

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 3057/2024 c/w
WP(C) No.2075/2023

Reserved on 21.04.2025
Pronounced on: 05.05.2025

Sanjeev Gupta
Sanjeev Gupta

..... Petitioner (s)

Through :- Mr. Raghu Mehta Advocate.

V/s

Central University of Jammu
Central University of Jammu

.....Respondent(s)

Through :- Mr. D.C.Raina Sr. Advocate with
Mr. Govind Raina Advocate

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 Through the medium of WP(C) No. 2075/2023, the petitioner has challenged notification No. 176/2023 dated 03.08.2023, issued by the respondent-University, whereby applications from internal regular non-teaching employees of University for filling up one post of Assistant Registrar under the promotion quota were invited; and through the medium of WP(C) No. 3057/2024, he has challenged notification No. 94/DPC2024 dated 03.12.2024, issued by the respondent-University whereby the respondent-University has again invited applications from internal regular non-teaching employees of the University for filing up the same post under the promotion quota.

2 It is pertinent to mention here that the impugned notification dated 03.08.2023 was issued in supersession of earlier notification dated 12.07.2019, issued by the respondent-University for the same post, whereas the impugned notification dated 03.12.2024 has been issued in supersession of all the previous notifications. Both the impugned notifications have been issued in accordance with the Cadre Recruitment Rules of 2022, (hereinafter referred to as the “CRR of 2022”), whereas notification dated 12.07.2019 was issued in terms of the Cadre Recruitment Rules of 2016 (hereinafter referred to as “CRR of 2016”). Before coming to the grounds urged in the instant petitions, it would be apt to refer to the background facts leading to their filing.

3 The petitioner was appointed as a Private Secretary with the respondent-University and joined service as such on 03.06.2014. The respondent-University issued notification dated 12.07.2019 (*supra*) inviting applications for filling up five categories of posts, including the post of Assistant Registrar, by way of promotion from eligible internal regular employees of the respondent-University. It was provided in the said advertisement notice that the promotions would be made in accordance with the Cadre Recruitment Rules of 2016 (hereinafter referred to as “CRR of 2016”). As per CRR of 2016, the minimum qualification and criteria for promotion to the post of Assistant Registrar was five years of regular service as Section Officer or Private Secretary and the promotion was to be made on the basis of service record, qualifying written test, Annual Performance Appraisal Reports (APARs), and seniority. It was also provided that the promotion would be made through written and skill tests, and *inter se* seniority would be maintained.

4 The petitioner, having completed five years of regular service as a Private Secretary, applied for participation in the process relating to departmental promotion pursuant to the aforesaid Advertisement Notice dated 12.07.2019. He participated in the departmental promotion test on 01.10.2019, and according to him, he performed exceedingly well in the said test. As per Notification dated 10.10.2019, a skill test was scheduled to be held on 15.10.2019, which was later on postponed to 25.10.2019 through notification dated 22.10.2019. However, the petitioner claims that no skill test was conducted for Group A posts, including the post of Assistant Registrar, whereas skill test for Group B and Group C posts was conducted on 06.11.2019. The petitioner is stated to have made representations dated 08.08.2019, 08.09.2019, 08.07.2020, 04.08.2020 and 05.06.2023 to the respondent-University requesting it to issue the *inter se* seniority list of Sections Officers and Private Secretaries, which was a prerequisite for promotion to the post of Assistant Registrar.

5 It has been submitted that, in the 15th Executive Council meeting of respondent-University, which was held on 10.12.2019, it was resolved that the DPC procedures adopted for all the posts and the recommendations of DPC for Group A, B, and C posts in the Respondent University be approved. It was also resolved that the departmental promotions would be made on the basis of *inters e* seniority and that the selection procedure would be of a qualifying nature, and, therefore, no merit list will be prepared. In the said resolution, it was mentioned that the promotion to the post of Assistant Registrar which falls in Group A was under process.

