



CWP-24888-2023(O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-24888-2023(O&M)

Reserved on:-24.09.2025

Pronounced on: October 15, 2025

Dinesh Kumar and others

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Jai Vir Yadav, Senior Advocate with Mr. Tapan Kumar Yadav, Mr. Gursimrat Sandhu and Mr. Aman Gautam, Advocates for the petitioners.

Mr. Piyush Khanna, Addl. AG, Haryana.

Mr. Jagbir Malik, Advocate for respondent No.4.

HARPREET SINGH BRAR, J. (Oral)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of *certiorari* quashing the impugned orders dated 27.10.2023 (Annexure P-11), 29.12.2023 (Annexure P-15), and 06.01.2024 (Annexure P-16), whereby the Petitioners have been reverted from the post of Assistant Fire Station Officer/Sub Fire Officer to Leading Fireman. The petitioners further pray for the issuance of a writ in the nature of *mandamus* directing the respondents to allow the petitioners to continue to work on the promoted



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post of Assistant Fire Station Officer/Sub Fire Officer and to grant all consequential benefits.

FACTUAL BACKGROUND

2. Briefly stated, the petitioners were appointed as Fireman by the Deputy Commissioner, Gurugram in exercise of power under the Haryana Municipal Services (Integration, Recruitment & Conditions of Services) Rules, 1982 (hereinafter '1982 Rules'). They were promoted as Leading Fireman by the Commissioner, Municipal Corporation, Gurugram vide order dated 25.11.2011, in the exercise of powers under the Haryana Municipal Service Rules, 1998 (hereinafter '1998 Rules').

3. The genesis of the present dispute lies in the creation of 97 posts of Sub Fire Officer by the Government of Haryana vide communication dated 04.06.2014 to Director, Urban Local Bodies, Haryana. The Petitioners, along with others, filed **CWP No. 262 of 2018** titled as '*Mam Raj and others v. State of Haryana and others*' seeking quashing of advertisement dated 19.12.2017 to the extent vide which 26 posts of Sub Fire Officer were advertised by the Department to be filled by direct recruitment. The petitioners submitted that the posts are to be filled only by way of promotion as per the 1982 Rules and 1998 Rules in light of the principle of "old vacancy, old rules" as laid down by the Hon'ble Supreme Court in *Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors., (1983) 3 SCC 284*.



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4. Vide judgment dated 13.09.2018 (Annexure P-1), this Court allowed the writ petition, directing the Respondents to *consider* the case of the Petitioners for promotion as per the 1982 Rules, observing that the 97 sanctioned posts were vacant prior to the promulgation of the new Haryana Fire (Group C) Service Rules, 2016 (hereinafter, ‘2016 Rules’) and thus had to be filled by promotion under the old rules. The Court observed as follows:

“The respondents cannot rely upon the Haryana Fire (Group C) Services Rules, 2016, as the principle of old vacancy old rule has to be followed by the department. Since all the above 97 sanctioned posts are lying vacant prior to the promulgation of the 2016 rules, these posts can only be filled by way of promotion and not by direct recruitment. Further the similarly situated persons have also been promoted by the department vide order dated 07.04.2017 (P-15).

In view of the above factual position, the instant petition is disposed of with a direction to respondents to consider the case of the petitioners for promotion, as per Haryana Municipal Services (Integration Recruitment and Conditions of Service) Rules, 1982 and pass appropriate orders within a period of three months and inform this Court.”

5. In compliance, after departmental correspondence and a Contempt Petition (COCP No. 484 of 2019), the Respondent-Department, vide letter dated 08.02.2019, directed the Commissioner, Municipal Corporation, Gurugram—being the competent authority under the 1998 Rules—to consider the case of the Petitioners’ for promotion. Consequently, the Petitioners were promoted to the post of Assistant Fire Station Officer/Sub Fire Officer vide order dated 26.06.2020 (Annexure P-4) by the Commissioner, Municipal Corporation, Gurugram.



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6. Subsequently, the Respondents issued a show-cause notice dated 31.03.2022 (Annexure P-5), alleging that the promotion was void ab initio as it was not passed by the competent authority (the Director under the 2016 Rules) and that no vacant posts existed under the old rules. The Petitioners challenged this notice in CWP No. 7273 of 2022. This Court, vide order dated 26.07.2023 (Annexure P-8), disposed of the petition, directing the Petitioners to submit a reply to the show-cause notice and the competent authority to consider the same as per the applicable rules and in light of the judgment in CWP-262-2018.

