



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

CWP-18907-2004 (O&M)

Reserved on : 23.11.2023

Pronounced on: 07.03.2024

Satish Kumar and others

...Petitioners

Vs.

**Punjab Urban Planning and Development
Authority and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. G.S.Bal, Sr.Advocate with
Mr. Laxman Chaudhary, Advocate and
Ms. Lovepreet Kaur, Advocate for the petitioners.

Ms. Anu Chatrath, Sr.Advocate with
Mr. Nishant Maini, Advocate and
Mr. Nikhil Singh, Advocate
for respondent Nos.1 & 4-PUDA.

Mr. Aman Sharma, Advocate
for respondent No.3.

DEEPAK MANCHANDA, J.

Through this petition, the petitioners have impugned the order dated 08.11.2004 (Annexure P-25) whereby their claim for promotion as Senior Scale Stenographers from the retrospective date, i.e., the date on which the private respondents were promoted, was rejected and order dated 2/11/2001 (Annexure P-8) whereby private respondents have been promoted over and above the petitioners. Further prayer has been made to consider their claim for



promotion as Senior Scale Stenographers from the retrospective date, i.e., 02.11.2001.

2. The brief facts leading to the present petition are that the petitioners joined the Punjab Housing Development Board (for short, “*the Board*”) as Steno-Typists (Punjabi) on 23.12.1993 and 11.11.1992, respectively. However, after enforcement of Punjab Regional and Town Planning and Development Act, 1995 (for short, “*the Act*”), and the creation of Punjab Urban Planning and Development Authority (for short, “*PUDA*”) the said Board was abolished.

3. The petitioners were promoted as Junior Scale Stenographers, w.e.f 05.05.1998, and 18.03.1996, respectively under the pay scale of ₹4400-7000. Subsequently, the petitioners qualified the Punjabi stenography test for promotion to the post of Senior Scale Stenographers, w.e.f 26.11.1998 and 26.07.2001. After that petitioner No.2 was then promoted as Senior Scale Stenographer, w.e.f 03.10.2003, based on passing the Punjabi stenography test with a condition that she would pass the English stenography test within the stipulated period of three years in nine chances.

4. Learned Senior counsel for the petitioners contends that, in view of Section 150 of the Punjab Regional and Town Planning and Development Act, 1995, until and unless fresh conditions of service are prescribed with the prior approval of the State Government, the employees transferred from Punjab Housing Development Board to PUDA shall be governed by the Rules and Regulations applicable to the Board. He also contends that as per order dated 04.04.1998 (Annexure P-4) passed by Chief Administrator, PUDA-



respondents 1 & 4, a Junior Scale Stenographer is required to be promoted as Senior Scale Stenographer, provided he has cleared the Punjabi Stenography Test and clears the English Stenography Test within the next three years, within the stipulated number of chances. He further contends that on this basis, since the petitioners had passed the Punjabi Stenography Test and were senior to the private respondents, they were liable to be considered and promoted as Senior Scale Stenographers. However, the respondent authorities overlooked this aspect and instead applied the PUDA Regulations to them.

5. He also submits that, instead of considering the effect of Section 148 of the Act, an illegal and misplaced reference has been made to Section 15 of the Punjab Housing Development Board Act, 1972 and to the 1995 Regulations framed by the Punjab Housing Development Board. These regulations were never approved by the Punjab Government and, therefore, could not have been applied to PUDA employees such as the petitioners. This material aspect has been completely ignored. It is further submitted that the action of respondent No. 4 in ante-dating the promotion orders of the private respondents and actually issuing them on 24.01.2002 is *malafide*, as the Model Code of Conduct was already in force. The orders were deliberately ante-dated because, with effect from 07.01.2002, the Rules and Regulations applicable to the Board became applicable to PUDA employees as the same is apparent from the noting sheets annexed as Annexure P-27. It is further submitted that the claim of the petitioners for retrospective promotion was considered and granted by respondents No. 1 and 4 vide order dated 13.02.2020 (Annexure P-32), whereby the petitioners were granted retrospective promotion at par with



their juniors with all consequential benefits.

6. On the other hand, learned Senior counsel for respondent Nos. 1 and 4 submits that respondent PUDA framed its own regulations, which came into force w.e.f. 10.08.1999. As per these regulations, the requisite eligibility for the post of Senior Scale Stenographer is as under:-

“From amongst the steno-typist of the Board with 3 years experience who have attained the following proficiency in shorthand.

In Punjabi at the speed of one hundred words per minute; and

In English at the speed of sixty words per minute with eight percent mistakes allowed.”

AND

From amongst the Junior Scale Stenographer of the Authority with atleast 3 years experience as such and who have attained the following proficiency in shorthand:-

(I) In Punjabi language at a speed of one hundred words per minute and;

(ii) In English language at a speed of sixty words per minute with four percent mistakes allowed.”

