(2002) 09 P&H CK 0038

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11604 of 2002

A.S.I. Rajinder Singh and Others		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: Sept. 23, 2002

Acts Referred:

- Punjab Police Rules, 1934 - Rule 12.3

Citation: (2003) 133 PLR 385

Hon'ble Judges: Viney Mittal, J; S.S. Nijjar, J

Bench: Division Bench

Advocate: R.K. Malik, for the Appellant; Amol Rattan, A.A.G., Haryana, for the Respondent

Final Decision: Allowed

Judgement

S.S. Nijjar, J.

The petitioners were appointed Assistant Sub Inspectors of Police (hereinafter referred to as "ASI") by way of direct recruitment on 14.2.1995, 13.2.1995, 9.1.1996 and 13.2.1995 respectively. They have successfully completed the period of probation. They are eligible for promotion on the next higher post of Sub Inspectors (hereinafter referred to as "SI"). The petitioners are senior most in the seniority list of Assistant Sub Inspectors. Petitioner No. 2 was earlier promoted as Sub Inspector on 15.2.2002. He was, however, subsequently reverted, as no post was available in the range in which he was working. The service conditions of the petitioners are governed by Punjab Police Rules, 1934 as applicable to State of Haryana. Under the Punjab Police Rules, the post of S.I. is to be filled by way of promotion from the cadre of ASI. There was, however, a provision to fill up 10% of the posts of Inspectors by way of direct recruitment and 25% of the post of ASI could be filled by way of direct recruitment. For facility of reference, Rule 12.3 of the Punjab Police Rules is reproduced hereunder:-

"12.3 Except as provided in Rules 12.1 and 12.4 direct appointments shall not be made except in the rank of Inspector, prosecuting Sub-Inspector and Assistant Sub Inspector. Such appointments in the rank of Inspector and Assistant Sub Inspector may be made up to a maximum of ten per cent and twenty-five per cent of vacancies, respectively."

By notification dated 24.12.2001, the aforesaid Rule has been substituted by the following :-

"12.3. Direct appointment of Inspectors and Sub Inspectors-Except as provided in Rules 12.1 and 12.4 direct appointment shall not be made except in the rank of Inspector and Sub-Inspector of Police. Such appointment in the rank of Inspector and Sub-Inspector may be made upto a maximum often per cent and fifty percent of posts respectively."

2. A perusal of the aforesaid rules shows that upto a maximum of 10% of posts in the rank of Inspector and 50% of the posts in the rank of Sub Inspectors can be filled by direct recruitment. According to the petitioners, on 24.12.2001 when the substituted Rule 12.3 came into force, 200 vacant posts of Sub Inspectors were available to be filled by promotion from the cadre of A.S. Is. These posts were, however, not filled by promoting the petitioners belonging to the cadre of ASIs. Rather, the Director General of Police has issued directions on 27.12.2001 to all the Inspectors General of Police of the State not to fill the posts of Sub Inspectors by way of promotion. An advertisement dated 18.4.2002 has been issued for direct recruitment on 100 posts of Sub Inspectors in the Police Department, Haryana. The last date for submission of the application was 17.5.2002.

3. In this writ petition under Articles 226/227 of the Constitution of India, the petitioners have challenged the aforesaid action of the respondents and claim that the vacancies on the post of Sub inspectors that arose prior to coming into force of the substituted Rule 12.3 have to be filled on the basis of the old rule which provided that the posts of Sub Inspectors shall be filled by way of promotion from the post of ASI. It is stated that only 33 posts have fallen vacant in the cadre of Sub Inspectors due to promotions, retirement and creation" of posts since 24.12.2001. Therefore, the selection by direct recruitment could only be limited to a maximum of 50% of the 33 posts which became available after the coming into operation of the substituted Rule 12.3.

