

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

**C.W.P No. 14443 of 2016**

**Date of decision : 05.02.2020**

**Krishan Kumar and ors.**

**...Petitioners**

**versus**

**State of Haryana and ors.**

**..Respondent**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. R.N. Lohan, Advocate  
for the petitioners.

Mr. Randhir Singh, Advocate  
for State of Haryana

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**RITU BAHRI, J (Oral)**

Petitioners are seeking quashing of action of respondent No. 2 prescribing the cut of date of eligibility for promotion i.e 01.01.2014 in the letter dated 19.06.2015 (P-1). Further prayer is for issuance of direction to respondent No. 2 to promote the petitioners to the post of Lecturer/PGT in the subject of Hindi w.e.f the date juniors to the petitioners i.e respondent Nos. 3 to 19 were promoted with all consequential benefits.

Brief facts of the case are that petitioners were selected and appointed as Hindi Teachers in the Education Department, Haryana and are working as C&V teachers in the subject of Hindi in the Education Department Haryana. The details has been mentioned in para No. 2 of the writ petition. The requisite qualification for promotion to the post of PGT Hindi is M.A Hindi with at least 50% marks and B.Ed from recognized University and 02 years teaching experience as TGT Hindi/Hindi Teacher as

per Appendix B (4) of the Haryana State Education School Cadre (Group B) Service Rules, 2012 (herein after to be referred as '2012 Rules'). All the petitioners are duly qualified for promotion to the post of Lecturer/PGT in the subject of Hindi. The petitioners have passed M.A Hindi with at least 50% marks and B.Ed from recognized University and are having more than 02 years teaching experience as Hindi Teacher. Vide letter dated 19.06.2015 (P-1), respondent No. 2 directed all the District Education Officer and District Elementary Education Officer of all the Districts in State of Haryana to send the names of the candidates eligible as on 01.01.2014 as per 2012 Rules. Further respondent No. 2 directed all the District Education Officer and District Elementary Education Officer to made available the record of each and every Hindi teacher latest by 29.03.2016, as per letter dated 25.03.2016 (P-2). Thereafter, vide letter dated 06.05.2016 (P-3) respondent No. 2 issued the list of promotion on officiating basis as Lecturer/PGT wherein the person junior to the petitioners have been ordered to be promoted and the petitioners have been ignored. In this list, one Rachna Kalra who has passed the B.Ed qualification in the month of October, 2014 has been promoted. Her name figured at Sr. No. 368. Total 483 Hindi teachers have been ordered to be promoted to the post of PGT Hindi.

Learned counsel for the petitioners submits that the action of respondent No. 2 in prescribing the condition of the cut of date of the eligibility i.e dated 01.01.2014 in the letter dated 19.06.2015 is arbitrary, discriminatory and contrary to 2012 Rules. There is no provision of mentioning the cut of date and all the candidates have to be considered for promotion to the post of PGT.

Learned counsel for the petitioners further argued that various candidates who have passed B.Ed/M.A after 01.01.2014 have been promoted vide order dated 06.05.2016 and the petitioners have thus right to be considered for promotion.

Learned counsel for the petitioners has relied upon Division judgment of this Court in a case of *Geeta Devi vs. State of Haryana and others, 2010 (3) SLR 266* wherein the question was whether the eligibility of an employee for promotion has to be determined by confining it to the date of occurrence of vacancy. It was held as “No” as it would curb the right of those who may be senior and become eligible later on than their junior.

Reference has further been made to Division Bench judgment of this Court in a case of *Ram Niwas vs. HSAMB, Pkl, 1994 (3) SCT 214* wherein petitioner was working as Junior Engineer in the Marketing Board, Faridabad and was seeking direction to respondent No. 1 to consider his case for promotion for the post of Sub Divisional Engineer from the date respondent No. 2 was promoted. Respondent No. 2 was promoted on the ground that he had passed AMIE before the petitioner passed AMIE. This Court allowed the petition and observed that petitioner though passed AMIE diploma in 1990, if there was nothing against him and was fulfilling all the academic qualifications and experience, he could be promoted. The date of passing of EMIE diploma is 1993 by respondent No. 2 was held to be irrelevant.

On the other hand, learned State counsel has argued that the petitioners have passed their M.A Degree after the cut of date i.e 01.01.2014 and thus, the department had rightly not granted promotion to them. It has

further been argued that Mrs. Rachna Kalra, who has completed her B.Ed course in October, 2014 has wrongly been promoted. Her case was re-examined and she was reverted vide order dated 30.10.2017 (R-I).

Heard learned counsel for the parties.