7. By referring to the above regulations, the learned senior counsel submits that the earlier rules clearly indicate that prior to 1995 and from 01.07.1995 till 03.04.1998 and with effect from 10.08.1999, it was mandatory for a candidate to have passed both the English and Punjabi Stenography Tests in order to be eligible for promotion to the posts of Junior Scale Stenographer and Senior Scale Stenographer. The exemption relied upon by the petitioners was applicable only for the intervening period from 04.04.1998 to 09.08.1999 and thereafter from 01.01.2002. It is further submitted that under this exemption, a candidate who had passed only the Punjabi Typing Test became eligible only for provisional promotion. It is further submitted that three vacancies of Senior Scale Stenographer were notified on 17.09.2001, out of



which two posts were earmarked for candidates of the General Category and one post was reserved for the Scheduled Caste category. The consideration for promotion took place on 24.10.2001. Since only two Junior Scale Stenographers, i.e respondent Nos. 2 and 3, had passed both the English and Punjabi Stenography Tests, approval for their promotion was granted by the competent authority, i.e the Chief Administrator, PUDA, on 02.11.2001. It is again submitted that, as the petitioners had filed various representations, so the endorsement of the promotion order was eventually issued on 24.01.2002.

8. It is also submitted that, on the date of consideration i.e. 02.11.2001, neither the petitioners nor any candidate belonging to the reserved category was eligible for consideration for promotion to the post of Senior Scale Stenographer as per the PUDA Regulations, 1999, which were applicable at that time. Since two eligible candidates were available, their promotions were duly approved on 02.11.2001. Learned Senior counsel for respondent contends that a candidate has a right to be considered for promotion only if he or she fulfills the requisite educational qualifications and experience at the time of consideration. In support of her contentions, she has relied upon the judgments passed by Apex Court in “*Deepak Agarwal Vs. State of Uttar Pradesh*” 2011 (2) S.C.T.766, “*State of Tripura Vs. Nikhil Ranjan Chakraborty*”, 2017 (2) S.C.T.131, “*State of Himachal Pradesh Vs. Raj Kumar*” 2022 (3) S.C.T.131 “*State of Uttar Pradesh Vs. Rachna Hills*”, 2023 (6) Scale 750.

9. Further, during the pendency of the present writ petition, Office Order dated 13.02.2020 (Annexure P-32) was issued by the PUDA, whereby



the petitioners were granted promotion w.e.f. the date juniors were promoted, with all consequential benefits. However, the said order being contrary to the record as well as the applicable Regulations, was cancelled vide Office Order dated 15.02.2021 (Annexure R-2). Therefore, the petitioners cannot claim any benefit from the Office Order dated 13.02.2020 (Annexure P-32) as same has not been challenged by the petitioners. On this ground as well, the dismissal of the writ petition has been prayed for.

10. Learned counsel for respondent No. 3 contends that a candidate has a right to be considered for promotion in accordance with the rules existing on the date when such consideration takes place. He further submits that the petitioners have made a deliberate attempt to mislead the Court by producing incomplete noting portions of the file, whereas the Additional Chief Administrator, in his note dated 16.01.2002, categorically recorded that the Chief Administrator had, in principle, approved the promotion of the private respondents whose cases had already been approved on 02.11.2001.

11. Learned counsel for respondent No.3 further submits that the present writ petition is liable to be dismissed on the principle of res judicata as the petitioners had previously filed two petitions i.e. CWP No.8614-2002 and CWP No.13426 of 2004 challenging the same promotion order dated 02.11.2001, whereby the private respondents were promoted and further prayed for issuance of writ in the nature of mandamus to consider the petitioners for promotion.

12. Learned counsels for the parties have been heard and material available on record has been perused.



13. A perusal of the pleadings as well as the material available on record shows that the petitioners have challenged the promotion of their juniors granted retrospectively vide order dated 02.11.2001 (Annexure P-8). The promotion of the petitioner No.2 to the post of Senior Scale Stenographer is admittedly not in dispute as has been conditionally promoted; however, their grievance is that the said promotion ought to have been granted retrospectively.

14. The first argument raised by the learned Senior counsel for the petitioners is that in terms of Section 150 of the Punjab Regional and Town Planning and Development Act, 1995, until fresh conditions of service are prescribed with the prior approval of the State Government, the employees transferred from the Punjab Housing Development Board to PUDA are required to continue to be governed by the Rules and Regulations applicable to the Board. It is the specific case of the petitioners that the respondents, without obtaining the approval of the State Government, amended the regulations, which was beyond their jurisdiction, and wrongly applied the amended provisions to the petitioners. In this context, it would be relevant to reproduce Sections 148 and 150 of the Act, which read as under:-

“148. Abolition of Punjab Housing Development Board and transfer of its assets and liabilities (1) On and with effect from the date of establishment of the Authority under Section 17 of this Act, the Punjab Housing Development Board established under the Punjab Housing Development Board Act, 1972 (Punjab Act 6 of 1973) shall stand abolished.

150. Transfer of service of employees of the Punjab Housing Development Board: (1) Every whole time employee of the Punjab Housing Development Board (hereinafter referred to as the employee of the Board) shall on and from the date of its abolition under sub



section (1) of section 148, become an employee of the Authority, and shall hold his office therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges, if any, and other matters as he would have held the same on the said date, if this Act had not come into force and shall continue to do so unless and until his remuneration, terms and conditions are duly altered by the Authority with the previous approval of the State Government.”

