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

Reserved on : 18th March, 2025

Date of Pronouncement: 14th May, 2025

1. **CWP No. 2975 of 2024 (O&M)**

Harish Kumar and others ... Petitioners
Versus
State of Haryana and another ... Respondents

2. **CWP No. 3067 of 2024 (O&M)**

Jagdish Ram and others ... Petitioners
Versus
State of Haryana and others ... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. D. S. Patwalia, Senior Advocate assisted by
Mr. A. S. Chadha, Advocate, for the petitioners
in CWP No. 2975 of 2024.

Mr. K. D. S. Hooda, Advocate, for the petitioners
in CWP No. 3067 of 2024.

Mr. Parvindra Singh Chauhan, Advocate General, Haryana,
assisted by Mr. Sanjeev Kaushik, Additional Advocate General,
Haryana.

Mr. Chetan Mittal, Senior Advocate assisted by
Mr. Shreenath A. Khemka, Advocate, for the applicant-
respondent nos. 3 to 32 in CWP No. 2975 of 2024.

Dr. Neha Awasthi, Senior Standing Counsel,
for the respondent- HPSC.

SANJEEV PRAKASH SHARMA, J.

This order will dispose of two cases, i.e. CWP Nos. 2974 and
3067 of 2024, as common questions of law and facts are involved therein.

The affidavit of Secretary, Shri Dusmanta Kumar Behera, IAS, Government

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of Haryana, Development & Panchayats Department, dated 24.08.2024, is taken on record.

2. Another application for vacation of stay was moved by the State. In view thereof, we have heard the case finally at this stage with consent of both the sides.

3. Brief facts which need to be adverted for adjudication of this case, are that the petitioners are presently working on the posts of Social Education and Panchayat Officers (hereinafter to be referred as 'SEPOs') since 2021 in terms of the offer of appointment issued to them on 26.02.2021. The next promotional avenue for the petitioners from the post of Social Education and Panchayat Officer is to the post of Block Development & Panchayat Officer (hereinafter to be referred as 'the BDPO'). The criteria for promotion is provided under the Haryana Development and Panchayat Rules, 2016 (for short, '2016 Rules'). Prior to the amendment of the Rules, 50% posts of BDPOs were required to be filled by direct recruitment and the remaining 50% posts were to be filled by way of promotion from amongst the Social Education and Panchayat Officers. The procedure for recruitment for the post of BDPO is settled down under Rule 9(1)(c) of the 2016 Rules, which is as under:-

Before Amendment

“9. (1) Recruitment to the Service shall be made, -

(c) In case of Block Development and Panchayat Officer:

(i) 50% by direct recruitment; and

(ii) 50% by promotion from amongst Social Education and Panchayat Officers.

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The aforesaid rule was amended vide gazette notification dated 08.03.2019.

The same is reproduced as under:-

After Amendment

2. In the Haryana Development and Panchayats Department (Group-B) Service Rules, 2016, (hereinafter called the said rules), in rule 9, in sub rule 1, in clause c,-
 - (i) after sub-clause (ii), the sign “ ” shall be inserted and
 - (ii) the following proviso shall be inserted, namely:-

“Provided that in case eligible Social Education and Panchayat Officers are not available, a maximum of 50% of promotional quota posts may be filled up by direct recruitment subject to the condition that the future vacancies of direct quota shall be filled up by promotion till the prescribed quota of promotion is achieved.”
3. In the said rules, in Appendix B, against serial number 3, under column 4, under heading By Promotion, in item (ii), for the words “Ten Years”, the words “Seven Years” shall be substituted.”
4. The petitioners, by way of these writ petitions, seek to challenge the aforesaid proviso added vide notification dated 08.03.2019 and the consequent advertisement issued for filling up the posts of the BDPOs on the ground that the avenues of their promotion have been severely curtailed which violates Article 14 of the Constitution.
5. Learned Senior Counsel appearing for the petitioners submits that the proviso takes away the import of the main rule which provides for

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filling up 50% posts by promotion and 50% by direct recruitment. On account of the aforesaid proviso, if eligible Social Education and Panchayat Officers are not available, 50% of the posts meant for the promotee quota, would be diverted to direct recruitment resulting in the failure of the quota rule for all times.

6. It is submitted that the proviso cannot, under any circumstance, go contrary to the main provisions and the substantive rule cannot be done away with. The real object of the main rule is to afford the employees of the department an equal opportunity of consideration for promotion vis-à-vis the direct recruits, which is attempted to be nullified by insertion of the above-said proviso.

