

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

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**CWP No.2598 of 2012
Date of Decision : 16.11.2023**

*Ram Phal Mann**..... Petitioner**versus**State of Haryana and another**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Chander Pal Tiwana, Advocate, for the petitioner

Ms. Tanushree Gupta, DAG, Haryana

TRIBHUVAN DAHIYA J. (ORAL):

This petition has been filed seeking a writ of *certiorari* quashing the order dated 16.12.2010, Annexure P-5, vide which the petitioner's claim for promotion to the post of Headmaster, High School has been declined on the ground that he does not possess qualification of Bachelor of Education/B.Ed. Further, a writ of *mandamus* has been sought directing the respondents to promote the petitioner to the post of Headmaster of High School with all consequential benefits, with effect from the date his juniors have been promoted.

2. It has been averred that the petitioner was appointed as Hindi Teacher on *ad hoc* basis on 10.11.1982, and regularised w.e.f. 1.11.1986. Till 2011, his service was governed by the Haryana State Education School Cadre (Group-C) Service Rules, 1998 (hereinafter referred to as 'the 1998 Rules'); Rule 9 (d) provides that seven per cent posts of Headmasters are to be filled from amongst Hindi Teachers. Further, Rule

7 stipulates that qualification for appointment to various posts in the service is governed by Appendix-B, whereunder qualification for promotion to the post of Headmaster, High School is, B.T./B.Ed. and eight years experience as Sanskrit Teacher/Hindi Teacher or Punjabi Teacher.

2.1. The second respondent called cases of eligible teachers, including Hindi teachers, for the post of Headmaster, High School, vide memo dated 15.3.2010, Annexure P-2. As the petitioner had the requisite experience and possessed qualification of Matric, Prabhakar Language Teacher course/L.T., his case was sent for promotion vide Form-A, dated 22.11.2010, by the Headmaster, certifying that he was eligible for the post.

2.2. The same was, however, returned in original vide impugned communication/order dated 16.12.2010, with remarks that the petitioner did not possess qualification of B.Ed.

2.3. In this background, the instant petition was filed.

3. Learned counsel for the petitioner has placed reliance upon judgment dated 21.3.2011 rendered by this Court in CWP No.14737 of 2010 titled *Ram Kumar v. State of Haryana and another*, to contend that the qualification of Language Teacher course was declared equivalent to B.Ed., and on that basis the petitioner therein, who was also a Hindi Teacher, was held entitled to promotion as Headmaster under the 1998 Rules. He has further placed reliance upon the Supreme Court judgment in *Y.V. Rangaiah and others v. J. Sreenivasa Rao and others*, (1983) 3 SCC 284, to contend that the petitioner has a right to be considered for promotion against the vacancies which were available at the time his case

was called for promotion as Headmaster, High School, in accordance with the Rules applicable at that time.

4. Learned State counsel, on the contrary, has referred to an affidavit, dated 10.10.2017, filed on behalf of the second respondent that the 1998 Rules do not prescribe that any qualification equivalent to B.T./ B.Ed. can also be considered for promotion as Headmaster, High School. Therefore, the petitioner has no right to seek promotion on the basis of equivalent qualification of Language Teacher course. It is further contended by her that the 1998 Rules have been repealed and replaced by the Haryana State Education School Cadre (Group-C) Service Rules, 2012, and as per Rule 9, Hindi Teachers are eligible for promotion to the post of Elementary School Headmaster, on this account also his case cannot be entertained. Besides, vide memo dated 15.3.2010, only promotion cases for the post of Headmaster, High School were invited, but no promotion order was issued. Mere inviting of cases does not confer any right to promotion unless any junior person has been promoted which is not the case.

5. Heard.

6. It is apparent on record that the petitioner's case was called for consideration for promotion to the post of Headmaster, High School, along with other eligible teachers vide memo dated 15.3.2010. The only ground of rejection of his case was 'not possessing the qualification of B.Ed' as was required under the 1998 Rules. A perusal of the judgment passed by this Court in *Ram Kumar* case (*supra*) shows that qualification of Language Teacher course has been held equivalent to B.Ed., and on that basis promotion has been granted under the 1998 Rules. However,

these Rules have been repealed and replaced by the 2012 Rules, which have no provision for promotion of Hindi Teachers to the post of Headmaster, High School. Besides, it is not disputed that the 2012 Rules do not entitle the petitioner to be considered for promotion as per the 1998 Rules; nor has it been shown that the former Rules are arbitrary or illegal in any manner.

7. Reliance placed on *Y.V. Rangaiah* case (*supra*) to contend that the petitioner has a right to be considered against the vacancy occurred prior to the 2012 Rules, and his case would be governed by the 1998 Rules, is mis-placed. The judgment stands over-ruled by the Supreme Court in *State of Himachal Pradesh and others v. Raj Kumar and others*, 2023 (3) SCC 773, holding that it does not reflect correct proposition of law. It has further been held that an employee has no vested right to be considered for promotion in accordance with the repealed rules, nor is there any obligation on the government to make appointments as per the old rules. Relevant paragraph of the judgement in *Raj Kumar* case (*supra*) reads as under:

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.

85.2. The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.

86. xxxxx xxxxx

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 and more particularly the decision in *Roshan Lal Tandon v. Union of India* 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 1 to 3 can claim for such consideration.

Accordingly, the petitioner's case for promotion to the post of Headmaster, High School cannot be considered under the 1998 Rules which stand repealed.

8. In view thereof, there is no merit in the petition, and it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

16.11.2023
Ashwani

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