4. Inspite of service, respondents No. 1 and 2 have chosen not to file a reply. Respondent No. 3, Haryana Staff Selection Commission has, however, filed a written statement. At the outset, learned counsel for the petitioners had pointed out that no written statement has been filed on behalf of respondents No. 1 and 2. Counsel for the State of Haryana, however, sought to rely on the written statement filed by respondent No. 3. The factual position as set out by the petitioners has not been denied. In the preliminary submissions, it is stated that on receipt of the requisition from the Police Department, Haryana Staff Selection Commission issued the advertisement No. 1/2000, dated 18.4.2002 which is quite legal and strictly in accordance with the Rule 12.3 of the Punjab Police Rules, 1934 as amended by the Haryana Government (Home Department) vide notification dated

24.12.2001.

5. Mr. Malik, learned counsel appearing for the petitioners submitted that by substituted Rule 12.3 vested rights of the petitioners for being promoted on the posts of Sub Inspectors cannot be adversely affected. The respondents can only fill up the posts of Sub Inspectors by direct recruitment on the vacancies which arose after 24.12.2001. On the other hand, it is submitted by Mr. Amol Rattan, learned counsel appearing for the respondents-State that the posts have to be filled up on the basis of the rule which is in force at the time when the posts are sought to be filled. By substituted Rule 12.3, 50% of the posts in the cadre of Sub Inspectors can be filled up by direct recruitment. Since even according to the petitioners, 200 posts of Sub Inspectors were lying vacant prior to 24.12.2001, the respondents were entitled to fill up at least 100 posts by way of direct recruitment under substituted Rule 12.3. In support of the aforesaid submission, the learned counsel has relied on a Division Bench judgment of this Court in the case of Babita Rani v. State of Haryana and Ors. (2002) 131 P.L.R. 636: 2002(3) R.S.J. 199. He also relied on three judgments of the Supreme Court viz. State of M.P. and Others Vs. Raghuveer Singh Yadav and Others, , Rajasthan Public Service Commission v. Chanan Ram and Anr. 1998(2) R.S.J. 178 and Union of India v. Yogendra Singh 1994(3) S.C.T. 176.

6. We have anxiously considered the submissions made by the learned counsel for the parties.

7. It is not disputed that prior to the enforcement of the substituted Rule 12.3, the posts in the cadre of Sub Inspectors were to be filled up by way of promotion. It is also not disputed that 200 posts were lying vacant in the cadre of Sub inspectors prior to the enforcement of the substituted Rule 12.3 on 24.12.2001. It is also not disputed that 100 posts which had been advertised also include the posts which have been lying vacant prior to 24.12.2001. In fact, the Director General of Police had issued specific instructions on 27.12.2001 to all the Inspectors General of Police not to fill up the sots of Sub Inspector by way of promotion. The petitioners are undoubtedly eligible for promotion as Sub Inspectors. They are holding the senior most posts in the cadre of Assistant Sub Inspectors. Petitioner No. 2 was in fact promoted on the post of Sub Inspector on 15.2.2002, but was reverted as no post was available in the range in which he was working. Only 33 vacancies have arisen since the substituted Rule 12.3 came into force on 24.12.2001. We are of the considered opinion that the controversy raised in the present petition is squarely covered by the ratio of the law laid down by the Supreme Court in the case of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, In the aforesaid judgment, the Supreme Court has held as follows:-

"9. ..... The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no

question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to tae amended rules would be governed by the old rules and not by the new rules."

8. The aforesaid ratio of law has been followed in the case of A.A. Calton Vs. Director of Education and Another, . In the aforesaid case, it is clearly held that the Legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. The enunciation of law in the case of Y. V. Rangaiah (supra) has been reiterated by the Supreme Court in the case of P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, . The same proposition of law has also been laid down by a Division Bench of this Court in the case of Krishan Lal Bhatia v. The State of Punjab 1985(2) S.L.R. 50: In that case, the earlier rule had provided that 55% of the posts of Block Development Panchayat Officers will be filled by direct recruitment 15% by Political Sufferers/social workers and 30% by promotion. This criteria had been fixed on the basis of executive instructions. Thereafter, Punjab Development and Panchayat Class II Service Rules, 1974 were published on 25.1.1974. In Rule 9(1)of the aforesaid Rules it was provided as follows:-

4. .....9(1) All appointments to the posts in the service shall be made in the manner indicated below:-

(n) Block Development and Panchayat Officer and Educational Panchayat Officer: -

(1) 50 per cent of the posts by promotion from amongst the Social Education and Panchayat Officers; and

(2) 50 per cent of the posts by direct appointment.

