

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.533 OF 2023

Tayaji Vitthal Bambale

...Petitioner

Versus

Pune Municipal Corporation
Through its Municipal Commissioner
& Ors.

....Respondents

...

Mr. Tejas D. Deshmukh for the Petitioner.

Mr. Abhijit P. Kulkarni a/w. Ms. Sweta Shah for Respondent Nos.1 & 2.

Mr. M. M. Pabale, APP for Respondent No.3 - State.

...

**CORAM: NITIN JAMDAR, ACJ &
SANDEEP V. MARNE, J.**

DATE : 15 JUNE 2023.

ORDER – (Per – Sandeep V. Marne, J.):

Petitioner has filed this petition challenging contents of file noting (described by Petitioner as ‘explanation’) dated 10 August 2018 with further directions for his promotion to the post of Deputy Chief Auditor in the Respondent-Municipal Corporation.

2. Briefly stated, facts of the case are that Petitioner came to be appointed in the services of the Pune Municipal Corporation on 21 April

1986 and has been functioning as a Senior Auditor since 29 July 2006. He belongs to Schedule Tribe community and possesses qualification of M. Com., LSGD, Diploma in Finance Management & Information Technology and CDAC course. He claims to have passed audit qualifying examination conducted by the office of the Chief Auditor.

3. The post of Senior Auditor held by the Petitioner is a feeder post for promotion to the post of Deputy Chief Auditor. It is contended that the incumbent on the post of Deputy Chief Auditor Shri. Pandurang Gopal Sawant retired in May 2008 resulting in creation of vacancy of that post. It Petitioner's contention that at the time of accrual of vacancy, the requisite criteria for promotion to the post of Deputy Chief Auditor was (i) Graduate Degree in Commerce; (ii) 10 years' experience; and (iii) minimum 3 years' experience as a Senior Auditor. One Smt. Chhaya Siraj Kamble, who was senior to Petitioner, did not possess Graduate Degree in Commerce and that therefore Petitioner became due and eligible to be promoted to the post of Deputy Chief Auditor on completion of 3 years' of service as Senior Auditor in July 2009. He was however not considered for promotion on account of inaction on the part of Respondent Corporation.

4. On 26 August 2014, the State Government sanctioned Pune Municipal Corporation Service (Recruitment and Classification) Rules, 2014 prescribing the eligibility criteria for promotion to the post of Deputy Chief Auditor. Petitioner admittedly does not possess the

eligibility criteria prescribed in the Recruitment Rules of 2014. He however claims promotion to the post of Deputy Chief Auditor on the ground that he was eligible to be promoted to that post in the year 2009. It appears that Petitioner approached the Scheduled Castes and Scheduled Tribes Commission which issued directives to the Respondent-Corporation to consider Petitioner's case. However he is held ineligible for promotion to the post of Deputy Chief Auditor and therefore Petitioner has filed the present petition.

5. Appearing for Petitioner, Mr. Deshmukh the learned counsel would submit that Petitioner's case ought to have been considered for promotion to the post of Deputy Chief Auditor in July 2009 upon completion of 3 years' service as Senior Auditor. He would submit that the recruitment Rules 2014 cannot be made applicable to the case of Petitioner as vacancy arose in the year 2008. He would submit that Petitioner's case is required to be considered in accordance with the eligibility criteria prevailing in the year 2009, when Petitioner acquired eligibility for promotion. He would submit that Petitioner has legitimate expectation for being considered for promotion, which is also his fundamental right. That Petitioner cannot be made to suffer on account of inaction on the part of Municipal Corporation in not filling up post during 2009 to 2014 despite availability of eligible candidate. He would therefore pray that Petitioner be considered for promotion to the post of Deputy Chief Auditor and promoted as such. In support of his

contentions, he would rely upon judgment in **Union of India & Anr. Vs. Hemraj Singh Chauhan & Ors.** ¹.

6. *Per contra*, Mr. Kulkarni the learned counsel appearing for Respondent-Municipal Corporation would oppose the petition. He would submit that the post of Deputy Chief Auditor, which fell vacant in June 2008, could not be filled up on account of non availability of eligible candidate. He would submit that prior to 2014, there was no recruitment rules for the post of Deputy Chief Auditor. That the recruitment rules came to be formulated and sanctioned in the year 2014. That Petitioner does not possess Post Graduate Degree in Financial Management, which is one of the essential eligibility criteria for promotion to the post of Deputy Chief Auditor. That as per the recruitment rules, promotion is not the only method available for filling up the post of Deputy Chief Auditor. As per the recruitment Rules, post of Deputy Chief Auditor is required to be filled by direct recruitment followed by deputation and the last recourse is promotion. He would pray for dismissal of the petition.

7. Rival contentions of the parties now fall for our consideration.

8. Since the case of the Petitioner is essentially premised on the contention that the vacant post of Deputy Chief Auditor is required to be

¹ (2010) 4 SCC 290.

filled up in accordance with the eligibility criteria prevailing at the time of creation of vacancy, it would be necessary to first discuss the law on the subject. In short it is Petitioner's contention that the rule of 'old vacancy – old recruitment rule' must be followed in the present case. In **Y. V. Rangaiah Vs. T. Sreenivasa Rao**² two judges bench of the Apex Court expounded the law that the vacancy which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. The Apex Court held in paragraph No.9 as under -

*9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the Petitioners in the two representation petitions who ranked higher than Respondents 3 to 15 would not have been deprived of their right of being considered for promotion. **The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules.** It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.*

(emphasis ours)

² (1983) 3 SCC 284.

