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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9024/2019 and CM APPL. 37275/2019 (stay)**

BIJENDER KUMAR & ORS. Petitioner

Through: Mr. Arvind Kr. Sharma, Advocate.

versus

REGISTRAR GENERAL DELHI HIGH COURT Respondent

Through: Mr. Rajat Aneja and Ms. Jia Kapur,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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02.09.2019

1. This petition is by 52 Petitioners who are all working at present in this Court either as Judicial Assistants or as Junior Judicial Assistants. They are aggrieved by a notice dated 30th July, 2019 issued by this Court for filling up of 31 posts of Senior Judicial Assistants (SJAs)/Readers/Court Officers under the 50% test quota by holding a departmental examination.

2. The rules with regard to filling up of the aforementioned posts have undergone a change with effect from 7th June, 2019. The Court on its administrative side has taken note of the fact that the vacancies in the above posts have remained unfilled for the period 12th March, 2018 to 31st May, 2019. Taking into account the law explained by the Supreme Court in *Y.V Rangaiah v. J. Sreenivasa Rao (1983) 3 SCC 284* and by this Court in its

decision dated 4th August, 2016 in Writ Petition (Civil) 19087-91/2006 (*Pradeep Kumar v. Government of NCT of Delhi*) it was decided to fill up the above vacancies on the basis of the pre-amended rules. Accordingly, it was decided that the cut-off date for determining eligibility for taking the exams would be 6th June, 2019. The net effect of the above decision is that the administrative staff/officials of the Subordinate Courts, who would otherwise be ineligible to appear in the above exams for filling up the above posts in terms of the amended Rules, would be able to take the exams.

3. The Petitioners do not want field to be thrown open to the administrative staff/officials of the Subordinate Judiciary, and therefore, have approached this Court insisting that the cut-off date should be 7th June, 2019, i.e. the date of coming into force of the new rules.

4. When this petition was first heard by this Court on 21st August, 2019, the following order was passed:

“The petitioners have raised two pleas in the writ petition. The first relates to the syllabus prescribed by the respondent for holding the departmental examination to fill up the vacancies of the Senior Judicial Assistants. The second relates to the Rules under which the said examination is proposed to be held.

Learned counsel for the petitioner gives up the first submission ay whereby the petitioners' had sought that the syllabus prescribed should not include " Delhi High Court (Right to Information) Rules, 2006 as amended up-to-date; Notification/ Practice Directions issued in respect thereof; and the RTI Act, 2005 (as amended up-to-date)."

The submission of learned counsel for the petitioner is that the respondent, while issuing notice dated 30.07.2019 has prescribed that the candidates, who fulfil the requisite qualification and experience as on 06.06.2019 and desire to appear in the written test, may submit their applications in online mode only.

Learned counsel for the petitioner submits that the eligibility qualification prescribed in the said notice is as per the Rules which were prevalent up till 06.06.2019. He submits that vide notification dated 07.06.2019 - Hon'ble the Chief Justice in exercise of powers vested under Article 229 of the Constitution of the India made amendments in the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 and Delhi High Court Staff (Seniority) Rules, 1971, which came into effect on the said date itself. Learned counsel submits that the said departmental examination cannot be conducted under the pre-existing Rules which ceased to operate after 06.06.2019, and they should be held in terms of the amended Rules which were brought into force on 07.06.2019.

Mr. Aneja, who appears on advance notice on behalf of the respondent has tendered before us, the minutes of the meeting of the Committee consisting of four Hon'ble Judges of this Court, which was held on 20.08.2019. A perusal of the said minutes shows that the Committee places reliance on the judgment of the Supreme Court in *Y. V. Rangaiah and Ors. V. J. Sreenivasa Rao and Ors.*, AIR 1983 SC 858 ,(1983) SCC 284, wherein it was held that the posts which fell vacant prior to the amended Rule coming into force, would be governed by the old Rules and not by the new Rules.