6 It has been contended by the petitioner that the respondent-University, without finalizing the process of promotion for the post of Assistant Registrar which was set into motion pursuant to advertisement notification dated 12.07.2019 as per CRR of 2016, issued a fresh notification dated 03.08.2023 (impugned in WP(C) No. 2075/2023), whereby, in supersession of the earlier advertisement notice dated 12.07.2019, applications were invited for departmental promotion to the post of Assistant Registrar in accordance with the CRR of 2022, according to which, the promotion was to be made on the basis of merit from among the eligible candidates having requisite experience from the feeder cadre, on the basis of a written test, thereby changing the earlier criteria for promotion. The respondent-University thereafter issued another notification dated 03.12.2024 (impugned in WP(C) No. 3057/2024) in supersession of earlier notifications dated 12.07.2019 and 03.08.2023, for promotion to the same post under CRR of 2022.

7 The petitioner has challenged the impugned notifications on the ground that the post of Assistant Registrar, which is the subject matter of the impugned notifications, had fallen vacant during the recruitment year 2019, on which date, CRR of 2016 were *in vogue*, as such, the promotion to the said post is required to be made in accordance with the eligibility criteria prescribed under CRR of 2016, which provides for a qualifying written test and the maintenance of *inter se* seniority. In other words, the said Rules provide for promotion on the basis of *inter se* seniority with qualifying written and skill tests. It has been contended that it was not open to the respondent- University to change the criteria for promotion by amending the Rules and providing for

promotion to the post of Assistant Registrar purely on the basis of merit obtained in the written test by the eligible officers from the feeder cadre.

8 It has been further contended that, vide the guidelines issued by the Department of Personnel and Trainings, Government of India vide Office Memorandum dated 17.11.1986, instructions have been issued that meetings of Departmental Promotion Committees should be held regularly on an annual basis and that the panels for promotion should be utilized for making promotions against vacancies occurring during the course of the year. On this basis, it is being contended that the respondent-University could not have delayed the process of promotion to the post of Assistant Registrar in violation of the aforesaid OM. It is being further contended that, as per the law laid down by the Supreme Court in the case of **Arjun Singh Rathore and ors vs. B.N.Chaturvedi and others, (2007) 11 SCC 605**, the posts which fall vacant prior to the amendment of the Rules are to be governed by the original Rules and not by the amended ones. Therefore, it was not open to the respondent-University to issue the impugned advertisement notifications which provide that promotion to the post of Assistant Registrar shall be made under the amended Rules promulgated in the year 2022.

9 The respondent-University, in its reply to the writ petition, has contended that pursuant to the advertisement notification dated 12.07.2019, the process for promotion to the posts of Group A and B was initiated, but, due to the outbreak of COVID-19 pandemic and due to the imposition of lockdown in early 2020, work-from-home was practised and the routine matters, including promotions, could not be taken up. It has been submitted that even the external experts were not willing to visit the University during the peak of the COVID-

19 pandemic and thereafter. It has been further submitted that the tenure of the then Vice-Chancellor had also expired, as a result of which, the process of departmental promotion could not be finalized and when the tenure of the Vice-Chancellor was extended till further orders, powers regarding making of appointments under direct recruitment and departmental promotions were not delegated to the said authority, as a result of which, the process of promotion to the post of Assistant Registrar could not be finalized. It has been submitted that, during the pendency of the said process, the University Grants Commission circulated new Model Cadre Recruitment Rules for non-teaching employees, as a consequence whereof, the Executive Council of the respondent University, in its 19th meeting, adopted the said Rules, whereafter, the Departmental promotion and direct recruitment processes were initiated in accordance with CRR of 2022.

10 The respondent-University claims that, in the aforesaid circumstances, a fresh advertisement notification dated 03.08.2023 in supersession of the earlier notification dated 12.07.2019, came to be issued for filling up one post of Assistant Registrar in terms of new Recruitment Rules of 2022. It has also been submitted that vide notification dated 28.11.2024, all previous notifications were revoked, and a fresh notification dated 08.12.2024 came to be issued for departmental promotion to the post of Assistant Registrar which was to be made in terms of CRR of 2022. The respondent-University has contended that the petitioner has no vested right to seek conclusion of the process initiated under notification dated 12.07.2019 and that the Rules prevailing at the time of issuance of the impugned notification dated 08.12.2024 would govern the process of promotion to the post of Assistant

Registrar. It has also been submitted that the petitioner had an opportunity to participate in the fresh process for departmental promotion initiated by the respondent-University, but he failed to avail the same.