7. Learned Senior counsel submits that the respondent State has advertised 37 posts of BDPOs on 17.11.2023. Out of the said 37 posts, 90% belong to the promotion quota. The said advertisement has been issued in pursuance of the afore-referred amendment. He submits that 69 directly recruited BDPOs are working in the department and the total sanctioned strength is 143. Thus, he submitted that 50% sanctioned strength of the direct recruits are already working. Therefore, 37 posts of BDPOs which have been advertised vide the impugned advertisement actually belonged to the promotee quota. He submits that out of 143 posts, 71 posts, as per 50% quota, would fall in the promotee quota and only 35 posts have been filled up as of now. By allowing further direct recruitment against the promotion quota, the promotees are being given an unjust and unfair treatment. The candidates, who were recruited directly as BDPOs, are young in age and

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thus, will have longer service tenure. Even most of the directly recruited BDPOs have a service tenure spanning over a period of more than 30 years, and therefore, there would never be a chance for promotion of SEPOs till they retire.

8. It is further submitted that the petitioners, who have been appointed in the year 2021 as SEPOs would acquire experience of 7 years service in 2028 and at that stage there would virtually be no vacant posts left for the petitioners for promotion to BDPO.

9. Learned counsel for the petitioners has also taken us to the table to reflect the dates of retirement of the existing incumbents. He further submits that the plea of the respondent-State regarding the non-availability of the eligible Social Education and Panchayat Officer, who possesses the requisite experience, is misconceived. He submits that there is a power of relaxation of the experience and that power has been exercised earlier by the authorities and the persons have been granted promotion. Therefore, there was no occasion for the respondent-State to have inserted the proviso to the rule.

10. Learned counsel for the petitioners further submits that the proviso contravenes the main Rule and creates inequality amongst equals, and therefore violates Article 14 of the Constitution and is to be declared *ultra vires*. He, therefore, prays to quash notification dated 08.03.2019 to the extent whereby a proviso has been added to Rule 9 (i)(c) to allow promotion quota posts of BDPOs to be filled by direct recruitment by usurping the promotion quota. He further prays to set aside the advertisement dated

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17.11.2023 to the extent of filling up 37 posts of BDPOs by direct recruitment.

11. Learned counsel for the petitioners has cited judgments of the Supreme Court in **Director, Lift Irrigation Corporation Limited and others vs Pravat Kiran Mohanty and others** 1991 (2) SCC 295, **Ajay Kumar Shukla and others vs Arvind Rai and others** 2022 (12) SCC 579, to submit that right to be considered for promotion is a Fundamental Right.

12. Learned counsel for the petitioners has also relied on Supreme Court judgments **Nagar Palika Nigam vs Krishi Upaj Mandi Samiti and others** 2008 (12) SCC 364 and **Delhi Metro Rail Corporation Limited vs Tarun Pal Singh and others** 2018 (14) SCC 161, to submit that the proviso cannot override main clause.

13. Per contra learned Advocate General as well as Mr. Chetan Mittal, learned Senior Counsel appearing for the private respondents, have supported the amendment made in the Rule.

14. As per Appendix-B to the 2016 Rules before amendment, a Social Education and Panchayat Officer could be promoted to the post of BDPO only after he had served for 10 years. As there was no officer who had 10 years' experience on the lower post, the promotion quota was left unfilled for long time. He submits that the promotions were granted after making relaxation in experience.

15. The prescribed quota under the old Service Rules of 1988 was 50% by direct recruitment, 33% by promotion from amongst the graduate Social Education and Panchayat Officers, and 17% from amongst the

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graduate Deputy Superintendents/ Accountants/ Assistants. Out of 17%, 10% quota was reserved for Accountants.

16. In CWP No. 16978 of 1996 *Seth Singh and others vs State of Haryana*, this Court struck down the said 10% quota meant for the Accountants and further directed to consider the case of the petitioners therein for promotion to the posts of BDPOs on the basis of seniority-cum-merit. In view of the said directions, a Committee was constituted, headed by the Director, which bifurcated the channel of promotion of Gram Sachivs, SEPOs on one side and Clerks, Assistants, Accountants were kept on a separate hierarchy. Thereafter, 50% promotion quota of BDPOs was left exclusively to be filled from SEPOs alone. Since several changes in the administrative set up took place, the Rules of 1988 were re-framed and the 2016 Rules were notified. Thus, the avenues of promotion were increased for the SEPOs under the 2016 Rules.

17. Learned Advocate General submits that there is a nexus to the purpose sought to be achieved while making the amendment. He submits that the petitioners have been born in the service only in the year 2021 while the amendment had already been made in the year 2019. Taking into consideration the fact that there was a huge paucity of BDPOs in the State, the decision was taken. There was no Social Education and Panchayat Officer available for promotion as the BDPO as none of them possessed the minimum required experience.

