

(2018) 05 RAJ CK 0205

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4361 of 2017

Rajeev Kumar Jaiswal @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 31-05-2018

Acts Referred:

All India Council for Technical Education Act 1987 — Section 10(1), 10(i)(v), 23(1)
Rajasthan Technical Education (Engineering) Service Rules, 2010 — Rule 42
Constitution of India, 1950 — Article 14, 16, 21

Citation : (2018) 05 RAJ CK 0205

Hon'ble Judges : GOPAL KRISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : Harish Purohit, Navdeep Dadhich, P.R. Singh, Deepika Purohit

Final Decision : Allowed

Judgement

G.K. Vyas, J.

The instant writ petition has been filed by the petitioners challenging the Entry No.2 to the Schedule appended to the Rajasthan Technical Education

(Engineering) Service Rules, 2010 (Rules of 2010) so far as it treats the qualification possessed by the petitioners as not prescribed for the post of

Head of Department and Principal and prayed to quash the same and also direct the respondents to consider their case for the purpose promotion on

the post of Principal under the Rules of 2010, if they are found otherwise eligible and suitable.Â

Succinctly stated, the facts of the case are that the petitioner No.1- Rajeev Kumar Jaiswal, was appointed to the post of Lecturer (Electrical

Engineering) vide order dated 12.01.1990 and consequent to the recommendations made by the Rajasthan Public Service Commissioner (RPSC) after

due selection under the Rajasthan Technical Education Services Rules, 1973 (â??

Rules of 1973?). The petitioner No.1 satisfactory served with the respondents and vide order dated 17.11.1994 he was promoted to the post of Senior Lecturer in the subject- Electronic Engineering and further promoted on 23.06.2003 to the post of Head of Department against the vacancy of the year 2000-01.Â

The petitioner No.2 Pokar Lal Malviya, was initially appointed on the post of Lecturer (Electronic Engineering) vide order dated 18.03.1988 after due selection through RPSC in accordance with the Rules of 1973. He was further promoted to the post of Senior Lecturer on 27.10.1994 in the subject of Electronic Engineering.

The petitioner No.2 was further promoted to the post of Head of Department against the vacancy of the year 1998-99 and due to shortage of principals, he was directed to discharge the duties of Principal at Government Polytechnic College, Sirohi vide order dated 15.10.2012 and since then he is discharging the duties of Principal.Â

Petitioner No.3- Ganga Singh Verma, was initially appointed on the post of Lecturer (Electrical Engineering) vide order dated 21.06.1991 through

RPSC in accordance with Rules of 1973. After rendering satisfactory service, he was promoted to the post of Senior Lecturer in the Electrical

Engineering vide order dated 16.03.2005 and further promoted as Head of Department against the vacancy of the year 2002-03 and due to shortage

of principals, the petitioner was directed to discharge his duties as Principal at Govt. Polytechnic College, Sirohi.Â

All the petitioners were promoted on the post of Head of Department in accordance with Rules of 1973 and as per Rules of 1973, an officer holding

the post of Head of Department, was eligible to be considered for promotion on the post of Principal under the said Rules, which is evident from the

Schedule appended to the Rules of 1973. As per Schedule of Rules of 1973, an officer working on the post of Head of Department for more than five

years was eligible to be considered for promotion to the post of Principal. In the writ petition, it is stated by the petitioners that as per Rules of 1973,

they were possessing the requisite experience of five years for the post of Head of Department, therefore, they are eligible for promotion on the post

of Principal in accordance with Rules of 1973 and the vacancies of Principal were also available. However, for the reasons best known to the

respondents, they did not convene the meeting of DPC for regular promotion on the post of Principal, therefore, all the three petitioners were deprived

from an opportunity to be considered for promotion on the post of Principal. According to petitioners, there is no dispute about the fact that they were

discharging the duties of the post of Principal due to shortage of regular Principals, therefore, entitled for regular promotion on the post of principal

because they are possessing the requisite five years' experience on the post of Head of Department but due to inaction on the part of the State, no

meeting of DPC was convened for promotion on the post of Principal under the Rules of 1973.