9. However, in several other decisions later, the Apex Court took a departure from the view taken in *Y. V. Rangaiah* (supra). In *K. Ramulu Vs. S. Suryaprakash Rao*³ the Apex Court carved out an exception of 'conscious decision' and held in paragraph 12, 13 and 15 as under-

12..... *Shri H.S. Gururaja Rao, contends that this Court in Y. V. Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284 : 1983 SCC (L&S) 382] had held that the existing vacancies were required to be filled up as per the law prior to the date of the amended Rules. The mere fact that Rules came to be amended subsequently does not empower the Government not to consider the persons who were eligible prior to the date of amendment. It is seen that the case related to the amendment of the Rules. Prior to the amendment of the Rules two sources were available for appointment as Sub-Registrar, namely, UDCs and LDCs. Subsequently, Rules came to be amended taking away the right of the LDCs for appointment as Sub-Registrar. When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. **Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules.** As a proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in Rangaiah case [(1983) 3 SCC 284 : 1983 SCC (L&S) 382] would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force.*

13. *It is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the respondent. The ratio in the case of*

3 (1997) 3 SCC 59

Ramesh Kumar Choudha v. State of M.P. [(1996) 11 SCC 242 : (1996) 7 Scale 619] is also not of any help to the respondent. Therein, this Court had pointed out that the panel requires to be made in accordance with the existing Rules and operated upon. There cannot be any dispute on that proposition or direction issued by this Court. As stated earlier, the Government was right in taking a decision not to operate Rule 4 of the General Rules due to their policy decision to amend the Rules.

(emphasis ours)

10. In **D. Raghu Vs. R. Basaveswarudu**⁴ the Apex Court did not follow the principle in **Y. V. Rangaiah's** case and held in paragraph No. 129.8 as under:

129.8. The High Court was in error in holding that it has to be necessarily held that the vacancies which arose prior to the revised Recruitment Rules coming into force has to be filled up under the then existing Rules (the 1979 Rules) relying upon case law including Y. V. Rangaiah [Y. V. Rangaiah v. J. Sreenivasa Rao. There was a conscious decision taken to not fill up vacancies based on the restructuring, and what is more, letters dated 28-10-2002 and 14-11-2002 show that promotion to the post of Inspector was to be effected based on the new Recruitment Rules.

11. The 3 judges' bench in **State of H. P. Vs. Raj Kumar**⁵ had an occasion to revisit the principle of 'old vacancy-old recruitment rule' propounded in **Y. V. Rangaiah**. The 3 judges' bench of the Apex Court overruled the decision in **Y. V. Rangaiah** and held in paragraph No.36 as under-

4 (2020) 18 SCC 1.

5 (2023) 3 SCC 773.

85.1. The statement in *Y. V. Rangaiah v. J. Sreenivasa Rao* [*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.

82.1. 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 case* [*Y. V. Rangaiah v. J. Sreenivasa Rao*, must be understood in the context of the rules involved therein.

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existing 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.

82.3. 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 policy decision taken by the Government.

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. 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.

82.4. The principle in *Rangaiah* [*Y. V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

82.5. 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.

85.1. 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.

12. Thus, the principle of ‘old vacancy – old recruitment rule’ expounded in *Y. V. Rangaiah* is no longer good law. Therefore, even though the post of Deputy Chief Auditor fell vacant in June 2008, and even if Petitioner allegedly possessed the eligibility criteria prevalent in July 2009, he cannot seek filling up of the post of Deputy Chief Auditor in the year 2018 (when petition was filed) or in the year 2023 by following old eligibility criteria. For filling up the post of Deputy Chief Officer in the year 2023, Respondent Municipal Corporation is justified in following provisions of Recruitment Rules 2014. The post cannot be filled up by applying old eligibility criteria (not forming part of any recruitment rules) prevalent in July 2009.

13. Petitioner’s reliance on the principle of legitimate expectation is misplaced in that he failed to exercise his remedies in respect of his alleged right in the year 2009. If indeed Petitioner was fulfilling eligibility criteria prevalent in 2009, he ought to have approached this court and sought relief for grant of promotion. However, he filed the present petition only on 24 April 2018 by which time Recruitment Rules 2014 had come into force. Petitioner cannot have legitimate expectation against the provisions of statutory Recruitment Rules. He does not

possess the eligibility criteria specified in the Recruitment Rules and cannot claim promotion only on the principle of legitimate expectation.

14. Petitioner's reliance on the judgment in *Hemraj Singh Chauhan* (supra) is totally misplaced. In that case, there was delay on the part of State Government to undertake cadre review exercise in a timely manner, on account of which the concerned officers had become age barred. The Apex Court though held against the Respondents that the cadre review cannot be applied retrospectively, but granted leave to the Respondent therein in exercise of its power under Article 142 of the Constitution of India. The judgment therefore has no application to the facts of the present case.

15. Petitioner has contented that he has a fundamental right of being considered for promotion. There cannot be two opinions about this proposition. However right of being considered for promotion cannot be *de horse* the Rules. Petitioner admittedly does not fulfill the eligibility criteria prescribed in the Recruitment Rules.

16. Resultantly we do not find any merit in the petition. It is dismissed with no order as to costs.

SANDEEP V. MARNE, J.

ACTING CHIEF JUSTICE