15. The answer to this question has been explained in the written statement filed by respondent Nos. 1 and 4, wherein it has been stated that respondent-PUDA was created with effect from 01.07.1995 vide Punjab Government notification dated 30.06.1995. It has further been stated that, under Section 182 of the Punjab Regional and Town Planning and Development Act, 1995, the Authority is empowered to make regulations consistent with the Act and the Rules framed thereunder to carry out the purposes of the Act, including the framing of regulations relating to the salaries, allowances, and conditions of service of officers and other employees of the Authority under sub-section (2) of Section 26. The relevant extracts of Sections 182 and 180 of the Act are reproduced hereunder

“182.(1) The Authority may make regulations, consistent with this Act, and the rules made thereunder, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of this power, such regulations may provide for;-

(a) the summoning or holding of the meetings of the Authority, the time and place where such meetings are to be held and the conduct of business at such meetings under sub-section (1) of section 21 ; (b) the functions to be assigned to the Chief Administrator by the Authority under section 22 ;

(c) the appointment of committees under section 23 ;

(d) the salaries, allowances and conditions of service of officers and other employees of the Authority under sub-section (2) of section 26 ;

(e) the powers and duties of the officers and other employees of the Authority under sub-section (3) of



section 26 ;

(f) any other matter which has to be, or may be, determined by regulations.”

Section 180 of the Act

“The State Government may, by notification, make rules for carrying out the purposes of this Act.

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(3) Every rule made under this section shall be laid as soon as may be after it is made before the House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid the House agrees in making any modification in the rules or the House agrees that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

16. From the contents of Section 180 of the Act, it is clear that regulations are to be framed by the Authority i.e., PUDA, whereas rules are to be framed by the State Government. Therefore, no approval of the Government is required for framing regulations by the Authority. While exercising the powers under Section 182 of the Act, the 1999 Service Regulations were made by the Authority vide Agenda Item No. 10.17 in its meeting held on 05.07.1999. In view of the above, this Court finds that the averment of the petitioners that service conditions were deemed to have continued under the old rules applicable to the Board is not justified. Further, as per the stand taken by respondent Nos. 1 and 4, the order dated 04.04.1998 (Annexure P-4) remained in force and governed promotions to the posts of Junior Scale Stenographers and Senior Scale Stenographers till the 1999 Service Regulations were framed by the Authority. Thereafter, with effect from 10.08.1999, i.e. the date from which the 1999 Service Regulations came into



force, promotions to the posts of Junior Scale Stenographers and Senior Scale Stenographers, besides other posts, were governed by the said Regulations. PUDA in its meeting held on 06.11.2001, vide Agenda Item No. 14.05, accorded approval for the adoption of Punjab Government instructions dated 11.09.1998 regarding appointment and promotions in line of stenographers by amending the provisions made in Class-III (General) of the PUDA Service Regulations 1999.

17. Hence, the stand of the petitioners that the respondents were not competent to frame regulations without prior approval of the State Government stands answered under Sections 180 & 182 of the Act, which clearly provide that regulations are to be framed by the Authority and rules are to be framed by the State Government. Therefore, this court is in agreement with the submissions made by learned Senior Counsel for respondent no. 1 & 4, that no Government approval is required for framing regulations by the Authority. Further, this issue has already been dealt with by the Hon'ble Supreme Court in the Full Bench judgment titled "***U.T. Khanzode and others vs. RBI and another***", 1982 (1) SLJ 466, wherein it has been held that every corporation has inherent authority under its general administrative powers to frame regulations governing its service conditions, and it is not mandatory that such regulations must be framed only under a specific enabling provision requiring prior Government sanction. Government approval is required only where the statute expressly mandates it. Consequently, no prior Government sanction is required when a corporation frames service regulations under its general administrative powers. The relevant extract is reproduced hereunder:-



“20. In this behalf, reliance is also placed by Shri Nariman on a decision of a Constitution Bench of this Court in **Sukhdev Singh. v. Bhagatram. (1975)3 SCR 619**. Ray, C.J., who spoke for three members of the Bench observes in his judgment that the powers of statutory bodies are derived, controlled and restricted by the statutes which create them and that any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The concurring judgment of Mathew, J. also contains observations to the same effect (see pages 628, 630 and 659 of the Report). This enunciation of law is to the same effect as in *Halsbury* and our answer is the same. While issuing the administrative circular governing the staff's conditions of service, the Central Board of Directors has neither violated any injunction nor indeed has it exercised a power which is not conferred upon it by the statute. The circular is strictly within the confines of Section [7\(2\)](#).”

