

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103+222-2)

CM-980-CWP-2020 in/and
CWP-25325-2017
Date of Decision : September 06, 2022

Chatur Bhuj Sharma and others

.. Petitioners

Versus

State of Haryana and another

.. Respondents

(222)

CWP-9964-2017

Mahender and others

.. Petitioners

Versus

State of Haryana and another

.. Respondents

(222-3)

CWP-9037-2018 (O&M)

Vijender Kumar and others

.. Petitioners

Versus

State of Haryana and another

.. Respondents

(222-4)

CWP-13470-2020

Raj Kumar and others

.. Petitioners

Versus

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vijay Pal, Advocate, for the petitioners
in all the petitions.

Mr. Sandeep Singh Mann, Additional Advocate General,
Haryana.

Mr. Anil Kumar Sharma, Advocate, for applicants
in CM-9869-CWP-2022 and CM-6545-CWP-2020.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-980-CWP-2020 in CWP-25325-2017

As prayed for, the application is allowed.

Replication to the written statement filed on behalf of the
respondents is taken on record.

CM-9869-CWP-2022 in CWP-9037-2018

As prayed for, the application is allowed.

CM-6545-CWP-2020 in CWP-9037-2018

As prayed for, the application is allowed.

CWP-25325-2017 and other connected cases

By this common order, four writ petitions, the details of which
have been given in the heading of the order, are being disposed of as all the
petitions involve the same question of law on similar facts. For the purpose
of present order, the facts are being taken from CWP No.25325 of 2017.
The controversy which has been raised in the present petitions is with
regard to the promotion to the post of PGT Sanskrit.

As per the facts mentioned in the petition, the petitioners, who
are working as TGT Sanskrit are claiming promotion to the post of PGT

Education (Group B) Rules, 2012, the post is to be filled 67% by direct recruitment and 33% from promotion among the TGT Sanskrit/Sanskrit Teachers. The promotion is to be made on the basis of seniority-cum-merit.

Contention of the petitioners is that in the year 2016, 138 posts of PGT Sanskrit were filled up on the basis of 2012 Rules as it existed at the said relevant time but all the vacant posts which were available in the cadre of PGT Sanskrit were not filled up, hence, the petitioners were denied their right of consideration and consequent promotion in the year 2016. Further grievance of the petitioners is that the respondents amended the criteria for promotion for the post of PGT Sanskrit on 23.06.2017, after which date, all the posts which were vacant on 23.06.2017 were also sought to be filled up by amended rules, which according to the petitioners, was not permissible and the posts which were lying vacant on the date of the amendment, are to be filled by old rules keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal Nos. 2954-55 and 29656-57 of 1980 titled as Y.V. Rangaiah and others vs. J. Sreenivasa Rao and others, decided on 24.03.1983.***

Notice of motion was issued in the present case and a short reply has been filed. In the reply, the respondents have submitted that keeping in view the decision of the competent authority, according to which only 138 vacant posts were to be filled up by promotion in the year 2016, the action was taken by the Department and 138 posts were filled up, after which date, keeping in view the representation being received from certain corners with regard to seeking the amendment of the qualifications prescribed for promotion to the post of PGT Sanskrit, the amendment was

made to 2012 Rules, and the qualifications required for promotion to the post of PGT (Sanskrit) were amended on 23.06.2017 and the posts were decided to be filled up on the basis of the amended rules.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question which has been posed before this Court is that whether the posts, which were lying vacant as on 23.06.2017 in the cadre of PGT Sanskrit are to be filled by un-amended rules or all the posts which were vacant on 23.06.2017 can be filled up by the amended rules.

It is a conceded position that the petitioners are eligible under un-amended rules as well as under the amended rules. The petitioners are claiming that certain candidates who were ineligible under the un-amended 2012 Rules have been made eligible under 2017 amendment who will now cause prejudice to them by getting the said posts on the basis of seniority, hence, keeping in view the settled principle of law that vacancies available upto the time of the amendment of the rules needs to be filled in accordance with the rules before amendment only and therefore, only the qualification under un-amended 2012 Rules be taken into consideration for filling up the 764 posts which were available for promotion as on 23.06.2017.

