

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

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LPA No. 619 of 2020 (O & M)
Date of decision: 25.10.2021

State of Haryana and another

....Appellant(s)

Versus

Krishna Kumar and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Hitesh Pandit, Addl. A.G., Haryana,
for the appellants.

Mr. Rajesh Dhankhar, Advocate,
for respondent no. 1.

Mr. R.N. Lohan, Advocate,
for respondents no. 2 and 3.

G.S.SANDHAWALIA, J. (Oral)

The present appeal has been filed by the State against the judgment of the Single Judge in CWP No. 14443 of 2016, Krishan Kumar and others vs. State of Haryana and others decided on 05.02.2020. By virtue of the impugned judgment, the Single Judge had set aside the letter dated 19.06.2015 (Annexure P-1) wherein, the cut off date as 01.01.2014 had been provided for the purposes of promotion and, thus, restricting the right of the petitioners for consideration to the post of Lecturer/PGT in the subject of Hindi.

The learned Single Judge came to the conclusion that the Haryana State Education School Cadre (Group B) Service Rules, 2012 (in short 'the 2012 Rules') do not provide any criteria for fixing the date of promotion and, therefore, the State was not justified in fixing the cut off date and granting promotion on 06.05.2016 to respondents no. 3 to 19 when the petitioners were also duly eligible.

Resultantly, directions were issued to promote the petitioners to the post of Lecturer/PGT in the subject of Hindi with effect from the date the juniors to the petitioners i.e. respondents no. 3 to 19 were promoted with all consequential benefits. The petitioners were also held entitled to interest @6% per annum.

Counsel for the State has raised two arguments. First that the private respondents had not been heard by the Single Judge and the order of the Single Judge is adverse to respondents no. 8 to 34 and, therefore, the impugned order was passed without hearing the effected parties. Second limb of the argument is that the cut off date, as such, can be fixed while placing reliance upon the judgment of the Apex Court in *Civil Appeal Nos. 4593-4594 of 2002, Ramrao and others vs. All India Backward Class Bank Employees Welfare Association and others decided on 05.01.2004* and such a classification is a reasonable nexus to the object.

This Court is of the opinion that the Single Judge, as such, has rightly addressed the issues while placing reliance upon the judgment of the Division Bench in *Ram Niwas vs. HSAMB, Panchkula, 1994 (3) SCT 214* and *Geeta Devi vs. State of Haryana and others, 2010 (3) SLR 266*. The 2012 Rules provide that recruitment in service shall be made in the case of PGT, Hindi, 33% posts by promotion amongst TGT Hindi/Hindi Teachers. Appendix 4 of 2012 Rules read thus:-

<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>
1	2	3	4

4	PGT Hindi	(i) M.A. Hindi with at least 50% marks and B.Ed. From recognised university; AND (ii) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. With Hindi as one of the subject; AND (iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) /School Teachers Eligibility Test (STET). (iv) Consistent good academic record	i) M.A. Hindi with at least 50% marks and B.Ed. from recognised university; AND ii) 2 years teaching experience as TGT Hindi/Hindi teacher; AND iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) /School Teachers Eligibility Test(STET). By transfer of deputation:- (i) M.A. Hindi with atleast 50% marks and B.Ed. From recognised university; AND (ii) 5 years teaching experience as PGT Hindi; AND (iii) Matric with Hindi/Sanskrit 10+2/B.A./M.A. With Hindi as one of the subject; AND (iv) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) /School Teachers Eligibility Test (STET).
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Rule 9(2) of the 2012 Rules further provides that promotions had to be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions. The same reads thus:-

“(2) All promotions unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions.”

Thus, there is no such condition prescribed in the 2012 Rules as to the cut off date and the eligibility which is prescribed under Appendix 4. The State, by the impugned communication dated 19.06.2015 which has been addressed from the Director, Secondary Education, Haryana, could not have, as such, restricted the

right of the petitioners for consideration for promotion to the said posts by imposing the said conditions in its communications. It is not disputed that the petitioners had the requisite qualifications, which would be clear from the specific averments made in the writ petition. It is the case of the petitioners in para no. 2 where they have given the details of their appointment and further in para no. 8, it has been specifically averred that persons junior to the petitioners have been promoted. But the petitioners have been ignored in spite of the fact that they are eligible and qualified for promotion to the post of PGT as per Rules.