21. So long as staff regulations are not framed under Section [58\(1\)](#), it is open to the Central Board to issue administrative circulars regulating the service conditions of the staff in the exercise of power conferred by Section [7\(2\)](#) of the Act. In **T. Cajee v. U. Jormanik Siem, (1961)1 SCR 750**, a District Council was constituted under the Sixth Schedule to the Constitution, for the United Khasi and Jaintia Hills District in the Tribal Areas of Assam. The rules in the Sixth Schedule empowered the District Council to make laws with respect to various matters regarding the administration of the District Council to make laws with respect to various matters regarding the administration of the District, including the appointment or succession of Chiefs and Headman. No law was however made regulating such appointments. Even so, it was held by this Court that the District Council had the power to appoint or remove administrative personnel under the general power of administration, vested in it by the Sixth Schedule. Delivering the leading judgment of the Bench, Wanchoo, J., said that where executive power impinges upon the rights of citizens, it will have to be backed by an appropriate law; but where executive power is concerned only with the personnel of the administration, it is not necessary that there must be laws, rules or regulations governing the appointment of those who could carry on the administration under the control of the District Council. The District Council had therefore the power to appoint officers by virtue of the fact that the administration was vested in it. In **B.N. Nagarajan v. State of Mysore, (1966)3 SCR 682** Rule 3 of the Mysore State Civil Services (General Recruitment) Rules, 1957 provided that recruitment to the State Civil Services shall be made by a competitive examination or by promotion and that the method of recruitment and qualifications shall be as set forth in the Rules specially made in that behalf. It was urged before this Court that no recruitment could be made to any service until the rules were made. That argument was rejected on the



ground that it is not obligatory under the proviso to Article 309 to make rules of recruitment before, a service can be constituted and that it was not necessary that there must be a law in existence before the executive is enabled to function. It is true that reliance was placed in that case on the provisions of Article 162, by which the executive power of a State extends to the matters with respect to which the legislature of the State has power to make laws. But the decision is useful for illustrating that the power to frame rules or regulations does not necessarily imply that no action can be taken administratively in regard to a subject-matter on which a rule or regulation can be framed until it is framed. The only precaution to observe in the cases of statutory corporations is that they must act within the framework of their charter. Its express provisions and necessary implications must at all events be observed scrupulously.”

18. The second argument raised by the learned Senior counsel for the petitioners is that, having passed the Punjabi Stenography Test and being senior to the private respondents, they were entitled to be considered and promoted to the post of Senior Scale Stenographer.

19. Learned Senior Counsel appearing for respondent Nos. 1 and 4, however, submitted that passing both the English and Punjabi Stenography Tests was mandatory for eligibility to promotion to the post of Senior Scale Stenographer. It was contended that a candidate who had passed only the Punjabi typing test could, at best, be considered for provisional promotion. As per the PUDA Regulations, 1999, passing both the Punjabi and English typing tests was a mandatory requirement for eligibility for promotion to the post of Senior Scale Stenographer up to 31.12.2001. It was further pleaded that three vacancies of Senior Scale Stenographer were notified on 17.09.2001, out of which two posts were meant for candidates of the General Category and one post was reserved for an SC category candidate. The process of consideration for promotion took place on 02.11.2001. On that date, only two Junior Scale



Stenographers, respondent Nos. 2 and 3, had passed both the English and Punjabi Stenography Tests. Consequently, approval for their promotion was granted by the competent authority with effect from 02.11.2001, vide endorsement dated 24.01.2002.

20. It was also submitted that PUDA in its meeting held on 06.11.2001, took a decision to adopt the Punjab Government Instructions dated 11.09.1998. However, the said decision was formally implemented by the competent authority only by amending the provisions contained in Class-III (General) of the PUDA Service Regulations, 1999, relating to appointment and promotion in the Stenographer cadre, vide order dated 01.01.2002 endorsed on 07.01.2002 and under the PUDA Regulations, 1999, passing both the Punjabi and English Typing Tests remained a mandatory condition for eligibility for promotion to the post of Senior Scale Stenographer up to 31.12.2001.

21. A perusal of the material available on record shows that on the date of consideration, i.e. 02.11.2001, neither the petitioners nor any candidate belonging to the reserved category was eligible for consideration for promotion to the post of Senior Scale Stenographer in terms of the PUDA Regulations, 1999, which were applicable at the relevant time. Since two eligible candidates were available, their promotions were rightly approved on 02.11.2001. The law on this issue is well settled that a candidate has a right to be considered in accordance with the rules in force on the date of consideration, and there is no inflexible rule that vacancies must necessarily be filled in accordance with the law prevailing on the date when such vacancies arose.



22. Hon'ble the Supreme Court in "***Deepak Aggarwal and another Vs. State of UP and others***", 2011 (6) SCC 725 has held as under:-

"22. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the 'rule in force' on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah's case (supra) lays down any particular time frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it can not be accepted that any accrued or vested right of the appellants have been taken away by the amendment. The judgments cited by learned counsel for the appellants namely B.L. Gupta v. MCD (supra), P. Ganeshwar Rao v. State of Andhra Pradesh (supra) and N.T. Devin Katti & Ors. v. Karnataka Public Service Commission & Ors (supra) are reiterations of a principle laid down in Y.V. Rangaiah's case (supra).

