
(2013) 05 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5965 of 2011 (O and M)

Sandeep Kharab

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2013) 171 PLR 660 : (2014) 1 SCT 779

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Y.P. Malik, for the Appellant; D.D. Gupta, A.A.G., Haryana, for the State, Mr. R.K. Malik with Mr. Tej Pal Dhull, in CWP No. 5965 of 2011 and Respondent No. 5 in CWP No. 7031 of 2011, for the Respondent

Judgement

Rajesh Bindal, J.—This order will dispose of CWP Nos. 5965 and 7031 of 2011, as common questions of law and facts are involved. However, the facts have been extracted from CWP No. 5965 of 2011.

2. The petitioner, who was selected and appointed as Lecturer in Computer Engineer, vide letter dated 3.8.2007, has filed the present petition challenging the promotion of the private respondents to the post of Senior Lecturer claiming that he is senior most Lecturer working in Govt. Polytechnic Education Society, Uttawar, District Palwal and further the Lecturers, who had been promoted, were not eligible under the Haryana Technical Education Department (Group A) Service Rules, 1986 (for short, "the Rules").

3. Learned counsel for the petitioner submitted that respondent No. 5 herein was appointed as Lecturer in Computer Engineering on regular basis on 21.8.2007, whereas respondents No. 6 and 7 were appointed as Lecturer on regular basis on 10.8.2007 and 7.8.2007, respectively. In terms of the Rules for promotion to the post of Senior Lecturer, eight years' experience as Lecturer in the subject is required. As the private respondents did not have the requisite experience on the date when meeting of Departmental Promotion Committee (for short, "DPC") was held on 21.3.2011, they have wrongly been promoted.

4. He further submitted that the Rules were amended on 11.11.2008 providing for eight years" regular service. Prior to that, eight years" experience was required. Even if the experience gained by the private respondents prior to their regular appointment is counted in the case of respondent No. 5, he was having six years six months and two days" experience. If the experience of one year, two months and 21 days upto the date of amendment of the Rules providing for regular service is counted, on that date, respondent No. 5 was merely having experience of 7 years, 8 months and 23 days, hence, was not eligible when the Rules were amended.

Similarly, respondent No. 6 was having 4 years, 5 months and 25 days" experience prior to his regular appointment. If the experience of one year, one month and three days upto the date of amendment of the Rules providing for regular service is counted, on that date, he was merely having experience of 5 years, 6 months and 28 days.

Respondent No. 7 was having 6 years, 8 months and 22 days" experience prior to his regular appointment. If the experience of one year, 3 months and 05 days upto the date of amendment of the Rules is counted, on that date, he was having 7 years, 11 months and 27 days" experience.

5. It was submitted that on 21.3.2011, when the meeting of DPC was held for considering the cases for promotion to the post of Senior Lecturer, the amended Rules were required to be applied. As the amendment had already been carried in the Rules on 11.11.2008, in terms thereof, 8 years" regular service was required. The regular service of all the private respondents, who were promoted as Senior Lecturers was less than 4 years. 11k benefit of their earlier service rendered on ad-hoc basis could not be granted as their cases could not be considered under the un-amended Rules. While placing reliance Upon Deepak Agarwal and Another Vs. State of Uttar Pradesh and Others, and CWP No. 5771 of 2012 - Shobha Rani v. The Board of Governors and others, (2013-2) 170 PLR 292" decided on 6.3.2013,, the submission is that promotion of the private respondents as Senior Lecturer is contrary to the Rules, hence, liable to be set aside and the case of the petitioner deserves to be considered being senior most lecturer.

6. Learned counsel for the respondents submitted that the private respondents had been promoted keeping in view the law laid down by this Court in CWP No. 21663 of 2008 - Geeta Devi v. State of Haryana and others decided on 3.7.2009, wherein it was provided that if the vacancies pertain to the period prior to the amendment of the Rules, those have to be considered in terms of the un-amended Rules. On the date of consideration of the cases of the private respondents for promotion, their regular as well as ad-hoc service was counted and finding them to be eligible, they were promoted. In fact, the petitioner himself is also not eligible for promotion as Senior Lecturer, in case the consideration is as per the amended Rules, as he was also appointed on 6.8.2007 on regular basis. It was further submitted that respondent No. 7-Ramesh Chand

Yadhuwansi had earlier filed CWP No. 11124 of 2010 in this court, wherein while setting aside the order declining his promotion, his case was directed to be re-considered vide order dated 28.6.2010. As the order was not complied with, COCP No. 11 of 2011 was filed. It was only thereafter that he was granted promotion, hence, his case falls on different footing and his promotion cannot be set aside.

7. In response to the contentions raised by learned counsel for the respondents, learned counsel for the petitioner submitted that the petitioner is aggrieved of the promotion of the private respondents as they are not eligible. In case, they remain promoted on the post, the petitioner will never get a chance of promotion, as the private respondents may retire after him. Otherwise, as far as regular appointment is concerned, the petitioner is senior most Lecturer and whenever he will become eligible, his case will have to be considered for promotion prior to the private respondents.

