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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27832 of 2017
Date of decision : 12.01.2023

Baldev Singh and another

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gagneshwar Walia, Advocate
for the petitioners.

Mr. Sehajbir S. Aulakh, Asstt. Advocate General, Punjab.

Mr. J.S. Bhandohal, Advocate
for respondent No.4.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari for quashing the order dated 8th of June, 2015 (Annexure P-4/A) and order dated 1st of July, 2015 whereby the respondents No.5 and 6 have been appointed on the post of Fireman rejecting the claim of the petitioners.

2. Petitioner as well as respondents No.5 and 6 were all working as Sewadars with Municipal Council, Kotakpura. Vide Communication dated 18th July, 2007, respondent No.2 directed all the Municipal Councils/Municipal Corporations to utilize the services of firebrigades in a systematic manner and as a measure thereof it was directed that :-

> "1. Due to the scrapping of octroi tax, the staff is in surplus in

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> Municipal Council/Municipla Panchayats in Punjab State. Therefore, action be taken in adjusting the surplus staff of concerned Muncipal Council, who qualify the said eligibility qualifications and physical qualification for the staff of firebrigade against the vacant posts in Fire Brigade.
>
> 2. On the same lines, due to scrapping of octroi tax, surplus drivers be adjusted against the vacant posts of drivers of fire brigade, who qualify the said eligibility qualification of driver of fire brigade."

3. As per the qualification prescribed under the standing orders applicable for the post of Fireman, the minimum qualification was :

> "Minimum matric should preferably the demobilized soldiers or other able bodies person all below the age of 30 years who are quite fit to undergone rigors of the duties of a fire brigade personnel."
>
> Note :
>
> 1. Physique for all posts, for direct recruitment or by promotion.
> a. Height 5'5" minimum
> b. Chest 33.5" unexpanded with 1.5"expansion
> c. Eye sight 6/6 both eyes without glasses.
> 2. Physical fitness standards
> a. Running a distance of 100 yards with a weight of 60 kg stones in one minute.
> b. Lifting the hook ladder to a vertical position from 3rd and 6th round.
> c. Climbing a rope or a vertical pipe to a height of 8-10 feet from the ground."

4. As per the pleadings raised in the writ petition, Municipal Council passed a Resolution dated 28th January, 2015 reporting that out 10

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sanctioned posts of Fireman, 7 posts were lying vacant with the Council and recommended that 4 Sewadar and 1 Chowkidar be allowed to be appointed as Fireman. Resolution was passed and sent for approval *viz-a-viz* following employees :-

> "1. Sh. Baldev singh, Sewadar (Metric pass)
> 2. Sh. Surinderpal, Sewadar (12th pass)
> 3. Sh. Sukhwinder Singh, Sewadar (12th pass)
> 4. Sh. Pirthi Singh, Sewadar (Metric pass)
> 5. Sh. Ramesh Kumar, Chowkidar (metric pass)"

5. Prior to the passing of the said Resolution vide memo bearing Letter No.DSS-TSS-2014/50330-370, dated 19th of December, 2014 placed on record at Annexure P-4, the qualifications for the post of Fireman were amended to the following effect :-

> "1. Should have passed 10+2 from a recognized Board/University.
> 2. Should have licence of driving medium vehicle transport not less than three years.
> 3. Should produce heavy vehicle driving licence with in three to five years from the date of appointment.
> 4. After appointment the candidate shall undergo Fire Fighting training at Fire Station, Ludhiana, Jalandhar and Amritsar for a period of two months.
> 5. Should be quite fit to undergo rigors duties of Fire Brigade.
> 6. Physical fitness and age as prescribed in the standing orders."

6. Resolution dated 28th of January 2015 (Annexure P-3/A) was dealt by respondent No. 2 in the following manner :-

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"To

The Executive Officer,
Municipal Council, Kotakpura,
Reminder letter dated 8.6.2015

Sub : Regarding order No.4 dated 28.01.2015 passed by Municipal Council, Kotakpura.

With regard to your letter No.705 dated 30.03.2015 and letter dated 10.5.2015.

With regard to subject mentioned above after going through the above mentioned letters sent by you and and after considering the same with regard to order No.4 dated 28.01.2015 the Government has decided to give approval to Order No.4 dated 28.01.2015 on the condition that those two employees who fulfil the educational/physical qualifications as per instructions No.50330-370 dated 19.12.2014 they can be considered for direct appointment to the post of Fireman in question.

Sd/-
Supdt. Tracer"

7. In view of the aforesaid approval, respondents No.5 and 6 were appointed to the post of Fireman vide impugned order dated 1st of July 2015 (Annexure P-7).

8. Ld. Counsel for the petitioners submits that respondents No.5 and 6 have been wrongly appointed as they were not in possession of Driving Licence as required under the altered/amended qualification. Reference is being made to the following condition :-

"2. Should have licence of driving medium vehicle transport not less than three years."

9. Ld. Counsel for the petitioners while referring to the same thus

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submits that the Driving Licences of the respondents which have been placed on record at Annexures P-5 and P-6 would show that the appointees were not in possession of licence of driving medium vehicle transport not less than three years. He further submits that on a complaint made by the petitioners, a detailed inquiry was conducted wherein the Executive Officer was found to be guilty of having appointed ineligible persons, yet no action has been taken thereof. He further submits that since the vacancies had arisen prior to the amendment of Rules thus, they ought to have been governed by the Rules in Board at the time those vacancies arose.

10. Per contra, counsels for the respondents submit that the petitioners themselves were not eligible as per the Amended Rules as they did not possess the minimum educational qualification of 10+2 and, thus, the present writ petition would not be maintained at their hands. Counsels further submit that keeping in view the fact that it was a case of adjustment of surplus staff and the fact that the Rules were amended even prior to the date the Resolution could be passed and the case of the parties could be recommended, the plea taken by counsel w.r.t. 'old post old rule' cannot be entertained.

11. Ld. Counsel for respondent No.4 further submits that the plea with respect to licence of respondent No.5 being not valid is totally fallacious and probably is result of misreading of bare provision.

12. I have heard learned counsel for the parties and have gone

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through the records of the case.

13. The facts are not much in dispute. In the considered opinion of this Court the plea raised by Counsel representing the petitioners w.r.t. applicability of the the old rules is misconceived and the same cannot be entertained. Apex Court in the case of **State of Himachal Pradesh and others vs. Raj Kumar and others, 2022 SCC Online SC 680** held as under :-

> "**73.** 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."

14. Even as per the pleadings raised in the writ petition, amendment for the eligibility for the post of Fireman was effectuated on

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19th December, 2014 prior to the date, the case of the petitioners was even recommended vide the Resolution dated 28th of January, 2015 much less considered in terms of Communication (Annexure P-4/A). Thus, there can't be any dispute w.r.t. the fact that the petitioners lack in the eligibility conditions w.r.t. the post of Fireman as it existed on 28th of January 2015.

15. Consequently, no writ of mandamus can be issued w.r.t. consideration of the claim of the petitioners. Likewise petitioner has himself placed on record MV license possessed by respondents No.5 and 6. Authorities have found the same to be in order. Thus, no fault can be found with action of respondents in appointing respondents No.5 and 6.

16. Consequently, present writ petition at the hands of the petitioners is ordered to be dismissed.

January 12, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes

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