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29. It may be that the removal of the two posts from the feeder cadre would lead to some stagnation for the officers working on the two aforesaid posts. In fact, the Government seems to recognise such a situation. It is perhaps for this reason that the posts have been upgraded to the post of Deputy Excise Commissioner. However, mere upgradation of the post may not be sufficient compensation for the officers working on the two posts for loss of opportunity to be promoted on the post of Deputy Excise Commissioner.

30. In such circumstances, the Government may be well advised to have a re- look at the promotion policy to provide some opportunity of further promotion to the officers working on these posts."

23. Hon'ble Supreme Court in the case of "***State of Tripura Vs. Nikhil Ranjan Chakraborty***", 2017 (2) SCT 131 has observed as under:-

"10. The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in the case of



Deepak Agarwal (supra), in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24.11.2011."

24. In *State of Himachal Pradesh Vs. Raj Kumar*" 2022 (3)

S.C.T.131 it has been observed as under:-

29.1 In Deepak Agarwal v. State of U.P., (2011) 6 SCC 725, the question arose as to whether the appellants therein were entitled to be considered for promotion to the post of Deputy Excise Commissioner under the U.P. Excise Group 'A' Service Rules, 1983. The prayer was for consideration to the vacancies which occurred prior to the amendment of 1999 Rules. Reliance was placed on Rangaiah which was rejected. The Court observed as under:-

"24. We are of the considered opinion that the judgment in Y.V. Rangaiah case would not be applicable in the facts and circumstances of this case. The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the month of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976.

Subsequently, the Rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules.

25. In the present case, there is no statutory duty cast upon the respondents to either prepare a year wise panel of the eligible candidates or of the selected candidates for promotion. In fact, the proviso to Rule 2 enables the State to keep any post unfilled. Therefore, clearly there is no statutory duty which the



State could be mandated to perform under the applicable Rules. The requirement to identify the vacancies in a year or to take a decision as to how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to the candidates duly selected for promotion. In our opinion, the appellants had not acquired any right to be considered for promotion. Therefore, it is difficult to accept the submissions of Dr. Rajeev Dhavan that the vacancies, which had arisen before 17-5-1999 had to be filled under the unamended Rules.

26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.

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28. In our opinion, the matter is squarely covered by the ratio of the judgment of this Court in Dr. K. Ramulu. In the aforesaid case, this Court considered all the judgments cited by the learned Senior Counsel for the appellant and held that Rangaiah case would not be applicable in the facts and circumstances of that case. It was observed that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. It was also held that when the Government takes a conscious decision and amends the rules, the promotion have to be made in accordance with the rules prevalent at the time when the consideration takes place."

29.2 This is a very important case which recognises many points of distinction. (a) The Court found that there is no statutory duty cast on the Government to prepare panels as in the case of Rangaiah, (b) a candidate has a right to be considered only as per the existing rules, i.e., "the rule in force", (c) the rule applicable is the rule in force as on the date of consideration, (d) the principle in Rangaiah has no universal application, (e) for reasons germane to its decision, the Government is entitled to take a conscious decision about the filling of the vacancies and the rules applicable. This decision made deep inroads into the principle laid down in Rangaiah's case.

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34.1 In Rajasthan State Sports Council v. Uma Dadhich, (2019) 4 SCC 316, the respondent therein was appointed



under the Rajasthan State Sports Council on the posts of Coach Grade-III on 20.03.1986. She was promoted to Coach Grade-II in 1990 and Coach Grade-I in 1997. Promotion to the post of Sports Officer from the Cadre of Coach Grade-I was challenged by the respondent on the ground that the posts fell vacant in the year 2003-2004, for which the 2006 Rules changed the qualification from mere seniority to seniority-cum-merit could not be applied. Allowing the appeal this Court has held as under:-

"5. There is merit in the submission which has been urged on behalf of the appellants that the respondent had no vested right to promotion but only a right to be considered in accordance with the rules as they existed on the date when the case for promotion was taken up. This principle has been reiterated in several decisions of this Court. (See H.S. Grewal v. Union of India [H.S. Grewal v. Union of India, (1997) 11 SCC 758], Deepak Agarwal v. State of U.P. [Deepak Agarwal v. State of U.P., (2011) 6 SCC 725], State of Tripura v. Nikhil Ranjan Chakraborty [State of Tripura v. Nikhil Ranjan Chakraborty, (2017) 3 SCC 646] and Union of India v. Krishna Kumar [Union of India v. Krishna Kumar, (2019) 4 SCC 319]).

6. The judgment in Y.V. Rangaiah v. J. Sreenivasa Rao dealt with a situation where the rules required that the promotional exercise must be completed within the relevant year. Rangaiah case [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284], has hence been distinguished in the judgments noted above.

7. Rule 9(4) of the Rajasthan State Sports Council Service Rules, 2006 on which reliance has been placed on behalf of the appellant does not indicate that the vacancies must be filled in on the basis of Rules as they prevail in the year in which they have occurred. Rule 9(4) is in the following terms:

"9. (4) The appointing authority shall determine the vacancies of earlier years, year-wise which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in."