The case of the petitioner is that All India Council for Technical Education Act, 1987 (Act of 1987) came into force with effect from 23.12.1987 and

as per provisions of the Act, All India Council for Technical Education (AICTE) was established with a object to promote proper planning and

coordinated development in the field of technical education system throughout the country.

It is submitted in the writ petition that under Section 10 (1) of the Act of 1987, the function of the Technical Education Council includes laying down

the norms and standards for the courses, curricula, physical and instructional facilities, staff pattern, staff qualification, quality instructions, assessment

and examination.Â

In the official Gazette dated 13.03.2010 in exercise of powers conferred by subsection (1) of Section 23 read with Section 10 (i) and (v) of the Act of

1987, All India Council for Technical Education (Pay Scale) Service Condition and Qualification for the Teachers and other Academic Staff in

Technical Institutions (Diploma) Regulation 2010 (Regulation of 2010) came to be published, in which the qualifications for various posts including the

post of Principal were prescribed. Before publication of the aforesaid Gazette in the year 2010, promotions of the faculties of the Polytechnic College

were governed by the Rules of 1973 only and the recommendations or the qualification prescribe by the AICTE were not adhered to by the

respondents in the State of Rajasthan.Â

The AICTE prior to publication of Regulation of 2010 issued a Notification dated 30.12.1999 intimated recommendations regarding revision of pay

scale, service conditions of teachers of technical institutions (diploma) and as per

petitioners, paragraph 5.2 (i) and 5.2 (ii) of the Notification issued by the AICTE it is crystal clear that revised qualifications and experience will be required only for fresh appointees to that post and will not be insisted on for existing incumbent working on those positions and a relaxation for five years was allowed to departmental candidates applying for the posts by way of open competition. It is stated in the writ petition that the Notification as issued by the AICTE in the year 1999 makes it clear that qualification for faculties including post of Senior Lecturer, Head of Department and Principal were laid down by the Council, but for the reasons best known to respondents No.1 and 2, the said notification was not adhered to and the recruitment and promotions were made as per the Schedule of Rules of 1973.Â

The petitioners were also promoted as Head of Department under the Rules of 1973 and after publication of the Notification of 1999 (Annex.15), therefore, as per petitioners by any stretch of imagination, it cannot be said they are responsible for any failure or irregularity on their part. As per petitioners, a bare reading of the Notification of 1999 and the Regulation of 2010 make it clear that while publishing Regulation of 2010, virtually qualification prescribed by the Notification of 1999 were adopted so far as post of Head of Department is concerned. In the writ petition, it is specifically pleaded that norms for the faculties were prescribed by the Regulation of 2010 by the AICTE, therefore, with a view to bring unity, the respondent- State Government framed the Rules known as â??Rajasthan Technical Education (Engineering) Service Rules, 2010, but brought into force with effect from 01.09.1996 retrospectively. Under Rule 42 of the Rules of 2010, it is expressly provided that all Rules and Orders in relation to matters covered by these Rules and in force immediately before commencement of these rules are hereby repealed and proviso added with Rule 42 provides that any action taken or orders passed under the rules so repealed shall be deemed to have been taken or passed under the provisions of these rules. It has also been provided that any promotions/financial benefits/ other benefits which have already been given before 31.12.2009 under the Rules so repealed shall not be adversely affected by the provisions of these rules. The petitioners averred in the writ petition that as per Rule 42 of the Rules of 2010, any action taken or order passed under the Rules so prescribed,

was saved. Thus it is clear that the order of promotion of the petitioners as Head of Department was deemed to have been made under the Rules of

2010 and it was further made clear that said Rules will not affect the benefit which were already given before 31.12.2009. Therefore, it was duty of

the respondents to have considered and treat the petitioners to be promoted on the post of Head of Department in accordance with Rules of 2010 and

must have allowed all the benefits including the opportunity of promotion to the post of Principal under the Rules of 2010.Â

