

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

CWP-25508 of 2018 (O&M)

Date of decision: 13.10.2021

Rajender Sharma and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Jagjot Singh, Advocate for the petitioners.

Mr. Sharad Aggarwal, AAG, Haryana.

Mr. Karan Kumar, Advocate for UOI.

H.S. MADAAN, J.

Petitioner Rajender Sharma, aged about 53 years and Yunis Khan, aged about 52 years, have brought the instant writ petition against respondents i.e. State of Haryana and another, craving for issuance of a writ in the nature of certiorari for setting aside of order dated 06.07.2018 (Annexure P-13) vide which claim of petitioners for promotion to the posts of Leading Firemen has been wrongly rejected and further for issuance of directions to the respondents especially respondent No.2 to promote the petitioners to the posts of Leading Firemen being eligible as per ratio of orders passed in CWP-17156-2015.

2. According to the petitioners, they were appointed as Firemen on ad hoc basis with Municipal Council, Palwal on 20.09.1989; thereafter, their services were regularized on 26.07.1993 w.e.f.

31.03.1993 and they are working as such since then; earlier the conditions of service of Fire Station employees were governed by Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules 1982 (for short '1982 rules'); under those rules post of Leading Firemen was to be filled up by way of promotion on seniority cum merit basis; in that way, qualification required for promotion to the rank of Leading Firemen from post of Firemen was at least 05 years as Firemen in A or B class committees besides educational qualifications; according to the petitioners, they have been working as Firemen for about 25 years.

3. The State of Haryana had enacted a new Act known as Haryana Fire Services, Act 2009 (for short 'the Act'), copy Annexure P-3; the said Act was notified on 24.03.2009 and it had been passed in supersession of all the Acts governing the services rules of Fire Station Officers in State of Haryana; that as per Section 49 of the Act, the Government was under an obligation to make rules for carrying out purposes of this Act but no rules in pursuance of the said Act were framed and it was only in the year 2016 that rules under the new act came into being; that as per Sections 50 and 53 of the Act, all the assets and liabilities pertaining to the fire services maintained by all local authorities stood transferred to and vested in the Government and all the employees of the local authority became the employees of the Government on coming into force of said act; that 1982 rules were repealed vide notification dated 24.09.2010 wherein new rules known as Haryana Municipal Service (Integration, Recruitment and Condition of Service)

Rule, 2010 were enacted; rules were formulated and notified on 03.06.2016; the respondents kept making promotions even after 2009 under 1982 Rules and all those who had been promoted to the rank of Leading Firemen from the post of Firemen had never cleared any departmental examination because there was no such requirement till the year 2016; that similarly situated individuals had approached this Court by way of filing CWP-17156 of 2015, 25498 of 2012, 2507 of 2013, 23970 of 2014, 15918 of 2015 and 2216 of 2015 seeking promotion from the post of Sub Fire Officer to the post of Fire Station Officer under Rules of 2016 in addition to the qualification already prescribed in 1982 Rules, it was directed that the person will have to clear departmental examination; during pendency of those writ petitions, official respondents admitted that case of petitioners were to be considered accordingly; this Court issued directions to official respondents to take a decision on the promotion of petitioners.

4. According to the petitioners, respondent No.2 had rejected their claim for promotion to the posts of Leading Firemen on the ground that there was no sanctioned post of Fireman available in District Palwal at the time against which the concerned petitioners could be considered for promotion and now as per new Rules, they are required to clear the departmental test; however, office of Municipal Council, Palwal in its letter dated 19.06.2018 addressed to respondent No.2 has clearly mentioned that on 04.06.2014 there was 04 posts of Leading Firemen in Municipal Council, Palwal and the petitioners have also cleared the course of Leading Firemen in the year 2004; petitioner No.1 has cleared

course of Sub Fire Officer in the year 2005, whereas, petitioner No.2 did so in the year 2006; when the respondents did not consider the claim of petitioners, then they had approached this Court by way of filing the present writ petition.

5. On notice, the respondents appeared; respondents No.1 and 2 filed a joint written reply; inter alia, they have contended that claim of the petitioners for the promotion to the post of Leading Firemen is not covered under the principle of “Old Rules Old Vacancies” due to non-availability of regular sanctioned posts in District Palwal under old service Rules, 1982; the concerned petitioners were appointed under 1982 Rules, which have already been repealed by provision of new Haryana Fire Services Rules, 2016, notified on 03.06.2016; the case of the petitioners for promotion to the post of Leading Firemen can be considered by Director Fire Services, Haryana being the competent authority for the said purpose; under the new Rules, the candidates are required to pass the departmental test and should have 05 years experience as Fire Operators. Refuting the remaining assertions, they prayed for dismissal of the writ petition.

