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

**CWP-19193-2013 (O&M)
Date of Decision: April 30, 2019**

Krishan Kumar & Anr

... Petitioners

vs.

Haryana Roadways Engineering Corporation Ltd & anr.

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.K.Malik, Sr. Advocate with
Mr. Sandeep Kumar Rana, Advocate
for the petitioners.

Mr. Satyawar, Advocate
for respondent No.1.

ARUN MONGA, J (ORAL)

Prayer in this petition is to quash the promotion of respondent No. 2 as Head Black Smith and consequently a direction to be issued to the respondent(s) to consider the claim of the petitioners for promotion, in the light of unamended rules.

2. Short controversy is, whether a vacancy which arises before the amendment of the recruitment Rules is to be filled up in accordance with the un-amended Rules or as per the provisions of the amended Rules?

3. It is the case of petitioners that they were working as Black Smith, as on 31.05.2013 when on retirement of one Jai Singh, Head Black Smith, a post of one Head Black Smith fell vacant. Petitioners were entitled for consideration for the said post as per the then Rules called 'Haryana Transport Department (C) Haryana Roadways Services Rules, 1995'.

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4. Per the Rules, *ibid*, the post of Head Black Smith is to be filled up by way of promotion from Black Smith, who has middle class qualification with Hindi and having three years work experience on the post of Black Smith/Tinsimth.

5. The petitioners state that they are both middle class pass having more than 15 years experience as Black Smith. Yet, they have not been considered for promotion to the post of Head Black Smith. Petitioners further contend that other category of employees were granted the benefit of promotion as per the un-amended Rules, applicable at the relevant time, even after the publication of new Rules i.e. the Haryana Roadways Engineering Corporation Employees Service Rules on 11.07.2013. As per the new Rules, essential qualification for promotion to the post of Head Black Smith was prescribed as 10+2 and ITI and three years of experience in the respective trade of Welder/Black Smith/Electrician/Turner-cum-Machinist/Painter/Seat Metal Panel Maker.

6. Admittedly, owing to the amended criteria for promotion, both the petitioners became ineligible. Their case for promotion to the post of Head Black Smith, therefore, was not considered. Hence the present writ petition.

7. The stand taken by the respondent-Corporation in the written statement is that before the notification of amended rules as on 11.07.2013, draft service rules were applicable for the purpose of promotion/appointment to the post of Head Black Smith and under the rules, essential qualification was Matric with three years of experience as Black Smith. Therefore, the petitioners have not considered for promotion as their qualification was only middle.

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8. I have gone through the rival pleadings filed by the parties herein and have heard the learned counsel for the parties.

9. I am of the opinion that in view of the judgment rendered by Division Bench of this Court in CWP-21663 of 2008, the issue raised in the present writ petition is no more *res-integra*. The relevant extract of the judgment, *ibid* is reproduced herein below:

“The question whether amended rules could be applied to the vacancy which has arisen before the amendment is no longer res-integra. Hon'ble the Supreme Court in the case of Y.V.Rangaiah (supra) has considered the aforesaid question as early as in 1983 and has concluded in para 9 of the judgement 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.” (emphasis added).

The afore-mentioned view has been followed and applied repeatedly by Hon'ble the Supreme Court. In the case of State of Rajasthan v. R. Dayal and others (1997) 10 SCC 419 the principles have been reiterated in para 8 of the judgement. The relevant extracts are set out below:

“But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore? This Court has considered the similar question in paragraph 9 of the judgment above cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a

necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose.....”
(emphasis added)

The principles laid down in Y.V.Rangaiah's case (supra) have further been applied and followed by Hon'ble the Supreme Court in the case of Delhi Judicial Service Association v. Delhi High Court and others (2001) 5 SCC 145 and Arjun Singh Rathore and others v. B.N.Chaturvedi and others (2007)11 SCC 605.

It is pertinent to notice that no contrary view has been cited before us and therefore we will take it a well settled principle of service jurisprudence that a vacancy which has arisen before the amendment of the Rules has to be filled up in accordance with the un-amended rules and not as per the provisions of the amended rules”

10. The case of the petitioners is squarely covered by the judgment, *ibid* and, therefore, the respondents ought to have considered them for promotion to the post of Head Black Smith in accordance with the rules applicable at the time when the vacancy arose.

11. Learned senior counsel further submits that on the other hand, Service Rules, 1995, *ibid* were duly notified and were also approved and until the drafts rules are similarly notified and approved, the same cannot be made applicable to the petitioners. As regards the contention of the respondent-Corporation, in the written statement, that the draft service rules were applicable, the said stand does not stand the judicial scrutiny and is not tenable. Admittedly, the draft rules were neither ever notified

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nor, even otherwise, ever got approved by the State Government in accordance with law.

12. I am in agreement with the said submission of the learned senior counsel for the petitioners.

13. In view of my discussion above and the reasoning contained therein, the present writ petition is disposed of with a direction to the respondent-Corporation to consider the case of the petitioners for promotion by applying 'Haryana Transport Department (Group-C) Haryana Roadways Services Rules, 1995, applicable on 31.05.2013. If any one out of both the petitioners is found suitable and eligible, then, grant him notional promotion, since both the petitioners have retired from service during the pendency of the writ petition, without any pecuniary benefits.

14. It is, however, made clear that the promoted petitioner would be entitled to the pensionary benefits commensurate to the post of Head Black Smith.

April 30, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No