

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6587 OF 2003

DEEPAK AGRAWAL AND ANR. Appellant (s)

VERSUS

STATE OF U.P. AND ORS. Respondent(s)

Date: 31.03.2011 This appeal was called on for judgment today.

For Appellant(s)

Dr. Kailash Chand, Adv.

For Respondent(s)

Mr. K.K. Mohan, Adv.

Mr. Ravi Prakash Mehrotra, Adv.

Mr. Mukesh Verma, Adv.

Hon'ble Mr. Justice Surinder Singh Nijjar pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Sudershan Reddy and His Lordship. B.

This appeal is dismissed in terms of the signed order.

(Sukhbir Paul Kaur)  
Court Master

(Renuka Sadana)  
Court Master

(Signed Reportable Judgment is placed on the file)  
REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6587 OF 2003

Deepak Agarwal & Anr. ... Appellant (s)

VERSUS

State of Uttar Pradesh & Ors. ...Respondent (s)

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. This appeal is directed against the judgment of the

High Court of Judicature at Allahabad dated 16th April, 2002, dismissing the writ petition challenging the Notification dated 17th May, 1999, wherein the appellants had been rendered ineligible for promotion to the post of Deputy Excise Commissioner (DEC) and the Notification dated 26th May, 1999, promoting respondents No. 3 to 9 as Deputy Excise Commissioner, and further to consider and promote the appellants as Deputy Excise Commissioner, on the vacancies that arose before 17th May, 1999.

2. Old vacancies have to be filled under the old rules is the mantra, sought to be invoked by the appellants in support of their claim that the vacancies arising prior to 17th May, 1999, ought to be filled under the 1983 Rules as they existed prior to the amendment dated 17th May, 1999. The claim is based on the principle enunciated by this Court in Y.V.Rangaiah & Ors. Vs. J.Sreenivasa Rao & Ors.1.

3. The appellants were recruited through the Uttar Pradesh Public Service Commission on Class II posts in the Excise Department under the Excise Commissioner, Uttar Pradesh. Deepak Agarwal (hereinafter referred to as 'appellant No.1') was appointed on the post of Technical Officer in the pay scale of Rs.2200-4000 by an order dated 13th August, 1991. Similarly, Jogendra Singh (hereinafter referred to as 'appellant No. 2') was directly recruited through the Uttar Pradesh Public Service Commission and appointed on the post of Statistical Officer by Notification dated 8th January, 1992 in the pay scale of Rs.2200-4000. It is not disputed that both the appellants are confirmed in service. There is no adverse entry in their service record. The appellants are the only two officers recruited directly to Class II Excise Service. Otherwise, majority of the

officers have entered service as Inspectors in the Excise Department and subsequently promoted to higher posts.

4. The U.P. Excise Group 'A' Service Rules, 1983 govern the procedure for recruitment and conditions service of officers of Group 'A' of the Excise

1 (1983) 3 SCC 284

Department. Initially under Rule 5(2) only Assistant

Excise Commissioners and Technical Officers were eligible

for promotion.

Subsequently by amendment of the 1983

Rules on 22nd June, 1998, Statistical Officers were also

made eligible for promotion to the post of Deputy Excise

Commissioner.

5. It came to the knowledge of the appellants that

U.P. Excise Officers Sangh, Allahabad had filed a

representation before the State Government in the month

of September, 1998 protesting against the inclusion of

the Technical Officers and Statistical Officers in the

feeder cadre for promotion to the post of Deputy Excise

Commissioner.

The appellants, therefore, also made

representations before the Departmental Promotion

Committee (DPC). In the year, 1997-98 and 1998-99,

12 vacancies arose for the post of Deputy Excise

Commissioner. Out of these 12 vacancies, 10 vacancies

had arisen prior to 17th May, 1999 and 2 vacancies had

arisen on 30th June, 1999 due to the retirement of

Deputy / Joint Excise Commissioner. It is the case of the

appellants that they were entitled to be considered for

the aforesaid 10 vacancies under Rule 5(2).

6. In spite of the representation made by the

appellants, the 1983 Rules were amended on 17th May, 1999.

By the aforesaid amendment, the posts of Technical

Officers and Statistical Officers have been excluded from the feeder cadre for promotion to the post of Deputy

Excise Commissioner. This amendment came just two days before the DPC was scheduled to meet on 19th May, 1999. As

a consequence of the amendment, the DPC did not consider the appellants for promotion. The justification given

for the aforesaid amendment is that the State Government had taken a "conscious decision" to exclude the Technical Officers and Statistical Officers as they were not fit for the post of Deputy Excise Commissioner because of their peculiar qualifications, duties, responsibilities and work experience. However, to compensate for loss of promotion, the pay scale of these two posts has been upgraded to the level of Deputy Excise Commissioner.