The petitioners submitted application seeking permission to grant study leave to acquire the Master Degree and sought and made request that they

may be posted at the Headquarters so as to enable them to acquire the prescribed Masters Degree under the Rules of 2010, however, those

applications were not considered. The contention of the petitioner is that they are holding the post of Head of Department on substantial basis, which

is evident from the seniority list published by the respondents and as per Rules of 2010, the qualification prescribed for the post of Principal in the

Regulation of 2010 framed by the AICTE were adopted in the Rules of 2010 by the State of Rajasthan.Â

As per Rules, the post of Principal/Joint Director is required to be filled in by way of promotion. The petitioners stated in the writ petition that Rule 42

of the Rules of 2010 saved the orders of promotion already made and treated the same to have been passed under the Rules of 2010, therefore, one

Vijay Singh, who was similarly situated to the petitioner, came to be promoted as Principal against the vacancy of 2009-10 in the year 2015 and was

given posting vide order dated 06.01.2015 as Principal at Govt. Polytechnic College, Sawai Madhopur. Their names were included in the seniority list

of Principal/Joint Director, which is evident from Annex.20 dated 06.03.2017. The petitioners were waiting and hopeful that as and when DPC shall

be convened for considering the candidature of eligible persons to the post of Principal, their candidature will be considered in accordance with Rules

of 2010, but it is very strange that the respondents failed to convene meeting of DPC in time, therefore, eligible persons like petitioners were deprived

from their right of consideration for promotion. Further, one Sh. L.C. Panwanr, preferred a writ petition being SBCWP No.967/2017 at Jaipur Bench

for the purpose of promotion, in which an order was passed on 15.02.2017 that the respondents shall determine the vacancy of each year and consider

the candidature of the officers for the purpose of promotion as per the Scheme of 2010.

The respondents in view of aforesaid directions proceeded to convene the meeting of DPC for promotion on the post of Principal and the petitioners

hopeful that they too will be considered as per the Scheme of 2010, but they were taken by surprise when they came to learn that their candidature is

not forwarded treating them not to possessing the requisite qualification under the Rules of 2010.

The contention of the petitioners is that the representation was filed by them to consider their candidature by treating them eligible for promotion to the

post of Principal under the Rules of 2010 but of no consequence. Learned counsel for the petitioners submit that once the petitioners were promoted

on the post of Head of Department prior to coming into force of the Rules of 2010 and their promotions were treated to be an order for promotion

under the Rules of 2010 under the specific clause, then it was duty of the respondents to have allowed benefits following from such order of promotion

to the post of Head of Department and treat the petitioners eligible for the purpose of promotion to the post of Principal. As per petitioners, their

candidature has illegally been not considered by treating them ineligible under the Rules of 2010. The Notification of 1999 was issued by the AICTE

was never implemented by the respondents and straightway the Regulation of 2010 were implemented by publishing Rules of 2010, therefore, it was

the duty of the respondents to adopt the standards prescribed by the AICTE in toto. Had the respondents done so, then in the year 1999 itself

petitioners became eligible for the purpose of promotion on the post of Principal and further the respondent State Government has failed to adhere the

standards prescribed by the AICTE, therefore, the petitioner cannot be made the penalized for inaction on the part of the State. It is thus prayed that

Entry No.2 of the Schedule appended to the Rules of 2010 that treating the petitioners ineligible for the purpose of promotion to the post of Principal

may kindly be declared illegal because a bare perusal of the Rules of 2010 makes it clear that the Rules of 2010 were implemented w.e.f. 01.09.1996

retrospectively. Therefore, in absence of same rules for almost four teen years, the respondents passed the order under the Rules of 1973, which rules

were having force of law at the relevant point of time, therefore, it was expected from the respondents that respondents would saved all the orders

passed during the interregnum period, therefore, by way Rule 42, and the notes appended immediately after the Schedule saved all order passed and

action taken under the repealed Rules of 1973.Â

It is vehemently argued by the learned counsel for the petitioners that before enactment of the Rules of 2010, the service conditions were governed

under the Rules of 1973 inspite of the fact that in the year 1999, notification was issued and recommendations regarding revision of pay scale, service

conditions of teachers of Technical Institutions (Diploma) was issued. Further, it is admitted position of the case that till formation of the Rules of