Learned counsel for the respondents submitted that the promotions were not effected as the amendment of rules was under consideration and therefore, as the rules were amended on 23.06.2017, all the posts which were lying vacant on the said date needs to be filled up by the qualification as amended on 23.06.2017, keeping in view the decision of the competent authority.

Argument which has been raised by the petitioners to support their prayer in this petition is by placing reliance upon the judgment of the Hon'ble Supreme Court of India in *Y.V. Rangaiah's case (supra)*.

Learned counsel for the petitioners submitted that as per the settled law in *Y.V. Rangaiah's case (supra)*, the posts which were vacant at the time of the amendment of the rules are to be filled up by the un-amended rules and therefore, the respondents are under an obligation to fill 764 posts which were available in the cadre of PGT Sanskrit upto the date amendment in 2012 Rules by the un-amended rules only.

In the present case, the reliance of the petitioners on *Y.V. Rangaiah's case (supra)*, cannot be accepted for two reasons. Firstly, the facts in *Y.V. Rangaiah's case (supra)* and in the present case are not similar. In *Y.V. Rangaiah's case (supra)*, according to the rules governing the service, the promotions were to be made on the basis of an approved panel, which was to be statutorily made every year and under these circumstances, the Hon'ble Supreme Court of India in *Y.V. Rangaiah's case (supra)* held that once a statute gives a right to a candidate in formation of a panel for being promoted, which panel is to be made every year, the panel needs to be prepared every year and the said panel is to be prepared in a particular year keeping in view the rules which existed in the said year. By relying upon the rules governing the service on the said aspect, the law was laid down in *Y.V. Rangaiah's case (supra)*. In the present case, there is no rule, which prescribes or binds the authorities to make any panel every year so as to effect promotion to the post of PGT Sanskrit, which fact differentiates the case of the petitioners with facts in *Y.V. Rangaiah's case*

(*supra*), hence, the said law cannot be made applicable so as to grant the prayer of the petitioners.

Learned counsel for the petitioners submits that though in the present case, there is no rule which binds the State to make a panel every year but the respondents have issued instructions, a copy of which has been appended as Annexure P-6, according to which, a list of eligible persons, should be made against the vacancies which are likely to arise during the course of year so that promotions can be made without any loss of time.

In respect of the said argument, the instructions Annexure P-6 is only a guideline which is not a justiciable. It is only the rules which gives a right to a candidate to claim certain benefits. The guidelines, which are being relied by the petitioners are not for effecting the promotions but the same has been issued with regard to the constitution of the departmental promotion committee for considering the cases of the employees, who are to be promoted to Group A or Group B post. The said instructions are general in nature but keeping in view the settled principle of law, the same are to be treated only as guideline which does not give a right to a candidate to claim promotion every year against the vacancies which arise.

Further, the judgment of the Hon'ble Supreme Court of India in *Y.V. Rangaiah's case (supra)*, came up for consideration in *Civil Appeal No.9746 of 2011 titled as State of Himachal Pradesh and others vs. Raj Kumar and others, decided on 20.05.2022*.

After elaborating the complete law on the subject as to whether, the old vacancies are to be filled by un-amended rules or not, the Hon'ble Supreme Court of India held that the judgment in *Y.V. Rangaiah's case*

(supra), was rendered in particular facts especially with respect to the rules governing the service which was in continuation in the said case and cannot be treated as a law under all the circumstances.

As per the judgment in ***Raj Kumar's case (supra)***, the rules governing the service at the time of effecting the promotion are to be taken into account. The Hon'ble Supreme Court of India held that it is only where the statutory rules bind the Government for effecting promotion every year, the ***Y.V. Rangaiah's case (supra)*** can be applied for but not in every case and that too without appreciating the rules governing the service. The final analysis of the Hon'ble Supreme Court of India as recorded in paragraph 36 and 37 is reproduced hereunder for ready reference.

“36. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.