18. Learned Advocate General further submits that the proviso was added to Rule 9(1)(c) to meet the requirement of filling up the posts of

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BDPOs, which were lying vacant on account of ineligible SEPOs in the department. The condition, therefore, clearly mentioned that the future vacancies of direct quota would be filled by promotion till the prescribed quota of promotion is achieved. Further, only 50% of the promotion quota posts were allowed to be filled by direct recruitment. He submits that the reason is apparent as it is to avoid the delay in department's work due to the paucity of staff.

19. Learned counsel for the State further submits that an employee has only a right of consideration but no right of promotion. He also submits that the Government has a right to change/re-change, adjust/re-adjust the provisions of the Rules in accordance with the needs and requirements and on the said aspect alone, the amendment cannot be held to be *ultra vires*. He has also taken this Court to a chart to submit that the petitioners, who are only appointed in the year 2021, would be considered as soon as they become eligible for promotion and sufficient number of posts would be available at that time to fill up the posts by promotion. He, therefore, submits that it is a case of collapse of the quota rule.

20. Learned Advocate General has also pointed out that on 15.09.2020, a request was sent for filling up of 46 posts, however, only 39 BDPOs joined. Another requisition was sent for 8 posts on 28.07.2021. Thereafter again requisition has been sent for 37 posts. He submits that as on date, there were 21 posts of direct quota available after returning 28 borrowed posts of promotion quota. In the meanwhile, 29 persons have been further promoted, one has retired and 19 persons have resigned. Therefore,

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49 posts became available. In this way, he has attempted to submit that when the petitioners would become eligible for promotion on completing 7 years of experience (reduced to 7 years from 10 years), sufficient number of posts of BDPOs would be available.

21. It is further submitted that the demand of SEPOs of further relaxation of experience cannot be accepted as the petitioners have served for a very short period as they have only joined in the year 2021. He, therefore, submits that as the principle of 50:50 quota could not be operated, necessary proviso was added in order to meet with admissible requirements. The proviso itself saves the promotion quota in future.

22. We have considered the submissions and also noticed the pleadings.

23. This Court ordinarily would not interfere with the powers of the State Government in framing the Rules under Article 309 of the Constitution of India. Such a Rule can be declared as *ultra-vires* only when the same does not serve the purpose sought to be achieved, as has been affirmed by Hon'ble the Supreme Court in **Union of India vs. Manjurani Routray and others, (2023) 9 SCC 144**, and held as under:-

“12. Before parting with this Appeal, we note that, vide order dated 15.09.2016, an application being I.A. No. 3 of 2015 for intervention was allowed. By virtue of the same, respondents nos. 3 to 141 were impleaded. They seek to support the order of the High Court and have urged various grounds to demonstrate that Rule 4(b) was rightly struck down. As we have set aside the order of the High Court declaring Rule 4(b) as unconstitutional on the ground of lack of any challenge, either in the O.A. or in

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the writ petition, we do not permit the impleaded parties here to urge those grounds. In case, any of them are adversely affected, they will have the liberty to take recourse in law by instituting appropriate proceedings. We, therefore, recall the order dated 15.09.2016 allowing their impleadment and delete them from the array of parties. We make it clear that we have not expressed any view regarding the validity of the Rules on merits, one way or the other and, therefore, this judgment will not come in the way of any court dealing with the issue of the vires of the Rules in any pending proceeding or in any proceeding that may be initiated afresh.”

24. In **Maulavi Hussein Haji Abreham Umarji vs State of Gujarat** 2004 (6) SCC 672, Hon’ble the Supreme Court while dealing with the issue regarding the function of proviso held as under :-

“10. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Surrey (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha and Calcutta Tramways Co. Lid. v. Corpn., of Calcutta) when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso

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is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso" said Lord Watson in West Derby d Union v. Metropolitan Life Assurance Co. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See A.N. Sehgal v. Raje Ram Sheoran, Tribhovandas Haribhal Tamboli v. Gujarat Revenue Tribunal and Kerala State Housing Board v. Ramapriya Hotels (P) Ltd.)."

25. In **Dwarka Prasad vs Dwarka Das Saraf** 1976 (1) SCC 128, the Constitution Bench of Hon'ble the Supreme Court held as under :-

"18. We may mention in fairness to counsel that the following among other decisions, were cited at the Bar bearing on the uses of provisos in statutes : C. I. T v. Indo-Mercantile Bank Ltd.; M/s Ram Narain Sons Ltd. v. Asstt. C. S. T.; Thompson v. Dibdin': Rex v. Dibdin' and Tahsildar Singh v. State of U.P. The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' (1912 AC 544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso,

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although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

*The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail. (**Maxwell on Interpretation of Statutes**, 10th Edn. p 162)*