2010, the respondent Department applied the Rules of 1973 for the purpose of promotion and other service conditions, but abruptly when Rules of

2010 were promulgated it has been given effect retrospectively w.e.f. 01.09.1996. As per learned counsel for the petitioners, there is no rational or

nexus to give retrospective effect to the Rules of 2010 with effect from 01.09.1996 because admittedly till formation of the Rules of 2010, the

respondent Department applied the provisions of the Rules of 1973 to govern the service conditions of the employees of the respondent

Department.Â

To substantiate the aforesaid argument, it is submitted that in the Rules of 2010, a proviso to Rule 42 of the Rules was purposely inserted so as to

protect all the actions taken under the Rules of 1973 till 2010. Therefore, it is a case in which arbitrarily the respondent State Government gave

retrospective effect to the Rules of 2010 w.e.f. 01.09.1996. It is admitted position of the case that Rules of 1973 remained in force till formation of the

new Rules of 2010 and all actions were taken by the respondent Department as per Rules of 1973 till 2010 when rules of 2010 were framed, then,

there is no rational or nexus to give retrospective effect to the Rules of 2010 w.e.f. 01.09.1996. According to learned counsel for the petitioners due to

such type of illegal applicability of the Rules, the petitioners have been deprived of their valuable right of consideration for promotion on the post of

Principal because before 2010, they were very much entitled and eligible for promotion on the post of Principal. Therefore, the respondents are under

obligation to consider their candidature for promotion on the post of Principal as per Rules of 1973 against the vacancies which were in existence till

formation of the Rules of 2010.Â

Learned counsel for the petitioners prayed that the date 01.09.1996 fixed in the Rules to give effect may kindly be quashed and set aside and the

respondents may kindly be directed to consider the case of the petitioners for promotion on the post of Principal in accordance with Rules of 1973

against the vacancies which remained unfilled till formation of Rules of 2010.

Per contra, by way of filing reply, it is averred that an incumbent holding the post of Head of Department had promotional channel of Principal in the

Rajasthan Technical Education Service Rules, 1973, however, since the State Government has enacted the Rajasthan Education Engineering Rules,

2010 in concurrence to All India Council for Technical Education (Pay Scale) Service Condition and Qualification for the Teachers and Other

Academic Staff in Technical Institutions (Diploma) Regulations, 2010, therefore, now an incumbent seeking promotion to the post of Principal/Joint

Director must have qualifications as required vide the Rules of 2010 and AICTE Regulation, 2010. The aspirant if having requisite experience in view

of Rules of 1973 cannot be considered for the purpose of promotion to the post of Principal/Joint Director because as per settled principle of law,

promotion is not a fundamental right rather it is a legal right provided the employee possesses requisite qualification as per the rules.Â Â Â

In reply to paragraph 12 and 13, it is specifically pleaded that AICTE Act, 1987 was promulgated with a view to uplift the standard of Education in the

field of Technical and Engineering and accordingly in order to implement the planning norms and standards for the different branches of technical

education are provided by the regulation issued from time to time while exercising the powers conferred in the Act. Accordingly, AICTE Regulation,

2010 were framed and enacted, which is followed by the respondent- State and the Rajasthan Technical Education Engineering Service Rules, 2010

were framed.