34.2 The Court considered a large number of decisions that distinguished Rangaiah's case and held as a matter of principle that rules that exist on the date when the case for promotion was taken up would hold the field. The Court further observed that there is no rule which specifically mandates that the vacancies prior to the amendment must be filled as per the rules that existed and not the new rules. This is a complete reversal of the principle set to have



been laid down in Rangaiah's case.

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37.2 The decision in Deepak Agarwal (supra) is a complete departure from the principle in Rangaiah, in as much as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of Union of India v. Krishna Kumar (supra). In fact, in Krishna Kumar Court held that there is only a "right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place."

25. In ***“State of Uttar Pradesh Vs. Rachna Hills”, 2023 (6) Scale***

750 the following observations were made:-

*32. In a recent decision, in **State of Himachal Pradesh and Ors. v. Raj Kumar and Ors. 2022 SCC OnLine SC 680**, after reviewing a number of decisions on the same subject, this Court formulated the following principles:*

"70. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

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's case must be understood in the context of the rules involved therein.

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

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.

4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

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." (emphasis supplied)"

26. The third argument raised by the learned senior counsel for the petitioners is that respondent Nos. 2 and 3 were promoted to the post of Senior Scale Stenographer vide order dated 02.11.2001, however, the said order was actually issued on 24.01.2002 during the period when the Model Code of Conduct for the Punjab Assembly Elections was in force by antedating it to bypass the restrictions in force at that time. This argument does not have any legs to stand on and is, therefore, not acceptable. The record reflects that the order promoting respondent Nos. 2 and 3 had already been passed on 02.11.2001, though it was issued subsequently on 24.01.2002. Had the promotion itself been granted during the period of the Model Code of Conduct, as alleged by the learned senior counsel for the petitioners, the situation would have been different. However, once the order of promotion had already been passed prior to the imposition of the Model Code of Conduct, raising a dispute merely on the ground of its subsequent issuance is not legally sustainable.

27. Moreover, as per the submissions of the learned senior counsel for the petitioners, their claim for retrospective promotion was considered by the respondents on 13.02.2020 (Annexure P-32), and it was ordered that the petitioners be granted retrospective promotion at par with their juniors along



with all consequential benefits. However, the said order was subsequently withdrawn vide office order dated 15.02.2021 (Annexure R-2). It is pertinent to note that the petitioners have not challenged the said withdrawal order dated 15.02.2021. As per the explanation furnished by the respondents, the order dated 13.02.2020 was cancelled on the ground that it was contrary to the official record as well as the applicable service rules. Therefore, once the withdrawal order dated 15.02.2021 was never challenged by the petitioners, the aforesaid plea does not carry any weight in their favour.

28. The fourth argument raised by learned Senior counsel for the petitioners is that the petitioners have relied upon the noting sheets in reference to the process of considering the cases of private respondents for promotion to the posts of Senior Scale Stenographers, however, we find that the same is an attempt to suggest that the promotion of the private respondents on 02.11.2001 was merely a proposal and was not final decision and the same is factually incorrect.

29. It is a settled proposition of law that the noting portions of a file have no legal sanctity and merely reflect the opinions of officers, such notings do not amount to a decision, nor create any right to be claimed on their basis. The Apex Court has also dealt with similar issue in “***Mahadeo Vs. Sovan Devi***”, 2022 AIR (SC) 4071 and held as under:-

“14. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said question in a judgment reported as Omkar Sinha v. Sahadat Khan 2022 SCC OnLine SC 601. Reliance was placed on Bachhittar Singh v. State of Punjab AIR 1963 SC 395 to hold that merely writing something on the file does not amount to



an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. The said judgment was followed in K.S.B. Ali v. State of Andhra Pradesh (2018) 11 SCC 277, and Dyna Technologies Pvt. Ltd. v. Crompton Greaves Limited (2019) 20 SCC 1. In Bachhittar Singh, it has been held as under:

"8. What we have now to consider is the effect of the note recorded by the Revenue Minister of PEPSU upon the file. We will assume for the purpose of this case that it is an order. Even so, the question is whether it can be regarded as the order of the State Government which alone, as admitted by the appellant, was competent to hear and decide an appeal from the order of the Revenue Secretary. Article 166(1) of the Constitution requires that all executive action of the Government of a State shall be expressed in the name of the Governor. Clause (2) of Article 166 provides for the authentication of orders and other instruments made and executed in the name of the Governor. Clause (3) of that article enables the Governor to make rules for the more convenient transaction of the business of the Government and for the allocation among the Ministers of the said business. What the appellant calls an order of the State Government is admittedly not expressed to be in the name of the Governor. But with that point we shall deal later. What we must first ascertain is whether the order of the Revenue Minister is an order of the State Government i.e. of the Governor. In this connection we may refer to Rule 25 of the Rules of Business of the Government of PEPSU which reads thus:

"Except as otherwise provided by any other Rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Rajpramukh and the Chief Minister."