7. The Petitioners submitted a detailed reply dated 27.07.2023 (Annexure P-9) and were granted a personal hearing. However, the Commissioner, Municipal Corporation, Gurugram, passed the impugned order dated 27.10.2023 (Annexure P-11), declaring the promotion order void ab initio. This was followed by consequential communications/orders dated 29.12.2023 (Annexure P-15) and 06.01.2024 (Annexure P-16). Aggrieved by these actions, the Petitioners have approached this Court.

CONTENTIONS

8. Learned counsel for the petitioners *inter alia* contends that the impugned action is in direct contravention of the directions issued by this Hon'ble Court in CWP-262-2018 and CWP-7273-2022. The Court had categorically directed the Respondents to consider the case of petitioners for promotion under the 1982/1998 Rules, and the Commissioner was the designated competent authority under those very rules. To now hold that the



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same Commissioner lacked competence is a subterfuge to circumvent the Court's mandate. It is submitted that the petitioners' promotion vide order dated 26.06.2020 was not an independent or arbitrary act of the Commissioner but a direct consequence of the compliance proceedings initiated pursuant to this Court's order dated 13.09.2018 and the subsequent contempt petition. The competent authority in the case of petitioners would be Commissioner, Municipal Corporation, Gurugram, as is discernible from letter dated 08.02.2019 attached with the short reply of respondent No.2 in COCP No.484-2019 (Annexure P-2). The impugned order also states that the petitioners neither fulfilled the required qualification/experience for the promotion to the post of Sub Fire Station Officer nor any post of Assistant Fire Station Officer was lying vacant in the Municipal Corporation Gurugram.

9. Furthermore, it is submitted that the action of the respondents is blatantly discriminatory. Several other similarly situated co-petitioners from CWP No. 262 of 2018, who were promoted in other Municipal Corporations in compliance with the very same High Court order, have been allowed to continue in their promoted posts. The petitioners alone have been singled out for reversion, which smacks of arbitrariness and malice.

10. Moreover, the impugned order dated 27.10.2023 passed by the Commissioner, Municipal Corporation, Gurugram (Respondent No. 4) suffers from the vice of non-application of mind. It is evident from the communication dated 04.10.2023 (Annexure P-10A) from the Director, Fire



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and Emergency Services (Respondent No. 2), that the Commissioner was merely acting under the dictation of a superior authority. The said communication categorically observed that the case of the petitioners regarding reversion be considered being void-ab-initio and not in accordance with 2016 Rules, thereby leaving the Commissioner with no independent discretion. An authority exercising quasi-judicial functions must act independently and an order passed under dictation is a nullity in the eyes of law.

11. *Per Contra*, learned counsel for respondents No.2 and 3 submits that the promotion order dated 26.06.2020 was void-ab-initio as it was not passed by the competent authority. While the Commissioner, Municipal Corporation, was the competent authority under the repealed 1998 Rules, the appointing authority for the post of Sub Fire Officer under the currently governing 2016 Rules is the Director, Fire and Emergency Services, Haryana. Since the promotion was granted on 26.06.2020, i.e., after the 2016 Rules came into force, only the Director was empowered to issue such an order. The Commissioner's order was, therefore, without jurisdiction and a nullity.

12. It is argued that the claim of the petitioner has to be tested in the light of the factual matrix as prior to the passing of the promotion order of the petitioners. Municipal Corporation Gurugram vide its letter memo dated 16.01.2019 (Annexure R-2) has intimated that the sanctioned strength of Sub Fire Officer under the old rules is 6 and that all these posts were



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filled up. Hence, there is no vacant post of Sub Fire Officer under the old rules in Municipal Corporation Gurugram prior to the coming into force of the 2016 rules. As such, in the absence of any availability of sanctioned posts for the promotional posts, the claim of the petitioner has been rightly rejected.

13. In rebuttal, learned counsel for the petitioners contends that the respondents assertion that “no vacancy is available” is factually incorrect and deliberately misleading. In their detailed reply to the show-cause notice (Annexure P-9), the petitioners had demonstrated with reference to specific promotion orders of other officials (dated 12.12.2019 and 16.06.2020), that a total of five posts of Sub Fire Officer had fallen vacant in the Municipal Corporation, Gurugram, just prior to their promotion on 26.06.2020. Three persons namely Sh. Narender, Sh. Sunil and Sh. Mahender Singh who were working on the post of Sub Fire Officer, Gurugram were promoted to the post of Fire Station Officers on 12.12.2019 and three posts of Fire Officer in Municipal Corporation became vacant. Thereafter, on 16.06.2020 two more persons namely Sh. Lalit Kumar and Sh. Ramesh Kumar were also promoted to the post of Fire Station Officer. Learned Counsel refers to the written statement filed on behalf of respondents No.2 and 3 and submits that the respondents could not controvert the stand taken by the petitioners with regard to creation of post under 1982 Rules and further in para 8 of the short reply, it has been clearly mentioned that there are six posts of Sub fire officers sanctioned in the Municipal Corporation, Gurugram under the



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Haryana Municipal Corporation Rules, 1998 and no new post of Sub Fire Officer has been sanctioned within the Municipal Limits of Gurugram.