Reference at the very outset can be made to Appendix 4 of 2012

Rules, which reads as under:-

| <i>Sr. No.</i> | <i>Designation</i> | <i>Academic Qualifications and experience, if any, for direct recruitment on contract basis</i>                                                                                                                                                                                                                                                            | <i>Academic Qualifications and experience, if any, for appointment other than direct recruitment on contract basis</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| 1              | 2                  | 3                                                                                                                                                                                                                                                                                                                                                          | 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 4              | PGT Hindi          | (i) M.A. Hindi with at least 50% marks and B.Ed from recognised university; AND<br><br>(ii) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject; AND<br><br>(iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) /School Teachers Eligibility Test (STET).<br><br>(iv) Consistent good academic record. | i) M.A. Hindi with at least 50% marks and B.Ed from recognised university; AND<br><br>(ii) 2 years teaching experience as TGT Hindi/ Hindi teacher; AND<br><br>(iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) /School Teachers Eligibility Test (STET).<br><br><b>By transfer of deputation:-</b><br><br>(i) M.A. Hindi with atleast 50%marks and B.Ed from recognised university; AND<br><br>(ii) 5 years teaching experience as PGT Hindi; AND<br><br>(iii) Matric with Hindi/Sanskrit 10+2/B.A./M.A. with Hindi as one of the subject; AND<br><br>(iv) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) /School Teachers Eligibility Test (STET). |

The petitioners have passed M.A Hindi with at least 50% marks and B.Ed from recognised university and are having more than 02 years teaching experience as Hindi teacher, as provided in Appendix B of the Haryana Education School Cadre (Group B) Service Rules, 2002. The above rule does not lay down any criteria for fixing date of promotion to discard the right of the candidates, who acquired the qualification after cut off date. The above rule is silent on this issue.

The judgment of **Ram Niwas** is directly applicable to the facts of the present case and the operative part of the judgment reads as under:-

*“The vacancy occurred prior to June 15 1983. This fact is not disputed. The question, thus, for consideration is as to what is the relevant date for consideration of eligibility of the persons for the purposes of promotion, .i.e is it the date when the vacancy occurred or is it the date when the authorities decided to fill the vacancy? If the first stand is accepted obviously the petitioner could not be considered for promotion as on that day he had not passed the A.M.I.E If the second stand is to be accepted the petitioner being senior was available for promotion as having passed A.M.I.E and was to be preferred as against respondent No 2. Anil Garg who was junior. A government employee cannot claim promotion as a matter of right. The only right which vests in him is for consideration of his name for promotion when the question of promotion is being considered by the competent authority. Merely because a vacancy of a promotional post occurred on a particular date will not clothe any rights on a government servant to claim the promotional post. The relevant date for consideration of eligible candidates available for promotion is when the State Government decides to fill the promotional post. It is prerogative of the State as to when a vacancy occurring on the promotional post is to be filled. No doubt respondent No.2 had passed A.M.I.E in 1983 and vacancy was also available for promotion however it was on October 12 1990 when question of promotion to the post of Sub Divisional Engineer was considered and respondent No.2 was so promoted. At that time it was to be seen as to who was senior most person available for promotion Possessing all the necessary qualifications and experience. The petitioner who had acquired A.M.I.E Degree in July 1990 and was senior to Anil Garg respondent No.2. was also to be considered for promotion. If nothing against him existed on the service record and he was fulfilling all the academic qualifications and experience he could be promoted. However, as per stand of the respondents, his name was not considered for promotion on the ground*

*that when promotional post became vacant the petitioner had not passed A.M.I.E whereas the respondent No. 20 who had passed A.M.I.E was available. On behalf of the respondents it has been contended that the relevant law applicable at the time when vacancy occurred has to be taken into consideration for filling such vacancy Reliance has been placed on the decision of Supreme Court in Y.V.Rangajah and others V. Rao and others and State of Andhra Pradesh and another Vs J. Sreenivasa Rao and others AIR 1983 S.C. 852 and Narender Chadha and others vs. Union of India and others 1986 SLR S.C.1 437 and Mehar Chand and Ve The State of Haryana and another 1989 SLR 357 Punjab 6 Haryana High Court. The ratio of the decisions aforesaid cannot be applied to the case in hand. There is no amendment of the Rules which is for consideration. The only question is as to who was eligible for promotion at the time when case of promotion was taken upe The eligibility criterion changed which was the is not to apply at the time vacancy occurred.*

Thus at the time of promotion of respondent Nos. 3 to 19 on 06.05.2016, the petitioners were duly eligible for promotion.

The writ petition is allowed and letter dated 19.06.2015 (P-1) is set aside. The respondents are directed to promote the petitioners to the post of Lecturer/PGT in the subject of Hindi w.e.f the date juniors to the petitioners i.e respondent Nos. 3 to 19 were promoted with all consequential benefits. The petitioners are entitled to interest @ 6 percent per annum.

(RITU BAHRI)  
JUDGE

05.02.2020  
G Arora

Whether speaking/reasoned : Yes  
Whether reportable : No