9. Since the promoters were holding posts far in excess of the quota before the publication of the rules on 25.1.1974, it was argued on their behalf that for the compliance of the rules only the appointments made or sought to be made subsequent to January 25, 1974, are to be seen and what fell to the share of quota of the two sources of recruitment prior to that date had to be ignored. The aforesaid submission was repelled by the Division Bench as under:-

"It has categorically been ruled by their Lordships of the Supreme Court in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, that vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules..... We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules. The petitioners, therefore, cannot legitimately urge that the quota falling to the share of the direct recruits

prior to January 25, 1974, as provided for through executive instructions (as mentioned at No. 1 in the affidavit of the Joint Secretary, Shri Sewa Singh, I.A.S.) had to be ignored. As has been clarified in his affidavit at No. 8, out of the total cadre strength of the Block Development and Panchayat Officers (134) as on November 21, 1984, 67 posts fell to the share of the direct recruits and out of these only 52 are manned by them (including the appointments dated August 10, 1984 and August 31, 1984, which are impugned in these petitions) and thus 15 more appointments by way of direct recruitment can legitimately and legally be made by the authorities and that is what is sought to be done by the respondent authorities. We, therefore, find no infirmity in the appointments made or intended to be made by way of direct recruitment."

10. We are of the considered opinion that the aforesaid observations of the Division Bench are fully applicable to the facts and circumstances of the present case, Rule 12.3 of the Punjab Police Rules which is relevant in the present case, came into force on 24.12.2001. In view of the law laid down above, we have no hesitation in holding that only vacancies which became available after 24.12.2001 can be filled, on the basis of the substituted Rule 12.3. The old vacancies would have to be filed up on the basis of the rules as it existed before 24.12.2001. Similar view has been taken by a Division Bench of this Court in the case of Mast Ram and Ors. v. State of Haryana and Ors., rendered in CWP No. 15928 of 1999 on 7.3.2001. Considering a similar proposition, the Division Bench of this Court has held as under:-

"The grievance of the petitioners is that the posts that fell vacant before 23.1.1996, in any case, could not go to other categories because the percentage of the posts of Junior Engineers having B.E./A.M.I.E. qualifications have been increased from 4% to 12%. The contention has been well taken. All decisions or rules, unless there is reason to hold otherwise, would operate prospectively. If the vacancies in the cadre falls in the quota prescribed for the Junior Engineers having diploma before January, 1996, necessarily they have to be made available to the concerned persons.....

11. Earlier also, another Division Bench of this Court has also taken the same view in the case of Sm., Kiran Paruthi and Anr. v. State of Haryana and Ors., C.W.P. No. 7942 of 1998, decided on 9.7.1999.

12. We are of the considered opinion that the judgments cited by Mr. Amol Rattan, counsel appearing for the State of Haryana are not applicable in the facts and circumstances of the present case. In the case of Babita Rani (supra), the Division Bench was considering a case where the petitioners had applied in response to advertisement dated 7.11.1996 for the posts of S.S. Master/SS Mistress. Subsequently, in 1998 a condition of subject combination was introduced by an amendment in the Haryana State Education School Cadre (Group-C) Service Rules, 1998. In the amended rule, the subject combination for eligibility on the post had been changed. Since the petitioners did not have the subject combination under the amended rule, they were not permitted to take the written test which was conducted on the basis of subsequent advertisement issued on

14.11.1999. In this advertisement, the qualifications specified were identical to the ones provided under the amended rules. In such circumstances, the Division Bench observed as follows:-

12. Thus, because an advertisement has been issued which subsequently is withdrawn does not give any right to the petitioners to claim selection or even for that matter consideration in furtherance to the new advertisement. The new advertisement has been issued after amendment of the rules.....