14. Learned counsel for the respondents submits that the posts were created in the year 2014 as one time measure. Thereafter, these posts were filled and they cannot continue to be governed by old Rules of 1998. The promotion, if any, would now be done under the 2016 Rules.

OBSERVATION & ANALYSIS

15. I have heard the learned counsel for the parties and have perused the record with their able assistance. It transpires that this Hon'ble Court vide order dated 13.09.2018 (Annexure P-1) in **CWP No. 262 of 2018** held that since the 97 sanctioned posts *lying vacant prior to the promulgation of the 2016 rules*, they can only be filled by way of promotion and not by direct recruitment under the 1982 Rules and not under the 2016 Rules. Accordingly, the Respondents were directed to *consider* the case of the petitioners for promotion under the 1982 Rules. No LPA was filed by the Respondents against the aforesaid judgement and thus, order dated 13.09.2018 attained finality. However, since no action was taken by the Department in complying with the directions of this Court, COCP no. 484 of 2019 was filed by the petitioners.

16. In COCP No. 484 of 2019, a reply was filed by the Director General, Urban Local Bodies Department-cum-Fire Service, Haryana (Annexure P-2). It was stated that since the 19 petitioners in that case were



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servicing in different districts and municipal corporations, a decision was taken vide letter dated 08.02.2019 to ensure expeditious compliance with the judgment of this Court. Accordingly, it was directed that the respective appointing authorities of the petitioners would consider their cases for promotion at their own level in accordance with the 1982 Rules. The concerned authorities, being custodians of the petitioners' personal records, were best placed to assess their eligibility and the availability of vacancies under the 1982 and 1998 Rules. The letter further clarified that posts created or available exclusively under the 2016 Rules were not to be filled by way of promotion under the earlier Rules. Thus, the promotion of the petitioners was to be considered only against the posts of Sub-Fire Officer that were vacant under the 1982 and 1998 Rules.

17. Consequently, in view of the vacancies available under the old Rules, promotion orders were issued by the Municipal Commissioners of Panchkula and Ambala, while the cases of the remaining petitioners were under consideration at that time. However, the Municipal Corporation, Gurugram, vide letter dated 16.01.2019, informed that six posts of Sub-Fire Officer had been sanctioned and all were already filled, leaving no vacancy under the old Rules. Subsequently, vide communication dated 15.03.2019, the Commissioner, Municipal Corporation, Gurugram, reiterated that in the absence of any vacancy under the old Rules, the promotion of the petitioners could not be considered.



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18. Despite the non-availability of vacancies, the petitioners in the present case were promoted to the post of Assistant Fire Station Officer/Sub-Fire Officer vide order dated 26.06.2020 (Annexure P-4) issued by the Commissioner, Municipal Corporation, Gurugram. As per the stand taken in the impugned order dated 27.10.2023 (Annexure P-11), this was an inadvertent mistake. Upon the matter being brought to the notice of the Government, it took cognizance and issued directions vide letters dated 29.01.2021 and 25.06.2021 to the Commissioner, Municipal Corporation, Gurugram to rectify the error. Consequently, show-cause notices were issued to the petitioners, and vide the impugned order dated 27.10.2023 (Annexure P-11), their promotions were withdrawn.

19. A Two-Judge Bench of the Hon'ble Supreme Court in *Y.V. Rangaiah (supra)*, laid down the principle of 'old vacancy, old rule' and held that any post that fell vacant prior to coming into force of the new rules would be governed by the old rules and not by the new rules. The Hon'ble Court speaking through Justice R.B. Misra observed as follows:

*“9. ...Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their rights of being considered for promotion. **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*



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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 the amended rules would be governed by the old rules and not by the new rules.