6. I have heard learned counsel for the parties besides going through the record.

7. It is not in dispute that petitioners are in line for consideration for promotion as Leading Firemen. Now the question arises as to whether their cases are to be considered under 1982 Rules since repealed or the prevalent Rules which were notified on 03.06.2016. As per case of the petitioners, they should be considered under 1982 Rules

whereas the version of the respondents is that they are required to be considered under the new Rules. It has to be kept in mind that as per new Rules, the petitioners shall have to clear the departmental examination. According to the petitioner four posts of Leading Firemen were available before the new Rules came into effect, therefore, their case needs to be dealt with under 1982 Rules as has been ordered to be done by this Court in case of similarly situated officials working as Sub Fire Officers, who sought promotion as Fire Station Officer; reference in that regard has been made to the order passed in CWP-17115-2015.

8. Whereas, learned State counsel has contended that the said judgment is distinguishable and is not applicable here, since that related to promotion of Sub Fire Officers to Fire Station Officers i.e. different post having different qualification. Furthermore, 04 posts said to be in existence were in fact the posts created for the Directorate of Fire Services, which was to be established under new Rules. Those posts were created in the year 2014 but since there was delay in framing of the Rules and Rules came up in existence in the year 2016 only, the posts are to be filled up under new Rules and not under earlier Rules. According to learned State counsel earlier it was a district cadre post and there was no sanctioned vacant post at Palwal, where the petitioners were working till the Rules of 1982 were repealed, therefore, they could not possibly be promoted there. In that case 29 sanctioned posts of Fire Station Officers in the Municipal cadre under Old Rules were found, out of which, 12 posts were filled up whereas remaining were kept vacant.

9. As regards the promotion given to Firemen on

representations, the explanation given is that those Firemen were employees of Municipal Corporation, Gurugram and 05 sanctioned posts of Leading Firemen were vacant in the said corporation. Therefore in terms of old Rules, directions were issued to Commissioner, Municipal Corporation to consider such case under old Rules by the then Director General, Fire Service vide order dated 07.11.2017. With regard to Municipal Council, Palwal, 06 posts of Leading Firemen had been provided on contract basis. There was no sanctioned post of Leading Fireman at Palwal, therefore, case of petitioners could not be considered applying the principle of “Old Vacancies Old Rules”.

10. I find the explanation by learned State counsel to be quite convincing. A memo by Addl. Chief Secretary, Govt. of Haryana, Urban Local Bodies Department address to Director, Urban Local Bodies, Panchkula dated 04.06.2014 is with regard to creation of posts in Directorate of Fire Services, Haryana. Copy of that memo has been placed on record as Annexure R-2. In that memo, various other sanctioned posts like that of Joint Director (Technical), Deputy Director (Technical), Deputy Director (Admin.) etc. at headquarter and other posts at various fire stations have been given. Since fire service was made State level service under Rules of 2016 only, the posts are naturally to be filled up under the new Rules.

11. Distinguishing the order passed by this Court, which is being relied upon by the petitioners, learned State counsel has stated that there posts were available before coming into being of the new Rules, where the petitioner in that case were sought to be promoted and in between the

Rules of 1982 being abolished and new Rules coming into being. Some promotion were made which were under the old Rules but those were subject to availability of the sanctioned posts at the places where the promotions were made because at the relevant time, fire services were under various Municipal Committees, Municipal Council, Market Committees etc., at district level and it was only under the new Rules, that fire service became a State level cadre. Thus, it comes out that the four posts of Leading Firemen had been sanctioned for Directorate of Fire Services, Haryana under the Haryana Fire Services Act, 2009 and they have been specified in new service Rules of 2016. Therefore, the prayer of the petitioners for considering them for promotion under the old Rules was rightly rejected and no fault can be found with such rejection order by the respondents. However, the petitioner may be considered for promotion under the new Rules subject to their fulfilling necessary requirements.

12. Finding no merit in the present writ petition, the same stands dismissed accordingly.

13.10.2021
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No