According to learned Addl. Advocate General, the State Government is required to adhere and follow the latest regulation for the purpose of

appointment/promotions, financial benefits and other service conditions and thus if some relaxation was granted by the AICTE in the notification dated

30.12.201 999, then the same is of no consequence because presently for the purpose of promotion and other service condition the provisions

prescribed vide Regulation of 2010 are applicable, therefore, the petitioners are

not eligible for promotion as per the Rules of 2010. Further, the incumbents falling within the criteria of promotion by way of appointment to the post of Head of Department in the Rules of 1973 were accorded promotion as per Rules of 1973 but now the criteria has been changed and any incumbent seeking promotion to the post of Principal is required to possess the qualification as per Regulation, 2010 and Rules of 2010 and the petitioners are not possessing the eligibility, therefore, they are not entitled for any relief. With regard to contention of the petitioners for giving effect to the Rules of 2010 from 01.09.1996, it is submitted that the State Government is under obligation to follow Regulation framed by the AICTE for the purpose of qualification. The petitioners are not possessing the said experience and the qualification as provided in the Rules of 2010, therefore, the petitioners are not entitled for promotion. With regard to claim of the petitioners for benefit on account of Rule 42, it is submitted that under Rule 42, if any benefit conferred prior to 31.12.2009, the same would not adversely affected because the Rules were enacted in the year 2010, in which different qualification was prescribed. It is further argued that jurisdiction with regard to prescribing qualification for promotional post is the sole domain of the State Government and the candidate is required to possess the requisite qualification on the date of his/her consideration for the purpose of appointment/promotion. Therefore, in this background, Entry No.2 of the Schedule appended to the Rules of 2010 cannot be held to be ultra virus because earlier promotions were made in accordance with Rules of 1973, therefore, there is no force in the writ petition and the same is liable to be dismissed.Â

After hearing the learned counsel for the parties, it emerges from the facts that before promulgation of the Rajasthan Technical Education (Engineering Service) Rules, 2010, Rules of 1973 were in force and admittedly till 2010 when the Rules of 2010 were made applicable, all the benefits and promotions were given to the employees in accordance with Rules of 1973. The respondent State is not disputing the aforesaid fact, but pleaded before us that all rules and orders in relation to matters covered by these Rules and in force immediately before the commencement, were in the year 2010 under Rule 42 but a proviso was added that any action taken or orders passed under the Rules so repealed, shall be deemed to have been taken

or passed under the provisions of these Rules.Â

Rule 42 of the Rules of 2010 reads as under: -

42. Repeal and Saving- All rules and orders in relation to matters covered by these rules and in force immediately before commencement of these rules are hereby repealed.

Provided that any action taken or order passed under the rules so repealed shall be deemed to have been taken or passed under the provisions of these rules.Â

Provided further that any promotions financial, benefits/ other benefits which have already been given before 31.12.2009 under the rules so repealed shall not be adversely affected by the provisions of these rules.Â?

Â It is admitted position of the case that Rules of 2010 were notified on 08.01.2010 vide Notification dated 19.01.2010, which is placed on record as

Annex.18. According to Rule 1 (2), it is specifically provided that, â??they shall be deemed to have coming into force with effect from 01.09.1996.Â?

Meaning thereby, Entry No.2 of the Schedule appended to the Rules of 2010 were made applicable w.e.f. 01.09.1996. There is no dispute before us

that the petitioner No.1 was promoted on the post of Head of Department in the year 2000-01 in accordance with Rules of 1973 vide order dated

23.06.2003. The petitioner No.2 Pokar Lal Malviya was promoted on the post of Head of Department vide order dated 21.02.2005 against the

vacancy of 1998-99. Likewise, petitioner No.3 Ganga Singh Verma was promoted on the post of Head of Department vide order dated 16.03.2005

against the vacancy of 2002-03, and all the three petitioners are performing the duties of Principal due to shortage of Principles in the respondent

Department.

Â The aforesaid facts loudly speaks that the respondents are not disputing the fact that the petitioners were promoted on the post of Head of

Department as per Rules of 1973 but now Rules of 2010 came into force w.e.f. 08.01.2010 and have made applicable retrospectively i.e. from

01.09.1996, therefore, the respondent State Government is not treating the petitioners entitled for promotion on the post of Principal because they are

not possessing the qualification as per Entry No.2 of the Schedule appended to the Rules of 2010 for the simple reason that these rules were made

applicable w.e.f. 01.09.1996.