The stand of the State qua para no. 2 is that the petitioners have passed their M.A. Degree or B.Ed. after the cut off date and had the requisite qualification after the cut off date and, therefore, the department had not granted any promotion to them. Rather, in para no. 10, the stand is that the department has prescribed the cut off date according to its discretionary power. It has also been admitted that the juniors have been promoted but the petitioners are not eligible to be promoted with effect from 06.05.2016. Thus, there is a candid admission as to the fact that juniors have been promoted and secondly that there is no statutory power for fixing the cut off date. The relevant portion reads thus:-

“10. That the contents of Para No. 10 are denied because the Department has prescribed cutoff date according to its discretionary power. Therefore, the action of Department is not arbitrary and not against the law.

11. That the contents of Para No. 11 are denied because they are not eligible for promotion on the said cutoff date. So they are not liable to be promoted w.e.f. 06.05.2016 when their juniors were promoted with all consequential benefits.”

In such circumstances, the reasoning which has been given by the learned Single Judge cannot be faulted with in any manner. The argument raised that the private respondents were not served is without any basis. The directions

have been issued that promotion to the petitioners is to be given with effect from the date the juniors to them were promoted. In the writ petition also, no relief as such was claimed challenging the promotion to the juniors and, therefore, no relief as such was claimed against the said juniors and they were not necessary parties and, therefore, the argument raised is without any basis.

In *Ram Niwas case (supra)*, the Division Bench was seized with the issue of the question as to what is the relevant date for consideration of eligibility of persons for the purpose of promotion i.e. whether it is the date when the vacancy occurred or it would be the date the authorities decided to fill the vacancy. Accordingly, it was held that the relevant date for consideration would be when the State Government decides to fill the promotional post and the petitioner who had been ignored for promotion on the ground that when the promotional post became vacant, he did not fulfill the academic qualifications and experience was not justified. Resultantly, directions were issued to respondents to reconsider the question of promotion on the date when the private respondent had been promoted, who was junior to the petitioner and who had been wrongly ignored.

Similarly, in *Geeta Devi's case (supra)* also, it was held that there was no rule of law that the eligibility of an employee for promotion has to be determined by confining it to the date of occurrence of the vacancy and that if the said principle, as such, was to be applied by referring to the date of vacancy, it would curb the right of those who may be senior and become eligible later on.

In the present case, it is to be noticed that by virtue of fixing the cut off date, the writ petitioners were denied the benefit of promotion on the ground that they did not have the eligibility as on the cut off date, which would be against the rule of seniority-cum-merit basis enshrined in Rule 9(2) of the 2012 Rules, reproduced above. Therefore, the learned Single Judge has not erred in any

Coming to the judgment in *Ramrao's case (supra)*, this Court is of the opinion that the same would not be applicable. The issue in the said case was of de-reservation of vacancies and the bank had passed a resolution for filling up the back log and de-reserving the vacancies which were reserved. The said action had been challenged before the High Court, which had dismissed the writ petition. The Supreme Court upheld the said order by noting that the order of de-reservation was not the issue before the High Court and in the said circumstances, observations of the cut off date were made. Rather, it has been observed that the cut off date can be provided in terms of provisions of Statute or any executive order which, in this case, itself is missing. The relevant para in *Ramrao's case (supra)* portion reads thus:-

“30. It is not in dispute that a cut-off date can be provided in terms of the provisions of the statute or executive order. In University Grants Commission v. Sadhana Chaudhary & Ors., 1997 (1) SCT 363 (SC). It has been observed :

"21It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: Union of India v. Parameswaran Match Works, (1975) 1 SCC 305: (1985) 2 SCR 573 at p. 579 and Sushma Sharma (Dr) v. State of Rajasthan (1985 Supp SCC 45 : (1985) 3 SCR 243 at p. 269.)

31. *If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employee seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend [Article 14](#) of the Constitution of India.”*

Accordingly, the said judgment is not applicable in the present facts and circumstances as there is no delegation done for the said purpose.

Accordingly, finding no merit in the present appeal, the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

25.10.2021
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(SANT PARKASH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No