19. *We now move on to 'dominant intent' as the governing rule. In our view, the dominant intent is found in leading decision of this Court. Indeed, some State Legislatures, accepting the position that where the dominant intention of the lease is the enjoyment of a citizen, as distinguished from the building, have deliberately amended the definition by suitable changes (e.g. Kerala and Andhra Pradesh) while other Legislatures, on the opposite policy decision, have expressly excluded the rent control enactment (e.g. the later Act)."*

26. Complying the principle of 'dominant intent' if we examine the proviso which has been impugned vide amendment dated 08.03.2019, we find that the purpose of introducing the proviso is well explained in the affidavit by the Secretary, Shri Dusmanta Kumar Behera, IAS, Government of Haryana, Development & Panchayats Department, dated 09.09.2024, wherein he states as under:-

"4. That the post of BDPO is very important for the State of Haryana, so as to provide monitoring, guidance and awareness programs about various development projects of the

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Government (i.e. Centre and State) to the people in the rural areas. In the past, the department had observed that most of the time, many posts of BDPOs remain vacant. To solve the problem related to shortage of BDPOs, the State Government made amendments in the Rule 9(i)(c)& (ii) of the Haryana Development and Panchayats Department (Group-B) Service Rules, 2016 vide notification dated 08 March, 2019.”

Introducing the proviso by way of amendment has, therefore, a nexus to the purpose sought to be achieved i.e. to fill up the vacant posts lying with the department.

27. The principle underlying the scope for quashing a rule framed under Article 309 of the Constitution of India requires this Court to examine the impugned amendment on the anvil of Article 14 of the Constitution, and also with reference to the nexus and the purpose sought to be achieved. The power of the State Government to frame rules and also amend the same is absolute in terms of Article 309 of the Constitution. The judicial review is only limited to the extent as noticed above.

28. In CWP No. 12764 of 2025 – **Vinod Kumar vs. State of Haryana and others**, decided on 06.05.2025, wherein the law as laid down in **Manjurani Routray**'s case (supra) was followed by this Court.

29. We noticed that even after reducing the requisite experience required for promotion from 10 years to 7 years, as per the amendment, the petitioners, who are holding the feeder posts for promotion to the post of BDPO only from the year 2021, can at the best become eligible for consideration only in the year 2028. Even at the lower cadre, on which the petitioners are working, there is paucity of staff as we find from the affidavit

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that out of 143 posts of SEPOs, 52 posts are lying vacant. The petitioners are those who are presently working on the remaining posts. Thus, we also do not find it a case where relaxation of experience for promotion can be further granted so as to make them eligible in near future. It is well settled now that no person can claim relaxation in qualifying service for promotion as a right (See; **State of U.P. and others vs Vikas Kumar Singh and others** 2022 (1) SCC 347).

30. The amendments in the Rules are also required to be made by the State in order to meet with the requirements of administration.

31. The contention of learned counsel for the petitioners that the proviso cannot override the main clause relying on the judgments of Hon'ble the Supreme Court in **Nagar Palika Nigam vs Krishi Upaj Mandi Samiti and others** 2008 (12) SCC 364 and **Delhi Metro Rail Corporation Limited vs Tarun Pal Singh and others** 2018 (14) SCC 161, is found to be without basis. It is from the facts of each case that we have to understand the introduction of the proviso which is added to carve out an exception in certain circumstances. We are also satisfied that the main rule has not been in any manner disturbed as the very language of the amendment reflects that the promotion quota shall be fulfilled as soon as eligible persons are available for promotion.

32. We have further noticed that as per the afore-referred affidavit, against the total sanctioned 143 posts of the BDPOs, only 84 are working. Even after appointment of 34 BDPOs selected under the impugned advertisement, which has been stayed by this Court, 25 posts still remain

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vacant. 11 more posts would fall vacant upto 31.09.2027. Thus, we are satisfied and find that the contention raised by the petitioners regarding non-availability of the posts for promotion in future, is wholly misconceived. In future the promotions from the BDPOs to the posts of DDPOs shall also be made from the existing BDPOs. As and when the petitioners would become eligible for promotion, sufficient posts would be available. In view thereto, we are satisfied that sufficient reasons are available with the State Government for making amendment in the Rule and inserting the above said proviso. Hence, the challenge to the said insertion of the proviso to Rule 9(1)(c) of the 2016 Rules fails.

33. In view of the aforesaid discussion, we do not find any ground to quash the amendment introduced vide notification dated 08.03.2019 and advertisement issued for filling up posts of BDPOs on 27.11.2023. The writ petitions are, accordingly, dismissed.

34. The interim orders passed by this Court shall stand vacated. The respondent-State shall now proceed with the recruitment.

35. All pending applications shall stand disposed of.

36. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

14th May, 2025

vs

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No