Â Upon consideration of entire facts of the case, arguments, as also pleadings, it emerges from the fact that there was total inaction on the part of the

State for not enacting the Rules of 2010 as per the Notification dated 30.12.1999 within time, therefore, at the time of enactment of the Rules of 2010,

under Rule 42, all the orders of promotion/appointments were made in accordance with Rules of 1973 were saved. It is settled principle of law that

existing vacancy is required to be filled in as per the existing Rules and admittedly prior to 08.01.2010, the respondents themselves followed the Rules

of 1973 and promotions were accorded to all the employees including the petitioners on the post of Head of Department under the Rules of 1973. All

the three petitioners were regularly promoted on the post of Head of Department and since long, they are performing the duties of Principal due to

shortage of regular Principals but now the respondents denied the right to consideration only on the ground that the Rules of 2010 were framed and

given effect w.e.f. 01.09.1996.

Â It is settled principle of law that promotions are to be made as per existing Rules and admittedly due to inaction on the part of the respondent, the

post of Principal was not filled in for long time when Rules of 1973 were in force, and later on, when the Rules of 210 were framed, a specific proviso

under Rule 42 was made to protect all those promotions which were made under the Rules of 1973 and the same were deemed to be made under the

Rules of 2010.Â

Â Upon examination of the entire reply and arguments advanced by the learned Addl.Â Advocate General, we are of the opinion that there is no

nexus or rational for giving retrospective effect to the Rules of 2010 w.e.f. 01.09.1996. Although there is jurisdiction left with the State Government to

frame Rules and to give retrospective effect, but it is a case in which there is reply of the State Government that the Rules of 2010 were promulgated

as per the AICTE Regulation, notified on 30.12.1999, before that they applied the Rules of 1973, therefore, under Rule 42 of the Rules of 2010, all the

orders passed prior to application of Rules of 2010, were saved.

Â In view of above discussion, it is obvious that the consequence of giving retrospective effect to the Rules of 2010 w.e.f. 01.09.1996, to snatch the

right of those employees including the petitioners from their right of

consideration under the Rules of 1973 for promotion, which were admittedly followed by the respondent Department till 08.01.2010. It is true that legal right can be claimed as per provisions of Rules but at the same time we cannot loose sight of the fact that no such Rule can be framed to snatch right of consideration of the employees like the petitioners, when they were having existing right under the Rules when vacancies arose. There is no doubt that the State Government has jurisdiction to frame Rules but at the same time, it cannot be accepted that the State Government can act arbitrarily so as to snatch existing rights of the employees, therefore, the action of the respondent State for giving retrospective effect to the Rules of 2010 w.e.f. 01.09.1996, it totally illegal and unconstitutional and is violative of Articles 14, 16 and 21 of the Constitution of India because number of persons were considered for promotion, and accorded promotion prior to 08.01.2010 as per Rules of 1973 against the vacancies, which were in existence before 08.01.2010 but by way of giving retrospective effect to the Rules of 2010 the said rights of the petitioners is snatched.Â

Â The upshot of the above discussion is that the writ petition filed by the petitioners deserves to be allowed, accordingly, the same is allowed. The retrospectivity given to the Rules of 2010 with effect from 01.09.1996 is hereby declared illegal, unconstitutional and accordingly the same hereby struck down and the respondent State is directed to make applicable Rules prospectively i.e. from the date of enactment. However, it is clarified that the vacancies which arise after 2010, shall be filled in, in accordance with Rules of 2010 and all those unfilled vacancies of Head of Department and Principal till 08.01.2010, shall be filled in, in accordance with Rules of 1973. The respondents are directed to consider the candidature of the petitioners for promotion on the post of Principal/Joint Director against the vacancies, which remained unfilled, till January, 2010 and the said exercise may be made within a period of six months from the date of receipt of certified copy of this order. No costs.