19. We may also notice that wherever the Hon"ble Apex Court has taken the view that an advertisement by a Commission give some right to the applicants, there were the cases where the Commission had actually acted upon the advertisement and not only commenced the process of selection but actually selected the candidates as well. Reference can be made to the judgment of the Hon"ble Supreme Court in the case of P. Mahendran v. The State of Karnataka 1990(1) R.S.J. 103 (S.C.) : 1990(1) S.L.R. 307 (S.C.). In the present case, admittedly the advertisements issued by the Board in the year 1990 were never acted upon and no process of selection was commenced thereupon, in fact all the advertisements prior to November, 1999 in this regard have been abandoned and all fresh selections are controlled by the process commenced in furtherance to 1999 advertisement. All persons are being treated by the same criteria. There has been no restriction of any kind upon all the eligible persons to apply in furtherance to the advertisement and the qualification prescribed in the amended rules of 1998.

13. A perusal of the aforesaid observations make it abundantly clear that the Division Bench was not considering a case where vested or accrued rights of the employees already in service were sought to be taken away by the amendment. Similarly, in the case of Raghuveer Singh Yadav (supra), the Supreme Court was again considering the change of qualifications for direct recruitment. It was, therefore, held that the candidates who had appear for the examination and passed written examination had only legitimate expectation to be considered for their claims according to the rules then in vogue. In fact it was rather held that the amended rules have only prospective operation. It was held that no candidate had acquired any vested right merely because they had appeared for the examination and passed the written statement. In the case of Rajasthan Public Service Commission (supra), again the Supreme Court was dealing with the case of an infructuous advertisement. In that case after issuance of the advertisement, the selection process was not commenced. Thereafter, an advertisement was issued for filling up 26 vacancies in the newly created posts. The earlier posts of Assistant Directors (Junior) had in fact been abolished. The old advertisement had related to the filling up of the posts which did not exist at the time when the subsequent advertisement was issued. It was in these circumstances that the Supreme Court held that the vacancies had to be filled up under the amended rules. The question in the case of Yogendra Singh (supra) is also of no assistance to the respondents as the aforesaid judgment again related to change in qualifications for direct recruitment, In that case also, the process of selection had not been completed. Although the respondent had passed the written test, but it was

discovered before the interview that he did not possess the necessary educational qualifications. He was, therefore, not interviewed in such circumstances, the Supreme Court held that"-.

5... No candidate who does not possess the currently prescribed qualifications, but who may possess the educational qualifications prescribed earlier can be said to qualify or have any vested right to appointment even against some earlier unfilled vacancy. Every candidate who aspires to fill any vacancy must possess the educational qualifications that are then prescribed.

14. The aforesaid observations are of no assistance to the respondents in the facts and circumstances of the present case.

15. In view of the above, we find that the respondents can only fill up the vacancies on the posts of Sub Inspectors which arose after 24.12,2001, on the basis of the advertisement No. 1/2002 dated 18.4.2002. Vacancies which arose on the post of Sub Inspectors in the State of Haryana before 24.12.2001 would have to be filled up by way of promotion from the Cadre of Assistant Sub Inspectors. If is, however, not necessary to quash the impugned advertisement and the subsequent process of selection on he basis thereof. The recruitment process would still be valid for the number of posts which can be filled by direct recruitment under the substituted Rule 12.3. In view of what has been held above, the respondents will have to restrict the selection process to the posts which fall to the share of direct recruits under the substituted Rule 12.3 on the vacancies which became available after 24.12.2001. The present writ petition is allowed in the aforesaid terms. No costs.

Sd/- Viney Mittal, J.