11 I have heard learned counsel for the parties and perused the pleadings and record of the case.

12 So far as the first writ petition bearing WP(C) No. 2075/2023, whereby challenge has been thrown to notification dated 03.08.2023 is concerned, the same has been rendered infructuous, because the said notification has been withdrawn by the respondent-University and, in supersession thereof, a fresh notification dated 03.12.2024 has been issued, which has been challenged by the petitioner by way of WP(C) No. 3057/2024. Thus, WP(C) No. 2075/2023 has been rendered infructuous.

13 That takes us to the merits of the contentions raised by the petitioner for impugning notification dated 03.12.2024. The first contention that has been raised by the petitioner is that once the respondent-University has set into motion the process of departmental promotion in terms of CRR of 2016, and the petitioner participated in the said process by appearing in the written test, it is not open to the respondent-University to abandon the process and issue a fresh advertisement notification.

14 In the above context, it is to be noted that the respondent University abandoned the aforesaid process set into motion in terms of notification dated 12.07.2019 after the written test of the eligible candidates had been conducted. The skill test of the candidates had not yet been held and no promotion orders were issued in favour of the petitioner. The question that

arises for determination is as to whether the petitioner has a vested right to claim promotion merely on the basis that he has participated in the process of departmental promotion that was not finalized by the respondent University.

15 It is a settled law that when the process of recruitment/promotion has not been finalized and culminated into a select list, a candidate does not have any right to appointment/promotion. The employer has a right to stop the process at any time before a candidate is appointed/promoted. A candidate does not have any vested right to get the process completed. At the most, the employer can be asked to justify its action on the touchstone of Article 14 of the Constitution.

16 The Supreme Court, in the case of **State of Madhya Pradesh and others vs Raghubir Singh, (1994) 6 SCC 151**, has held that a candidate who appears and qualifies in a written examination only has a legitimate expectation to be considered according to the rules in vogue. It has been further held by the Supreme Court that the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules. A similar view has been taken by the Supreme Court in the case of **Deepak Aggarwal another vs State of UP and ors, (2011) 6 SCC 725**. In the said case, the Supreme Court has held that a candidate has the right to be considered for promotion under the rules in force at the time of consideration, and if those rules are amended before finalization, it cannot be accepted that any accrued or vested right has been taken away by the amendment.

17 Adverting to the facts of the present case, the respondent-University has clearly explained in its reply affidavit that, due to Covid-19

pandemic, it could not conclude the process of promotion to the post of Assistant Registrar. It has also been submitted that due to the expiry of the term of Vice-Chancellor and in the absence of delegation of powers regarding appointment/promotion to the said authority during the extension period, the process for departmental promotion pursuant to notification dated 12.07.2019 could not be taken to its logical conclusion. It has further been explained that, in the meantime, Rules of 2022 came into effect, which became the basis for the respondent-university to abandon the earlier process and to initiate a new one by issuing a fresh notification for conducting departmental promotion to the post of Assistant Registrar in accordance with the new Rules. The respondent-university has, therefore, adequately justified the non-conclusion of the departmental promotion process under the Rules of 2016 and the issuance of a fresh notification for initiating the process of departmental promotion in terms of Rules of 2022. The action of the respondent-university, in these circumstances, cannot be termed to be either arbitrary or *mala fide* as has been claimed by the petitioner.

18 That takes us to the second ground urged by the learned counsel for the petitioner. It has been contended that because the post for which the departmental promotion was to be made, had accrued in the year 2019, when the Rules of 2022 were not in vogue, therefore, the promotion to the said post ought to have been conducted in terms of the Rules of 2016, which were in vogue at the relevant time. To support this contention, reliance has been placed on the ratio laid down by the Supreme Court in the case of **Arjun Singh Rathore** (supra).

