

CWP-10405-2018 & 11312-2018

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

208 (2 cases)

Date of decision:12.03.2026

1.

CWP-10405-2018

Diwan Singh Phogat and others

.....Petitioners

VERSUS

State of Haryana and others

.....Respondents

2.

CWP-11312-2018

Vijay Kumar and others

.....Petitioners

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. V.D. Sharma with Mr. Jaspreet Singh and Mr. Vishesh Sharma, Advocates for the petitioners in CWP-10405-2018.

Mr. Kanwal Goyal, Advocate and Ms. Sheena Dahiya, Advocate for respondent-HPSC in CWP-11312 & 10405 of 2018.

Mr. Vishal Garg, Advocate for respondents No.4 and 5 in CWP-11312-2018.

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Mr. Udit Garg, Advocate for respondent No.2 in CWP-10405-2018.

HARPREET SINGH BRAR, J. (Oral)

CM-13024-CWP-2018 in CWP-11312-2018

The present application has been filed under Section 151 CPC for permission to place on the record the result of written test declared by HPSC dated 27.07.2018 (Annexure P-6) and the order passed by this Court on 03.08.2018 (Annexure P-7).

In view of the grounds mentioned in the application, the same is allowed, as prayed for, subject to all just exceptions. Annexures P-6 and P-7 are ordered to be taken on record.

Registry is directed to place the same at the appropriate place.

CM-18805-CWP-2018 in CWP-11312-2018

Allowed as prayed for, subject to all just exceptions.

MAIN

1. This order shall dispose of the above-mentioned writ petitions as they arise from a similar factual matrix. However, for the sake of brevity, the facts are taken from **CWP-10405-2018**.

2. The present petition(s) have been filed under Article 226/227 of the Constitution of India for issuance of a writ, order or direction in the nature of *certiorari* for quashing the inaction of the respondents for advertising 03 posts of Sub Divisional Engineer (Electrical) which are more

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than 40% quota meant for direct recruitment as per Haryana State Agriculture Marketing Board Service Rules, 2008 published vide advertisement No.3 of 2017, dated 07.12.2017 (Annexure P-1). Further praying for issuance of a writ in the nature of *mandamus* directing the respondents to recruit only 02 posts of Sub Divisional Engineer (Electrical) by direct recruitment in pursuant of advertisement (Annexure P-1) which are 40% out of total 06 vacancy as per Rules and not to fill up the vacancies of promotion quota.

3. Learned counsel for the petitioner(s), *inter alia*, contends that respondent No.3, vide advertisement dated 07.12.2017, invited applications for the post of Sub Divisional Engineer (Electrical) in the State of Haryana, as is evident from Annexure P-1 appended with the paper book. It is submitted that, in terms of Rule 10 of the Haryana State Agricultural Marketing Board Service Rules, 2008, the recruitment to the service is required to be made strictly in accordance with the provisions contained in Appendix 'B' thereof. Further, as per Rule 11 of the said Rules, promotion to the posts in question is to be effected on the principle of seniority-cum-merit, and mere seniority does not confer any indefeasible right to promotion. Learned counsel further draws the attention of this Court to page 25 of the paper book, wherein the prescribed method of recruitment has been delineated, which clearly stipulates that 40% of the posts are to be filled by way of direct recruitment, whereas 60% are to be filled through promotion

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from amongst eligible Junior Engineers. However, it is contended that a perusal of the impugned advertisement reveals a patent deviation from the statutory Rules, inasmuch as the allocation of posts does not conform to the prescribed quota.

3.1 Learned counsel further submits that as per the advertisement, applications were invited for three posts of Sub Divisional Engineer (E), whereas the cadre strength of the said post, as reflected at page 24 of the paper book, is six. Applying the prescribed quota of 40%, the number of posts earmarked for the relevant source would come to 2.4. Placing reliance upon the judgment of the Hon'ble Supreme Court in *State of U.P. and another versus Pawan Kumar Tiwari and others, (2005) 2 SCC 10*, it is contended that where the fractional value is less than 0.50, the same is liable to be rounded down, and where it is 0.50 or above, it is to be rounded up. Consequently, 2.4 being less than 2.5, the number of posts could not have exceeded two, and therefore, the issuance of advertisement for three posts is *ex facie* arbitrary and contrary to the settled principles of law. Learned counsel also refers to Annexure R-3/1 appended with the written statement filed on behalf of respondent No.3-Commission, being the requisition sent by respondent No.2. A perusal of the same (page 70 of the paper book) unequivocally indicates that the selection process was required to be governed by the Haryana State Agricultural Marketing Board Service Rules, 2008. In view thereof, it is further submitted that the impugned

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advertisement (Annexure P-1), to the extent that it invites applications for three posts of Sub Divisional Engineer (E), is unsustainable in the eyes of law and deserves to be set aside being violative of the statutory Rules governing the field.

