Annexure P-11, dated 29.02.2016 was issued, whereby amendment regarding experience of 5 years made on 29.01.2016 vide Annexure P-10 was annulled and earlier rules providing for one year experience as Circle Assistant was sustained. Thereafter, on 22.03.2016, Clauses 3.8 and 3.9 were incorporated under Regulation-3, 4.8 and 4.9 under Regulation-4 of the Recruitment and Promotion Policies in respect of Ministerial Services (Field Cadre), providing for one year experience as Circle Assistant for promotion to the post of Head Clerk.

4. That subsequently vide order Annexure P-13 (collectively) dated 16.05.2016, the Nigam modified the nomenclature and pay scale of the posts in the Field Ministerial Cadre changing the designation of Head Clerk to Deputy Superintendent as also the experience required for promotion to the post of Deputy Superintendent i.e. 5 years service as Assistant Field i.e. post of Circle Assistant renamed as Assistant Field. Amendment was also made in Regulation-6.1 requiring experience of 5 years on the post of Assistant Field for promotion to the post of Deputy Superintendent.

5. Grievance of the appellant-petitioner before the learned Writ Court was that he was entitled to be promoted to the post of Head Clerk subsequently renamed as Deputy Superintendent on his complying with the condition stipulated under the rules prescribing experience of one year on the post of Circle Assistant. Besides the respondents had initiated the process of promotion to the post of Head Clerk from the post of Circle

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Assistant on 27.01.2016, therefore, he was entitled to be promoted to the post of Head Clerk by considering his claim as per rules prevalent when the process had been initiated by the respondents on 27.01.2016.

6. The Writ Court took into account that the change in the nomenclature of the post of Head Clerk to Deputy Superintendent (Field) as also requirement of experience of 5 years had not only been approved by Haryana Bureau of Public Enterprises vide U.O. dated 16.05.2016 but the modification had further been approved by the Managing Director, HVPNL, Panchkula, pursuant to decision of its Board of Directors by circulation on 29.01.2016 and the said decision had been approved in its meeting held on 30.03.2016. The Writ Court further held that although Annexure P-13 (collectively) dated 16.05.2016 stipulating experience requirement of 5 years for promotion to the post of Deputy Superintendent (Field) had been called an 'Office Order', yet the same was an amendment to the rules under the statutory powers conferred upon the Nigam. The Writ Court further held that the post of Head Clerk and Circle Assistant had become non-existent, therefore, the initiation of promotion process on 27.01.2016 had lapsed and in the circumstances further promotion can be made in terms of new rules. Consequently, the appellant-petitioner did not have any ground or vested right for promotion w.e.f. 27.01.2016 on the basis of principle of 'old vacancy old rules' in terms of the decision of Hon'ble the Supreme Court in Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284. Instead the matter was squarely covered by decision of Hon'ble the Supreme Court in Deepak Agarwal and another v. State of Uttar Pradesh and others (2011) 6 SCC 725, as per which, the rules

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applicable would be the rules in force as on date of consideration for filling up of vacancy. In the aforementioned background, the learned Writ Court dismissed the writ petition.

7. Learned counsel for the appellant contended that process for promotion to the post of Head Clerk having been initiated on 27.01.2016 and in view of the appellant fulfilling the requirement of one year experience on the post of Circle Assistant, he was entitled to be promoted to the post of Head Clerk on the basis of old rules and the amendment made in the Regulations on 16.05.2016, vide Annexure P-13 (collectively), could not be used to deny promotion to him to the post of Head Clerk.

8. We have considered the submissions made by learned counsel for the appellant and are of the view that the matter in issue is squarely covered by the decision of Hon'ble the Supreme Court in Deepak Agarwal's case (supra) which provides for applicability of prevalent rules at the time of consideration for promotion. Relevant extract of Deepak Agarwal's case (supra) is reproduced as under:-

“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

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the Rules, the promotions have to be made in accordance with the rules prevalent at the time when the consideration takes place.

9. Besides posts of Head Clerk and Circle Assistant had become non-existent and have been renamed as Deputy Superintendent (Field) and Assistant (Field), vide amendment dated 16.05.2016. Besides amendment has also been made to Regulation-6 requiring 5 years experience on the post of Assistant (Field) for promotion to the post of Deputy Superintendent (Field).

10. In the light of the position as noted above, particularly the authoritative pronouncement of Hon'ble the Supreme Court in Deepak Agarwal's case (supra), the matter is no longer res-integra and it is clear that the rules applicable in such a situation will be the rules in force as on date of consideration for filling up the vacancies. Resultantly, finding no merit in the appeal, the same is dismissed in limine. Consequently, the application for condonation of delay in filing the appeal is also dismissed.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

March 1, 2018
rajesh.k.khurana

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