

Shobha Rani Vs. V.

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Court : Punjab and Haryana

Decided On : Mar-06-2013

Appellant : Shobha Rani

Respondent : V.

Judgement :

CWP No.5771 of 2012 [1]. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH C.W.P. No.5771 of 2012 (O&M) Date of decision: March 06, 2013 Shobha Rani .. Petitioner v. The Board of Governors and others .. Respondents CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL Present: Mr. R. K. Malik, Senior Advocate with Mr. Vijay Dahiya, Advocate for the petitioner(s). Mr. D. D. Gupta, Addl. Advocate General, Haryana. ... Rajesh Bindal J.

1. This order will dispose of two writ petitions bearing CWP Nos. 5771 and 7059 of 2012. The facts have been noticed from CWP No.5771 of 2012.

2. The petitioner herein is working as Lecturer in Computer Engineering in Chaudhary Matu Ram Arya Government Polytechnic Education Society, Sanghi (Rohtak) (for short, 'the Society'). Challenge has been made to the decision taken in the meeting whereby claim of the petitioner for promotion to the post of Senior Lecturer was declined by the Board of Governors (for short, 'the Board') of the Society.

3. Learned counsel for the petitioner submitted that the petitioner in the present case joined as Lecturer in Computer Science and Mathematics on 11.9.1998 and continued working as such till 11.12.2003. Thereafter, she was appointed as Lecturer in Computer Engineering w.e.f. 12.12.2003 and continued to work till 16.12.2008 in All India Jat Heroes Memorial College, Rohtak. After the petitioner was appointed in the CWP No.5771 of 2012 [2]. respondent-College, she joined her service on 17.12.2008 and is continuously working as such in the College. Learned counsel submitted that as per the Haryana Technical Education Department (Group-A) Service Rules, 1986 (for short, 'the Rules'), for promotion to the post of Senior Lecturer in Computer Engineering only 8 years' experience as Lecturer in Computer Engineering is required. 67% posts of Senior Lecturer are to be filled by way of promotion, whereas 33% posts are meant for direct recruitment. As the petitioner had more than 8 years' experience of working as Lecturer on 27.2.2012, when the cases for promotion to various posts in the Institute were considered and she was fully eligible for promotion, however, her claim was declined. Even in the Agenda put up before the Board, it was specifically mentioned that the petitioner is fully eligible for promotion. It was further submitted that two posts of Senior Lecturer in Computer Engineering were created on 16.5.2007 and 27.7.2007. The Rules, as were applicable on the date when the posts were created, need to be applied for considering the case of the petitioner. In terms thereof, the petitioner had 8 years of experience on the date of consideration for promotion as the Rules prior to the amendment carried out on 11.11.2008 required only 8 years' experience, which included experience working on ad hoc basis as well. In support of the plea, learned counsel relied upon a Division Bench judgment of this court in CWP No.21663 of 2008-Geeta Devi v. State of Haryana and others, decided on 3.7.2009, wherein it has been held that experience would include even working on ad hoc basis.

4. On the other hand, learned counsel for the respondent-State submitted that in terms of the amendment made in the Rules vide notification dated 11.11.2008, the experience has been defined as the service rendered in the Department of Technical Education after regular appointment. As the petitioner was appointed on regular basis on 17.12.2008, she was not having 8 years' experience as Lecturer to be considered eligible for promotion to the post of Senior Lecturer. Learned

counsel further submitted that judgment of Division Bench of this court in Geeta Devi's case (supra) is under challenge before Hon'ble the Supreme Court, however, there is no interim stay granted. CWP No.5771 of 2012 [3].

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

6. The case in hand was heard on 21.1.2013. In terms of the contentions raised, it was allowed. However, at the time of dictation of the order, it was found that some subsequent judgments, namely, Deepak Agarwal v. State of Uttar Pradesh, (2011) 6 SCC 72. and this Court in Punjab National Bank, formerly New Bank of India Officers Association, Moga, through its President Shri S. K. Palta v. Union of India, through the Secretary, Ministry of Finance (Banking Division), New Delhi and others, 2012(4) SCT 91. which were relevant on the issue, were not cited by either of the parties. The case was put up for re-hearing, which was notified to both the counsels.

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 9. xx xx xx The qualifications prescribed for promotion as Senior Lecturer in Computer Engineering is as under: Designation of the post Academic qualification & experience if any for appointment other than by direct recruitment Senior Lecturer in i) 8 years experience as Lecturer Computer Engineering in Computer Engineering. Amendment carried out vide notification dated 11.11.2008 Explanation: The term experience as used here in shall mean service rendered in the Department of Technical Education, Haryana after regular appointment in the post.

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 CWP No.5771 of 2012 [4]. time of consideration for promotion. The issue was considered by Hon'ble the Supreme Court in Deepak Aggarwal's case (supra) 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 CWP No.5771 of 2012 [5]. 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 not 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 Vs. MCD (supra), P. Ganeshwar Rao Vs. State of Andhra Pradesh (supra) and N.T. Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors (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 (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 CWP No.5771 of 2012 [6]. 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.

11. For the reasons mentioned above, I do not find any merit in the present petitions. Accordingly, the same are dismissed. (Rajesh Bindal) Judge March 06, 2013 mk (Refer to Reporter)

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