4. *Per contra*, learned counsel for respondent No.2 is unable to dispute the position that the earlier Haryana State Agricultural Marketing Board Service Rules, 1974 stand repealed vide notification dated 04.01.2008 (Annexure P-2). He is also unable to controvert the factual assertion that the cadre strength of the post of Sub Divisional Engineer (Electrical) is six and that 40% of the quota is earmarked for promotion from amongst Junior Engineers. However, learned counsel for respondent No.2 submits that the vacancies in question had arisen prior to the promulgation of the Haryana State Agricultural Marketing Board Service Rules, 2008. On this premise, it is contended that the settled principle of “old vacancies to be governed by old rules” would be attracted.

5. I have heard learned counsel for the parties and have perused the record with their able assistance. It emerges from the record that respondent No.2 had forwarded a requisition to respondent No.3-Commission for initiating the selection process by inviting applications from eligible candidates for recruitment to three posts of Sub Divisional Engineer (Electrical) (Class-II), i.e., General-02 and SC-01. Pursuant thereto, respondent No.3 issued advertisement bearing No. 3(6) of 2017 dated

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07.12.2017 (Annexure P-1). It is not in dispute that the Appendix appended to the Haryana State Agricultural Marketing Board Service Rules, 2008 (Annexure P-2) prescribes the designation and the cadre strength of the posts. A perusal thereof reveals that the cadre strength of Sub Divisional Engineer (Electrical) is six (06). The Rules further stipulate the method of recruitment, providing that 40% of the posts are to be filled by way of direct recruitment and 60% by promotion, out of which a specified proportion is to be filled from amongst Junior Engineers. However, a perusal of the impugned advertisement (Annexure P-1) demonstrates that applications were invited for three posts of SDE (Electrical) through direct recruitment, which, prima facie, exceeds the quota prescribed under the statutory Rules.

6. In this regard, reliance may be placed upon the judgment of the Hon'ble Supreme Court in ***Pawan Kumar Tiwari (supra)***, wherein the manner of dealing with fractional vacancies has been authoritatively settled. It has been held that where the fraction is one-half or more, it is to be rounded off to the next higher integer, whereas where the fraction is less than one-half, it is to be ignored. Applying the aforesaid principle to the present case, the permissible number of posts could not have exceeded two, and thus, the action of the respondents in advertising three posts is unsustainable and contrary to the governing Rules. Relevant extract thereof is reproduced herein below:-

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“.....7. The High Court has found mainly two faults with the process adopted by the State Government. First, the figure of 46.50 should have been rounded off to 47 and not to 46; and secondly, in the category of freedom fighters and ex-servicemen, total 3 posts have been earmarked as horizontally reserved by inserting such reservation into general quota of 46 posts which had the effect of pushing out of selection zone three candidates from merit list of general category.

8. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.

(emphasis supplied)

7. Moreover, the principle of ‘old vacancy old rules’ has been overruled by a Three Judge Bench of the Hon’ble Supreme Court in ***State of H.P. Versus Raj Kumar (2023) 3 SCC 773***, wherein speaking through Justice P. Sri Narasimha, the following observations were made:-

“11. In view of the above principles, flowing from the constitutional status of a person in employment with the State, we have no hesitation in holding that the observations in Rangaiah that posts which fell vacant prior to the amendment of Rules would be governed by old Rules and not by new Rules do not reflect the correct position of law. We have already explained that the status of a Government employee involves a relationship governed exclusively by rules and that there are no rights outside these rules that govern the services. Further, the Court in Rangaiah's case has not justified its

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observation by locating such a right on any principle or on the basis of the new Rules...

xx xx xx

36. 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."

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(Emphasis supplied)

8. In view of the foregoing discussion and the settled position of law, this Court is of the considered opinion that the action of the respondents in issuing the impugned advertisement to the extent of inviting applications for three posts of Sub Divisional Engineer (Electrical) through direct recruitment is not in consonance with the applicable Rules and is, thus, legally unsustainable. The cadre strength admittedly being six, and the quota for direct recruitment being 40%, the number of posts permissible for direct recruitment would not exceed two, upon application of the principle of rounding off as laid down by the Hon'ble Supreme Court ***Pawan Kumar Tiwari (supra)***.

9. Accordingly, both the present writ petitions are allowed. The impugned advertisement dated 07.12.2017 (Annexure P-1) is hereby quashed to the limited extent that it provides for filling up of three posts of Sub Divisional Engineer (Electrical) through direct recruitment, while only two posts could have been validly advertised under the direct recruitment quota.

10. Consequently, one post out of the advertised posts shall be treated as falling within the promotional quota and shall be filled strictly in accordance with the applicable Rules, by way of promotional quota.

11. Pending miscellaneous application(s), if any, shall stands disposed of.

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12. Photocopy of this order be placed on the file of connected cases.

(HARPREET SINGH BRAR)
JUDGE

March 12, 2026
P.C

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