According to learned counsel for the appellant his appeal pertains to the department which was in charge of the Revenue Minister and, therefore, he could deal with it. His decision and order would, according to him, be the decision and order of the State Government. On behalf of the State reliance was, however, placed on Rule 34 which required certain classes of cases to be submitted to the Rajpramukh and the Chief Minister before the issue of orders. But it was conceded during the course of the argument that a case of the kind before us does not fall within that rule. No other provision bearing on the point having been brought to our notice we would, therefore, hold that the Revenue Minister could make an order on behalf of the State Government.

9. The question, therefore, is whether he did in fact make such an



order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

xxx xxx xxx

11. *We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant."*

15. *This Court in **Municipal Committee v. Jai Narayan & Co. 2022 SCC OnLine SC 376** held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of an opinion by the particular individual. It was held as under:*

*"16. This Court in a judgment reported as **State of Uttaranchal v. Sunil Kumar Vaish, (2011) 8 SCC 670** held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. It was held as under:*

*"24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. (See **State of Punjab v. Sodhi Sukhdev Singh AIR 1961 SC 493**, **Bachhittar Singh v. State of Punjab, AIR 1963 SC 395**, **State of Bihar v. Kripalu Shankar (1987) 3 SCC 34**, **Rajasthan Housing Board v. Shri Kishan (1993) 2 SCC 84**, **Sethi Auto Service Station v. DDA (2009) 1 SCC 180** and **Shanti Sports Club v. Union of India (2009) 15 SCC 705**)."*

17. *Thus, the letter seeking approval of the State Government by the Deputy Commissioner is not the approval granted by him, which could be enforced by the plaintiff in the court of law."*



16. The basis of the claim of the writ petitioner is a letter written by the Secretary of the Soldier Welfare Department to the District Collector, Udaipur on 19.03.1971 for allotment of land. The Rules contemplate that if the possession is not taken within 6 months, the allotment shall be deemed to have been cancelled. Firstly, the inter-departmental communication dated 19.03.1971 cannot be treated to be a letter of allotment. Alternatively, even if it is considered to be a letter of allotment, the writ petitioner could not claim possession on the basis of such communication after more than 30 years in terms of the Rules applicable for allotment of land to the disabled ex-servicemen."

30. Further, in the judgment of "**Omkar Sinha Vs. Sehadat Khan**" 2022 INSC 491, it has been held as under:-

"11. Learned senior counsel for the appellants would point out that the High Court was wrong in deciding that by communication dated 14.05.2009, the Government circular dated 17.10.1977 was withdrawn. Actually, in law, the earlier circular made by Governor is withdrawn only on 11.06.2012. He would rely on **Bachhittar Singh v. State of Punjab and Another AIR 1963 SC 395**:

"8. What we have now to consider is the effect of the note recorded by the Revenue Minister of PEPSU upon the file. We will assume for the purpose of this case that it is an order. Even so, the question is whether it can be regarded as the order of the State Government which alone, as admitted by the appellant, was competent to hear and decide an appeal from the order of the Revenue Secretary. Article 166(1) of the Constitution requires that all executive action of the Government of a State shall be expressed in the name of the Governor. Clause (2) of Article 166 provides for the authentication of orders and other instruments made and executed in the name of the Governor. Clause (3) of that article enables the Governor to make rules for the more convenient transaction of the business of the Government and for the allocation among the Ministers of the said business. What the appellant calls an order of the State Government is admittedly not expressed to be in the name of the Governor. But with that point we shall deal later. What we must first ascertain is whether the order of the Revenue Minister is an order of the State Government i.e. of the Governor. In this connection we may refer to Rule 25 of the Rules of Business of the Government of PEPSU which reads thus:

"Except as otherwise provided by any other Rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Rajpramukh and the Chief Minister."

According to learned counsel for the appellant his appeal pertains to the department which was in charge of the



Revenue Minister and, therefore, he could deal with it. His decision and order would, according to him, be the decision and order of the State Government. On behalf of the State reliance was, however, placed on Rule 34 which required certain classes of cases to be submitted to the Rajpramukh and the Chief Minister before the issue of orders. But it was conceded during the course of the argument that a case of the kind before us does not fall within that rule. No other provision bearing on the point having been brought to our notice we would, therefore, hold that the Revenue Minister could make an order on behalf of the State Government.

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones."