19 A careful perusal of the judgment delivered by the Supreme Court in the case of **Arjun Singh Rathore** (supra) reveals that the same is based upon the ratio laid down by the Supreme Court in the case of **Y.V.Rangaiah vs. J. Sreenivasa Rao** (1983) 3 SCC 284 in which it was held that posts which fall vacant prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. The ratio laid down in the Judgment delivered by the Supreme Court in **Y.V.Rangaiah's case** (supra), along with 14 other cases dealing with the issue as to whether the Rules in force at the time of accrual of the vacancies or the Rules which are in vogue at the time of consideration for appointment/promotion are to be applied, was reviewed by a three-Judge Bench of the Supreme Court in the case of **State of Himachal Pradesh and others vs. Raj Kumar and others**, (2023) 3 SCC 773. Paragraphs (82) to (85.2) of the said judgment are relevant to the context and the same are reproduced as under:

“82. 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:

82.1. 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.

82.2 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.

82.3. 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.⁶¹ 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](#).

82.4. 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.

82.5. 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.

83.. The above-referred observations made in the fifteen decisions that have distinguished Rangaiah's case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished Rangaiah hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in Rangaiah is confined to the facts of that case.

84 The decision in [Deepak Agarwal](#) (supra) is a complete departure from the principle in Rangaiah, in as much as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of [Union of India v. Krishna Kumar](#) (supra). In fact, in Krishna Kumar Court held that there is only a "right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place."

85 The consistent findings in these fifteen decisions that Rangaiah's case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in Rangaiah is impliedly overruled. However, as there is no declaration of law to

this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

*85.1. The statement in **Y.V. Rangaiah v. J. Sreenivasa Rao** that, “the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules”, does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.*

85.2 The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services”.

20 From the foregoing analysis of law on the subject, it is clear that the statement of law declared by the Supreme Court in the case of **Y.V.Rangaiah's case** (supra) has been overruled, and it has been held that the same does not reflect the correct position of law. Thus, the contention of the petitioner that promotion to the post of Assistant Registrar in the present case is to be governed by the Rules of 2016, cannot be accepted in the face of the legal declared by the Supreme Court in **Raj Kumar's case** (supra).

21 In view of the aforesaid position of law as declared by the Supreme Court in the aforesaid case, promotion to the post of Assistant Registrar is to be made in accordance with the Rules of 2022, which are in vogue at the time of consideration for promotion.

22 Reliance has also been placed by the petitioner on the Office Memorandum dated 17.11.1986 issued by the Government of India to contend that promotion to the post of Assistant Registrar should have been made on an annual basis and that there should not have been any delay in convening the DPC by the respondent-University. It has also been contended that in the said

memorandum, it is provided that the vacancies should be filled up according to the Rules in force when the vacancies arose.

23 Firstly, the aforesaid Office Memorandum is an executive instruction issued for the guidance of Central Government Departments, having no statutory force. Secondly, the said office memorandum does not provide for holding of promotions every year. It only provides for preparation of panels at regular annual intervals for making promotions against vacancies accruing during the course of the year so as to avoid any delays. In the present case, there is no provision either in the Rules of 2016 or in the Rules of 2022 which provides for holding of departmental promotions every year. The aforesaid Office Memorandum has been issued prior to the judgment delivered by the Supreme Court in **Raj Kumar's case** (supra), as such, the observation made in the OM that the Supreme Court has ruled that the vacancies should be filled up according to the rules in force when the vacancies arose no longer represents the correct position of law. Therefore, even the aforesaid OM is of no help to the case of the petitioner.

24 For the foregoing reasons, WP(C) No. 2075/2023 is dismissed for having been rendered infructuous, whereas WP(C) No. 3057/2024 is dismissed being without any merit.

Interim directions, if any, shall stand vacated.

(SANJAY DHAR)
JUDGE

Jammu
05.05.2025

Sanjeev

Whether order is reportable: Yes/No