8. Heard learned counsel for the parties and perused the paper book.

9. The facts, which are not in dispute are the date of joining in regular service, total experience on regular basis upto the date of meeting of DPC held on 21.3.2011, ad-hoc service rendered prior to the regular appointment and the experience gained upto the date of amendment of Rules on 11.11.2008. The same are summarised below in tabulated form:

10. The issue under consideration is as to whether the Rules applicable on the date of consideration of the candidature for promotion are to be seen or the Rules existing prior to the amendment, if the vacancy was existing, when the Rules were amended? Further the issue is as to whether an employee has a vested right to be considered under old Rules even if under the old Rules upto the date of amendment, he was not eligible to be considered.

11. An identical issue came up for consideration before this Court in Shobha Rani's case (supra), wherein while dealing with the same, this court opined that when a candidate was not eligible for consideration for promotion in terms of the un-amended Rules upto the date of amendment, no right vests in him for consideration of his case later on in terms of the un-amended Rules, as in that case the Rules in force on the date of consideration shall be applicable. The relevant paragraphs of the aforesaid judgment are extracted below:

7. The relevant part of the Rules providing for qualification and experience required for promotion to the post of Senior Lecturer and the amendment carried out on 11.11.2008 adding explanation, are extracted below:

Rule 9 of the Rules

8. XX XX XX XX XX XX XX XX XX XX XX XX XX XX XX

The qualifications prescribed for promotion as Senior Lecturer in Computer Engineering is as under:

8. The legal issue involved in the present petition is as to whether a vacancy, which arose prior to the amendment of the rules, is to be filled in terms of the rules existing at that time or in terms of the Rules existing at the time of consideration for promotion. The issue was considered by Hon"ble the Supreme Court in Deepak Agarwal and Another Vs. State of Uttar Pradesh and Others,) and it was opined that the principle of old vacancy old rules is not of universal application.

Relevant paras thereof are extracted below:

21. We are of the considered opinion that the judgment in Y.V. Rangaiah's case (supra) 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 amendment rules would be governed by the old rules and not the amended rules. 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 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 how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to 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 Dhawan that the vacancies, which had arisen before 17th May, 1999 had to be filled under the unamended rules.

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 inter linked 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 and others v. Karnataka Public Service Commission and others (supra) are reiterations of a principle laid down in Y. V. Rangaiah's case (supra)."

(Emphasis supplied)

9. The aforesaid judgment was followed by this Court in Punjab National Bank's case, 2012(4) S.C.T. 91 (supra) and by a Division Bench of this Court in C.W.P. No. 22406 of 2011 - Darshan Singh and another v. State of Punjab and others, decided on 5.10.2012.

10. In the present case, the petitioner was appointed as Lecturer in Computer Engineering in All India Jat Heroes Memorial College, Rohtak on ad hoc basis and worked as such from 12.12.2003 to 16.12.2008. From 17.12.2008 onwards, she is working as Lecturer in Computer Science in the respondent-College after having been appointed on regular basis. The Rules were amended on 11.11.2008. As on the date of amendment of the Rules, even if considered as per un-amended Rules, the petitioner did not have eight years' experience as Lecturer in Computer Engineering, hence, the contention that she had got vested right to be considered for promotion in terms of the un-amended Rules is totally misconceived. Upto the date of amendment of the Rules, the petitioner merely had less than 5 years' service to her credit. Even if the vacancy was there when the Rules were amended, in terms of the un-amended Rules, the case of the petitioner could not possibly be considered as she was not eligible. As per the amended Rules, the requirement is 8 years regular service on the post as rendered in the Department of Technical Education, Haryana. If considered in the light of the Amended Rules, as the petitioner joined the Department of Technical Education only on 17.12.2008, she did not possess 8 years' regular service to be eligible for consideration for promotion to the post of Senior Lecturer on 27.2.2012, when the cases were considered.

12. If the cases of the private respondents are considered in view of the enunciation of law, as referred to above in Shobha Rani's case (supra), they were not eligible to be considered for promotion to the post of Senior Lecturer on the date when the Rules were amended on 11.11.2008, as none of them was having 8 years' experience including ad-hoc service. Therefore, it can safely be opined that consideration of cases of the private respondents for promotion to the post of Senior Lecturer on 21.3.2011 in terms of the un-amended Rules is erroneous, when the Rules had already been amended on 11.11.2008, hence, liable to be set aside.

13. The contention raised by learned counsel for respondent No. 7 regarding filing of earlier writ petition by him is also to be noticed and rejected. He had

filed CWP No. 11124 of 2010 in this court, which was disposed of merely noticing the contention raised by learned counsel for the petitioner therein that his claim had been accepted by the authority. Even the contempt petition was disposed of by this court without recording any opinion on merits. Hence, to state that the case of respondent No. 7 is to be taken on a different footing as compared to the cases of other private respondents cannot be accepted.

14. For the reasons recorded above, the promotion of the private respondents is held to be contrary to the Rules, hence, set aside. The writ petitions stand disposed of.