



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(203)

CWP No. 12813 of 1998 (O&M)
Date of Decision : 03.09.2024

Kanwaljit Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Vivek Singla, Advocate for the petitioners.

Mr. T.P.S. Chawla, Senior Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioners is that the petitioners were working as Patwari and were entitled for further promotion as Kanungo, which benefit was not extended to them.
2. Learned counsel for the petitioners submits that promotion to the post of Kanungo was to be made as per Punjab Kanungo Services (State Services Class-III) Rules, 1976 (hereinafter referred to as '1976 Rules') and as per Rule 8 of 1976 Rules, the promotion can only be made from Patwari, who has qualified the departmental examination as envisaged Appendix-C of the 1976 Rules. Learned counsel for the petitioners argues that under the proviso, in case no Patwari who had qualified the departmental examination was available, power was given to the State to relax the said Rules for a period of two years so as to clear the examination, failing which the Patwari was to be reverted.



3. Learned counsel for the petitioners further submits 1976 Rules were repealed in the year 1994 and as per the 1994 Rules, the passing of the departmental examination was done away with and the Patwaris were to be promoted to the post of Kanungo to the tune of 85%, who had 10 years experience to their credit and have undergone a refresher course as specified in Appendix B of 1994 Rules and the promotion was to be made on the basis of the seniority-cum-merit.

4. The prayer of the petitioners in the present petition is prior to the promulgation of 1994 Rules, there were certain posts of Patwaris which were lying vacant and the same were to be filled up as per the unamended Rules of 1976 keeping in view the judgment of the Hon'ble Supreme Court of India in ***Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284***, according to which the old vacancies are to be filled by old Rules.

5. Upon notice of motion, the respondents have filed the reply, wherein, they have mentioned that the promotions have been made as per the rules governing the service and the petitioners cannot claim the benefit of 1976 Rules, which have already been repealed and all the promotions are being made under 1994 Rules.

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

7. The only argument raised in the present petition is that the vacancies which were available on the date when 1994 Rules were promulgated, are to be filled under 1976 Rules only, hence, only the Patwaris, who had passed the departmental examination were eligible and as the petitioners had passed the departmental examination, they should be



promoted to the post of Kanungo against one of the vacancies available prior to the promulgation of 1994 Rules.

8. It may be noticed that the law has undergone a change. No doubt, as per the judgment of the Hon'ble Supreme Court of India in ***Y.V. Rangaiah (supra)***, the vacancies were to be filled by old Rules but the said judgment has been re-considered by the Hon'ble Supreme Court of India in Civil Appeal No. 9746 of 2011 titled as ***State of Himachal Pradesh & Others Versus Raj Kumar & Others***, decided on 20.05.2022 and the same has been clarified to the extent that the department is well within its jurisdiction to apply amended/new rules even to the vacancies, which were available prior to the promulgation of the new rules. The relevant portion of the judgment is as under :-

“38.1 Returning to the facts of the present case, we have noticed that the High Court has proceeded on the premise that the vacancies occurring before the amendment of the Rules on 25.11.2006 must be governed by the 1966 Rules. The decision of the High Court took within its sweep even the 7 new posts of Labour Officers that were sanctioned by an inter-departmental letter dated 20.07.2006, which included even the 3 posts allocated for direct recruitment. The direction of the High Court to encompass even the 3 posts allocated for direct recruitment was on the ground that the posts were sanctioned on 20.07.2006, which is prior to the amendment of the Rules on 25.11.2006.

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.”

9. Keeping in view the above, as the vacancies of the post of Kanungo have already been filled up according to 1994 Rules, the prayer of the petitioners that they should be considered for promotion under 1976 Rules cannot be accepted merely on the ground that the vacancies were available at the time when 1994 Rules were promulgated, cannot be accepted.

10. No ground is made out for any interference by this Court in the present petition.

11. Dismissed.

September 03, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes