

[277] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23167-2012

Date of Decision :23.11.2023

Govt. Schools Head Masters
Association, Punjab (Regd.)

...Petitioner

versus

State of Punjab and another

....Respondent

Coram : **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present : Mr. Kapil Kakkar, Advocate for the petitioner.
Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (ORAL)

[1] Learned counsel for the petitioner has submitted that the petitioner claims that at the time of conducting exercise for promotion for the post of Principal in 2012, there were 412 posts available with the Department and the quota of reservation at the relevant time was required to be filled. Learned counsel submits that the amendment made in the Rules of 2012 would however not effect the quota as it was existing prior to amendment and the 52 posts which remain vacant out of the 412 posts ought to be given to the petitioner.

[2] I have considered the submissions and find that there was a quota meant for filling up the posts of Principals exclusively from Head Masters/Head Mistresses under the Punjab Educational Service (School and Inspection) Group A Service Rules, 2004. The said quota was 30% at that relevant time and the said Rules were amended in 2012 but the said posts were lying vacant as on 31.10.2012. The quota for Head Masters

and Head Mistresses for consideration for promotion to the posts of Principals was reduced, however in 2018 from 30% to 20%.

[3] Learned counsel has relied on the principle of law that the posts are to be filled as per the existing law, which was operating at the time when the posts were available.

[4] Learned counsel for the State has however submitted that the rules do not provide for year-wise determination of the vacancy and the amendment which has been made from time to time in the Service Rules would govern the posts which are lying vacant with the Department.

[5] This Court also finds that the law as laid down by the Hon'ble Apex Court in 'Y.V. Rangiah versus Sri Niwas Rao', AIR 1983 SC 852, has been specifically overruled by the Supreme Court Larger Bench in 'State of Himachal Pradesh and others versus Raj Kumar and others and connected appeals' and it has been held as under:-

“10. The principle laid down in Roshan Lal Tandon's case is followed in a number of decisions of this Court. 25 The following are the propositions emanating from the principles laid down in these precedents.

- (i) Except as expressly provided in the Constitution, every person employed in the civil service of the Union or the States holds office during the pleasure of the President or the Governor (Article 310). Tenure at pleasure is a constitutional policy for rendering services under the state for public interest and for the public good, as explained in Tulsiram Patel (supra).*
- (ii) The Union and the States are empowered to make laws and rules under Articles 309, 310 and 311 to regulate the recruitment, conditions of service, tenure*

and termination. The rights and obligations are no longer determined by consent of the parties but by the legal relationship of rights and duties imposed by statute or the rules. The services, thus, attain a status.

(iii) The hallmark of status is in the legal rights and obligations imposed by laws that may be framed and altered unilaterally by the Government without the consent of the employee.

(iv) In view of the dominance of rules that govern the relationship between the Government and its employee, all matters concerning employment, conditions of service including termination are governed by the rules. There are no rights outside the provision of the rules.

(v) In a recruitment by State, there is no right to be appointed but only a right to be considered fairly. The process of recruitment will be governed by the rules framed for the said purpose.

(vi) Conditions of service of a public servant, including matters of promotion and seniority are governed by the extant rules. There are no vested rights independent of the rules governing the service.

(vii) With the enactment of laws and issuance of rules governing the services, Governments are equally bound by the mandate of the rule. There is no power or discretion outside the provision of the rules governing the services and the actions of the State are subject to judicial review. ”

87. 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. ”

[6] In view of above and in absence of there being any rule for filling up posts of earlier year vacancies, the benefit cannot be extended even if 32 posts were lying vacant at that relevant time, the said posts will have to be added to the newly available posts as and when the promotion exercises are conducted. Such being the scheme of rules in Punjab, no interference is warranted.

[7] Dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

23.11.2023
'Rajneesh'

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No