(Emphasis supplied)

20. This Court is of the considered opinion that, as evident from the aforementioned communications, no posts of Assistant Fire Station Officer/Sub-Fire Officer were lying vacant in Municipal Corporation, Gurugram prior to the enforcement of the 2016 Rules. Consequently, there existed no vacancy under the old Rules. Applying the principle of “old vacancy, old rules,” any vacancy arising after the coming into force of the 2016 Rules, i.e., from 3rd June 2016, must be governed exclusively by those Rules. Under the 2016 Rules, the Director of Fire Services is the sole competent authority to grant promotions. Therefore, the five posts of Sub-Fire Officer that fell vacant in the Municipal Corporation, Gurugram, pursuant to promotion orders dated 12.12.2019 and 16.06.2020, are to be governed by the 2016 Rules and not the earlier Rules. In view of the above, the promotion orders issued by the Commissioner, Municipal Corporation, Gurugram, were void ab initio, having been passed without jurisdiction, and were rightly withdrawn.

21. Furthermore, the impugned order dated 27.10.2023 (Annexure P-11) states that the promotion orders of the petitioners were issued inadvertently and have consequently been withdrawn to rectify the said error. In this regard, the Hon’ble Supreme Court in *Union of India and*



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another v. Narendra Singh, (2008) 2 SCC 750, speaking through Justice C.K. Thakker has observed that even if an ineligible or unqualified person is promoted, such a mistake can always be rectified by following the due process of law. The relevant Para of the judgement in *Narendra Singh (supra)* is reproduced as under:

“28. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors., 1997 (4) SCT 156: (1997) 6 SCC 766, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules.”

22. Moreover, this Court is conscious of the fact that the decision in *Y.V. Rangaiah (supra)* has been overruled by a Three-Judge Bench of the Hon’ble Apex Court in *State of H.P. v. Raj Kumar, (2023) 3 SCC 773*. The Court, speaking through Justice Pamidighantam Sri Narasimha has held that there is no inflexible or universal principle mandating that vacancies must invariably be filled under the rules prevailing at the time they arose. Instead, a candidate’s right is limited to being considered under the rules in effect on the date of consideration, i.e., the rules *currently in force*. The Government is well within its authority to adopt a deliberate policy decision to withhold filling vacancies that existed prior to the amendment of the rules. Consequently, employees cannot claim any vested right to be considered for



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promotion under the repealed rules once such a policy decision has been made. Relevant paragraphs of the judgement are reproduced as under:

“11. In view of the above principles, flowing from the constitutional status of a person in employment with the State, we have no hesitation in holding that the observations in Rangaiah that posts which fell vacant prior to the amendment of Rules would be governed by old Rules and not by new Rules do not reflect the correct position of law. We have already explained that the status of a Government employee involves a relationship governed exclusively by rules and that there are no rights outside these rules that govern the services. Further, the Court in Rangaiah's case has not justified its observation by locating such a right on any principle or on the basis of the new Rules...

xx xx xx

36. 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:

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.**
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.**
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**



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restructuring of the cadre is intended for efficient working of the unit. 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.

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.

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.

(Emphasis supplied)

CONCLUSION

23. This Court is of the considered opinion that the Respondents have duly complied with the decision of this Court in CWP No. 262 of 2018 by granting promotions to similarly situated co-petitioners therein, on the basis of vacancies available under the old Rules in their respective Municipal Corporations. Shri Dharampal, Shri Mam Chand (Rewari), Shri Rajiv Kumar (Karnal), Shri Jagdev (Naraingarh), Shri Raj Kumar (Karnal), Shri Promod Kumar (Ambala), Shri Charan Dass (Panchkula), and Shri Mam Raj (Panchkula) were promoted to the post of Sub Fire Station Officer in their respective Corporations vide orders dated 13.12.2019 and 16.05.2019, in compliance with this Court's directions. The Respondents, therefore, cannot be held to have acted in a discriminatory manner by not granting promotion to the petitioners in the present case, as in the Municipal Corporation, Gurugram, no vacancy was available under the old Rules and



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all sanctioned posts already stood filled. The promotion of the petitioners can only be considered under the 2016 Rules.

24. However, this Court is constrained to observe that the conduct of the respondents is unbecoming of a public employer. In the present case, the Commissioner, Municipal Corporation, Gurugram, has taken inconsistent stands at different stages, thereby blowing hot and cold in his approach towards the petitioners. Despite the non-availability of vacancies in the Municipal Corporation, Gurugram, promotion orders were issued and were subsequently sought to be withdrawn on the ground that they had been issued inadvertently. Such actions cause grave mental agony, harassment, and loss of reputation to the employees concerned. Accordingly, the conduct of the employer is strongly deprecated.

25. In view of the foregoing discussion, the present petition is dismissed.

26. Pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

October 15, 2025

P.C

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No