31. *In "Municipal Committee, Barwala Vs. Jai Narayan and Company", 2022 (3) ICC 724, the Apex Court has observed as under:-*

*13. This Court has also considered that the inter-departmental communication and/or the notings on the file are not the decisions of the State. It has been held by the Constitution Bench in a judgment reported as **Bachhittar Singh v. State of Punjab AIR 1963 SC 395** that merely writing something on the file does not amount to an order. It was held as under:*

"10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following



*from the judgment of this Court in the **State of Punjab v. Sodhi Sukhdev Singh (AIR 1961 SC 493 at page 512]** :*

xxx xxx xxx

11. *We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant."*

xxxxxxx

15. *In a judgment reported as **State of Orissa and Others v. Mesco Steels Limited and Another (2013) 4 SCC 340**, this Court held that the High Court was in error in proceeding on an assumption that a final decision had been taken and in quashing what was no more than an interdepartmental communication constituting at best a step in the process of taking a final decision by the Government. It was held as under:*

"20. On the contrary, the issue of the show cause notice setting out the reasons that impelled the Government to claim resumption of a part of the proposed lease area from the respondent-company clearly suggested that the entire process leading up to the issue of the show cause notice was tentative and no final decision on the subject had been taken at any level. It is only after the Government provisionally decided to resume the area in part or full that a show cause notice could have been issued. To put the matter beyond any pale of controversy, Mr. Lalit made an unequivocal statement at the bar on behalf of the State Government that no final decision regarding resumption of any part of the lease area has been taken by the State Government so far and all that had transpired till date must necessarily be taken as provisional. Such being the case the High Court was in error in proceeding on an assumption that a final decision had been taken and in quashing what was no more than an inter-departmental communication constituting at best a step in the process of taking a final decision by the Government. The writ petition in that view was pre-mature and ought to have been disposed of as such. Our answer to question No. 1 is accordingly in the affirmative."

16. *This Court in a judgment reported as **State of Uttaranchal v. Sunil Kumar Vaish (2011) 8 SCC 670** held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. It was held as under:*

"24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file



*can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. (See **State of Punjab v. Sodhi Sukhdev Singh AIR 1961 SC 493**, **Bachhittar Singh v. State of Punjab AIR 1963 SC 395**, **State of Bihar v. Kripalu Shankar (1987) 3 SCC 34**, **Rajasthan Housing Board v. Shri Kishan (1993) 2 SCC 84**, **Sethi Auto Service Station v. DDA (2009) 1 SCC 180** and **Shanti Sports Club v. Union of India (2009) 15 SCC 705**)."*

32. Learned Senior counsel for the respondent-PUDA has raised an issue relating to res judicata. Upon examining the same and perusing the contents of the writ petitions, namely CWP No. 8614 of 2002 and CWP No. 13426 of 2004, it has transpired that CWP No. 8614 of 2002 was disposed of vide order dated 30.05.2002 (Annexure P-16). The relevant extract of the order dated 30.05.2002 is reproduced below:-

*"We have heard the learned counsel for the petitioner and with his assistance have gone through the records.
We dispose of the writ petition by giving direction to the respondent authorities to decide the legal notice dated 12.2.2002 Annexure P-17 within six months from the receipt of the copy of the order along with attested copy of this petition."*

33. The claim of the petitioners was rejected vide office order dated 25.09.2002 (Annexure P-17). Thereafter, the petitioners filed CWP No. 13426-2004 seeking quashing of the office order dated 25.09.2002 as well as the promotion order dated 02.11.2001 (Annexure P-8), and further prayed for issuance of a writ in the nature of mandamus directing consideration of the petitioners for promotion. Although, in CWP No. 13426-2004, the petitioners made a reference to the filing of CWP No. 8614-2002 in paragraph 17, they intentionally and deliberately concealed the fact that the promotion order dated



02.11.2001 (Annexure P-8) had already been challenged therein. The said writ petition was disposed of vide order dated 31.08.2004. The order reads as under:-

*“Heard the learned counsel for the petitioners.
Dispose of with a direction to the respondents to take a decision on the representation Annexure P-23 date of 15.06.2004 served upon the respondents within a period of two months from the date of receipt of a certified copy of this order by passing a speaking order.”*

34. Subsequently, the claim of the petitioners was rejected vide office order dated 08.11.2004 (Annexure P-25) and now the petitioners have challenged the aforesaid order along with promotion order dated 02.11.2001 (Annexure P-8), by filing the present writ petition. It is evident that the petitioners have conveniently concealed the fact that the promotion order dated 02.11.2001 (Annexure P-8) had already been challenged by them on two earlier occasions. Consequently, by applying the principle of res judicata, the petitioners are estopped by their own act and conduct from re-challenging the promotion order dated 02.11.2001 (Annexure P-8).

35. Moreover, as per the record, the replication has been filed only to the reply submitted by respondent Nos. 2 and 3. No replication has been filed to the reply/written statement of the contesting respondent Nos. 1 & 4, namely PUDA. This clearly indicates that the petitioners consciously chose not to rebut the submissions made by respondent Nos. 1 & 4. As a result, all averments and submissions contained in the written statement of respondent Nos. 1 & 4 have remained unrebutted. In the absence of any replication, the petitioners' subsequent plea controverting the same submissions cannot be accepted.



36. It is a settled principle of law that a candidate has only a right to be considered for promotion in accordance with the rules in force on the date of consideration. This principle stands well-affirmed in the judgments relied upon by the respondents. In view of the settled legal position, this Court does not find much merit in the submissions advanced by the learned Senior Counsel appearing on behalf of the petitioners.

37. Given the above discussion, this Court does not find any merit in the present writ petition and the same is hereby dismissed. All pending miscellaneous application(s) shall also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

07.03.2024
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No