An aspect we notice about *Y. V. Rangaiah (supra)* is that the Service Rules considered by the Supreme Court in that case themselves stipulated that a year-wise exercise

for promotion should be conducted. It is not brought to our notice whether any such Rule exists in relation to the conduct of departmental examination in question. Thus, there may be no question of vesting a right in the candidates who were eligible under the unamended Rules, to be so considered under the said Rules alone, and not under the Amended Rules. We may also refer to the decision of the Division Bench of this Court in *Pradeep Kumar v. Government of NCT of Delhi*, W.P.(C.) No. 19087-91/2006, wherein the Division Bench, after examining several earlier decisions, inter alia, observed as follows:

"In view of the foregoing, it is clear that law in this regard is no longer res Integra. The general rule is that vacancies occurring should be filled up as per the prevalent recruitment rules. The same is subject to two exceptions, i.e. when the rules are under consideration for amendment or revision and the authority has taken a conscious decision to defer further promotions until the changes are carried out or that the proposed new rules are to be made applicable retrospectively. Further, the decision to defer promotions should not be actuated by malafides and must be based on proper reasons. Such a reason may be gathered from the background and circumstances in which the decision was taken. The right of an employee to be considered for promotion accrues only on the date of consideration of eligible candidates by the department and not before or if the rules provide for a particular timeframe in which the selection process is to be concluded. No right accrues to the candidates upon the occurrence of vacancies." (emphasis supplied)

In the light of the aforesaid, the respondent may place the matter before the concerned Committee to re-examine the issue. Mr. Aneja prays for a short date, considering the fact that several departmental examinations are slated to be held one after another, and the disturbance of the

schedule for conduct of the examination in question would have a bearing on other such examinations.

At his request, list on 02.09.2019.

Order *dasti* under the signatures of the Court Master.”

5. It is seen, therefore, from the above order that the Petitioners have given up the plea that the syllabus prescribed for holding the above exam should not include ‘Delhi High Court (Right to Information Rules, 2006).’ The only question left to be considered was whether the cut -off date for determining eligibility should be 6th June, 2019 (as stated in the notice dated 30th July, 2019) or 7th June, 2019?

6. In terms of the above order, the Committee concerned of the High Court held another meeting on 29th August, 2019. The minutes of the said meeting have been placed before this Court. After examining the entire issue afresh in light of the above order dated 21st August 2019, the Committee *inter alia* decided as under:

“The Committee noticed that in ***Dr. Ramulu & Anr. v. Dr. S. Suryaprakash Rao & Ors., (1997) 3 SCC 59***, the Full Bench of the Hon’ble Supreme Court held that if the department takes a conscious policy decision to stop further promotion as per existing rule and the same is backed by proper reasons, then the eligible employees cannot claim as a right the preparation of a panel as per the old rules.

The Committee also noticed that in ***Pradeep Kumar’s case*** (supra), the Hon’ble Division Bench of this Court, after considering the judgements of the Hon’ble Supreme Court, held as under:

“In view of the foregoing, it is clear that law in this regard is no longer *res integra*. **The general rule is that vacancies occurring should be filled up as per the prevalent recruitment rules. The same is subject to two exceptions, i.e. when the rules are under consideration for amendment or revision and the authority has taken a conscious decision to defer further promotions until the changes are carried out or that the proposed new rules are to be made applicable retrospectively.** Further, the decision to defer promotions should not be actuated by *mala fides* and must be based on proper reasons. Such a reason may be gathered from the background and circumstances in which the decision was taken. The right of an employee to be considered for promotion accrues only on the date of consideration of eligible candidates by the department and not before or if the rules provide for a particular time-frame in which the selection process is to be concluded. No right accrues to the candidates upon the occurrence of vacancies.” (emphasis supplied)

After deliberations, the Committee is of the view that the factual position in the present case of Senior Judicial Assistant/ Reader/ Court Officer (Departmental) Examination – 2019 does not fall in either of two exceptions quoted above, which were noticed by the Hon’ble Division Bench of this Court in *Pradeep Kumar’s case* (supra) for the reason that in this case no conscious decision was taken to keep the vacancies unfilled awaiting the amendment of the Recruitment Rules and secondly, the amended Recruitment Rules have not been made effective retrospectively. In fact, this Court had taken a conscious decision that the vacancies in question, which were in existence

before the amendment in question, be filled up as per pre-amended Rules by giving one opportunity to the eligible candidates to appear in the examination and thereafter the unfilled vacancies, if any, be filled up under the amended Rules.

In view of the above, more particularly keeping in view the facts and circumstances of the present case, the Committee reiterates its earlier decision(s) to fill up the vacancies notified as per pre-amended Rules by giving one opportunity to the eligible candidates to appear in the examination and thereafter the unfilled vacancies, if any, be filled up under the amended Rules as per the cut-off date already notified, i.e., 06.06.2019 for the reason that Recruitment Rules for the posts of SJA/ Reader/Court Officer stand amended w.e.f. 07.06.2019 and the notified vacancies arose during the period from 12.03.2018 to 31.05.2019.

It is also reiterated to conduct Paper-I and Paper-II of Senior Judicial Assistant/Reader/Court Officer (Departmental) Examination – 2019 on the scheduled dates, i.e., 08.09.2019 to 09.09.2019 respectively a to postpone the same will unnecessarily delay the whole process of recruitment in question.”

7. Learned counsel for the Petitioners relied on the decision of a two-Judge Bench of the Supreme Court in ***Rajasthan State Sports Council v. Uma Dadhich (2019) 4 SCC 316*** which was not cited by him earlier when the matter was heard on 21st August, 2019. He submits that the Division Bench of the Supreme Court in the aforementioned decision has distinguished the decision in ***Y.V. Rangaiah (supra)***.

8. Having perused the said judgement, the Court finds that it turned on its own facts. The question there was appointment of the Respondent directly

under the Rajasthan States Sports Council to the post of Sports Officer to which a different set of rules applied. What is significant is while in the facts of that case, the decision in ***Rangaiah*** was stated to be distinguishable, as far as the facts of the present case are concerned, the Court finds that the decision in ***Rangaiah*** is squarely applicable.

9. The learned counsel for the Petitioner has also placed reliance on a decision dated 14th August, 2019 in W.P. (C) 8772 /2019 (***Monika Wadhwa v. High Court of Delhi***). This Court finds that there is no occasion for this Court to take a view different from what has been declared by the Supreme Court in ***Y.V. Rangaiah*** which has been followed by this Court in ***Pradeep Kumar v. Government of NCT of Delhi*** (*supra*). In the considered view of this Court, the said two decisions have been rightly understood and applied by this Court on the administrative side in deciding to fix the cut-off date for determining eligibility as 6th June, 2019.

10. It is then pleaded on behalf of Petitioners that this Court should postpone the date of the examination since the Petitioners were confused as to which set of rules should apply. The Court finds this submission to be untenable. After 21st August, 2019 when the Petitioners instructed their counsel to give up the plea regarding the syllabus, they could have been in no doubt that they were to sit for the exam on the dates already fixed. That event was not going to change and they were expected to prepare for the exam as they would in any event have to, irrespective of who else was going to take the exam. Consequently, the Court finds no merit in this submission.

11. Lastly, it is submitted by Petitioners that the minimum pass marks in the written exam and allocation of marks for the viva voce and the written exam should be in terms of what it was under the rules that applied as on 6th June, 2019. Learned counsel for the Respondent on instructions states that these two aspects were not part of the unamended rules. It was in the discretion of the Committee of the High Court to draw up the scheme of the examination including fixing the minimum pass marks for the written exam and viva voce apart from relative weightage to be given to the written exam and viva voce.

12. In that view of the matter, the Court is unable to accede to the prayers in this petition. It is dismissed. The pending application is also dismissed.

13. Order *dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 02, 2019

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