2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance

with the repealed rules in view of the *Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, Para 26; *Union of India v. Krishna Kumar*, (2019) 4 SCC 319, Para 10. *Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, Para 26; *Union of India v. Krishna Kumar*, (2019) 4 SCC 319, Para 10. policy decision taken by the Government. 60 There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. 61 The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of [Article 14](#).

4. The principle in *Rangaiah* need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.

37.1 The above-referred observations made in the fifteen decisions that have distinguished *Rangaiah*'s case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished *Rangaiah* hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in *Rangaiah* is confined to the facts of that case.

37.2 The decision in *Deepak Agarwal* (*supra*) is a complete departure from the principle in *Rangaiah*, in as much as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India v. Krishna Kumar* (*supra*). In fact, in

Krishna Kumar Court held that there is only a "right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place."

37.3 The consistent findings in these fifteen decisions that Rangaiah's case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in Rangaiah is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

(a) The statement in [Y.V. Rangaiah v. J. Sreenivasa Rao](#) that, "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules", does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services. Application of the principle to the facts of the present case."

Keeping in view the above, as there is no statutory binding upon the State to fill up the vacancies every year, the claim of the petitioners that they should be granted promotion on the vacancies which were available on the date of the amendment of rule i.e. 23.06.2017 by applying un-amended rules cannot be accepted.

As per the settled principle of law noticed hereinbefore, in

paragraph 38.2, the Hon'ble Supreme Court of India has held that there is no right for an employee outside the rules governing the service and the rules which are in force at the time of undertaking the exercise for promotion, is to be made applicable. The relevant paragraph 38.2 of ***Raj Kumar's case (supra)*** is as under:-

“38.2 We have already held that there is no right for an employee outside the rules governing the services. We have also followed and applied the Constitution Bench decisions in [Union of India v. Tulsiram Patel](#) (supra) and more particularly the decision in [Roshan Lal Tandon v. Union of India](#) (supra) that the services under the State are in the nature of a status, a hallmark of which is the need of the State to unilaterally alter the rules to subserve the public interest. The 2006 rules, governing the services of the Respondents came into force immediately after they were notified. There is no provision in the said rules to enable the Respondents to be considered as per the 1966 Rules. The matter must end here. There is no other right that Respondents no. 1 to 3 can claim for such consideration.”

Further, it is not the case of the petitioners that the petitioners were given current duty charge of a higher post prior to the amendment or there was any intention for the Government to fill up the post prior to the amendment. Government decided to fill 138 posts in the year 2016, which were filled up as per the un-amended rules. Thereafter, the Government never undertook exercise for filling up the posts. Though, record of certain employees might have been summoned by the authorities concerned prior to the amendment but once no further action was taken till the amendment of the rules, it cannot be said that mere summoning of the record will give a

right to the petitioners to claim that promotion be made under the un-amended rules against the 764 posts lying vacant so as to oust the seniors, who became eligible under the amended rules only.

Keeping in view the above, the prayer of the petitioners that 764 vacancies which existed as on 23.06.2017 be filled up by un-amended rules only, cannot be accepted keeping in view the facts and circumstances of the present case and the rules governing the service of the petitioners coupled with the settled principle of law noticed hereinbefore.

No ground is made out to accept the prayer of the petitioners.

Accordingly, the present petitions are dismissed having no merit.

It is made clear that the interim order restraining the respondents from effecting the promotion also stands vacated and the Department will be free to make promotion in accordance with the rules governing the service.

This Court has been informed that the 138 promotions which were effected prior to the amendment of rules are already subject matter of judicial adjudication in CWP No.11260 of 2020.

It is made clear that in the present petitions, the question of law which has been adjudicated upon is entirely different from the above mentioned writ petition and the present order will have no bearing upon the outcome of the said writ petition.

Learned counsel for the petitioners submits that rules are also under challenge in CWP No.26343 of 2018.

In the present petition, the challenge to the rules is not there

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and therefore, the prayer of the petitioners has been decided without going into the question of the validity of the rules.

As the main writ petitions are dismissed, applications i.e. CM-828-CWP-2019, CM-6021-CWP-2022 and CM-9868-CWP-2022 also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

September 06, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No