7. Thereafter, the State Government issued a Notification dated 26th May, 1999 wherein the State Government granted promotion to the 10 persons (Respondent Nos. 3 to 9) to the posts of Deputy Excise Commissioner. Aggrieved by the same, the appellants filed a writ petition before the Allahabad High Court challenging the Notification dated 26th May, 1999. It was also prayed that they should be considered for the posts of Deputy Excise Commissioner and Notification dated 17th May, 1999 be quashed. The High Court vide its judgment dated 16th April, 2002 dismissed the petition. Hence the present appeal.

8. We have heard the exhaustive submissions made by the learned counsel for parties. Dr. Rajeev Dhawan, learned senior counsel, appearing for appellants, has highlighted the primary issues involved herein, which are as follows:

Whether the State of Uttar Pradesh amendment of 17th May, 1999 in the Schedule is invalid because -

(a) it abolishes Technical Assistant Officers (TAO) and Statistical Officer (SO) as feeder streams to the post of Deputy Excise Commissioner.

(b) denies TAO and SO the right to be considered for promotion.

(c) stagnates them by denying any promotional avenue and merely gives them a 'sop' of up-gradation with no avenue to promotion.

(d) gives retroactive application to the amendment to exclude persons covered by the pre-amended rules of 1983.

#### SUBMISSIONS ON FACTS -

9. By the amendment, the avenue of promotion of the appellants has been totally blocked. The up-gradation of the pay scale is a mere sop. The decision to amend the rules on 19th May, 1999 came within one year of granting eligibility to the post of Statistical Officer on 22nd June, 1998. It was unreasonable for the State to do a total volte-face. Only reason for such a volte-face was the pressure from the Excise Commissioner to be favoured.

#### SUBMISSIONS ON LAW -

10. Right to be considered for promotion is a valuable right. The Government is required to make necessary provision in the rules to remove stagnation on a particular post and by giving suitable promotion avenue to its employees. Learned counsel relied on a decision of this Court in the case of Food Corporation of India Vs. Parashotam Das Bansall in support of the submissions that the Superior Courts have the jurisdiction to issue necessary direction to the Government. He submits, the issue herein, is squarely covered by the judgment of this Court in the case of Y.V. Rangaiah (supra). Therefore, the appellants were entitled to be

considered for promotion against the ten vacancies that occurred prior to the amendment dated 17th May, 1999. Reliance is also placed on Rule 7 to show that the Government has to determine the number of vacancies to be filled during the course of the year. Learned counsel also relied on the decisions of this Court in the cases of P. Ganeshwar Rao Vs. State of Andhra Pradesh<sup>2</sup>, N.T. Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors.<sup>3</sup> A.A.

- 1 (2008) 5 SCC 100
- 2 1988 (Supp) SCC 740
- 3 (1990) 3 SCC 157

Catton Vs. Director of Education<sup>1</sup>, State of Rajasthan Vs. R. Dayal<sup>2</sup> and B.L. Gupta Vs. M.C.D.<sup>3</sup> to emphasis that the rule of prospectivity application requiring the pre-amendment vacancies to be considered under the unamended rule is firmly embedded in the law. He has, however, very fairly stated that although the normal rule of prospectivity will apply, a subsidiary rule has come into existence since 1997 that if the Government takes a conscious decision not to apply the rule to pre-amendment vacancies under the old rules, it has the power to do so.

11. On facts, he submits that there was no legally binding conscious decision taken in this case. The criteria laid down in the case of Dr. K. Ramulu & Anr. Vs. Dr. S. Suryaprakash Rao & Ors.<sup>4</sup> has not been satisfied. He submits that the conscious decision has to satisfy the test of reasonableness and relevancy of criteria. In the present case, there is no evidence of a

conscious decision being taken. The plea was not even raised in the High Court. It is raised in this Court based on the observations made by the High Court. Such a conscious decision must

1 (1983) 3 SCC 33  
2 (1997) 10 SCC 419  
3 (1998) 9 SCC 223  
4 (1997) 3 SCC 59

be based on existing facts and cannot be conjured up in the affidavit to oppose the writ petition. He further submits that under Note to Rule 8 the respondents are required to prepare combined eligibility list of the candidates in order of seniority determined by the dates of their substantive appointments. Furthermore, the promotions under Rule 5(2) are to be made on the basis of the criteria in "The Uttar Pradesh Servants Criterion for Recruitment by Promotion Rules, 1994."

12. Rule 4 of these Rules provides that the promotion shall be made on the basis of seniority subject to the rejection of the unfit. Under these Rules, Dr. Dhawan has submitted that the appellants were bound to be promoted being senior and having a good record of service. The attempt by the State without amendment in this rule to introduce comparative merit on irrelevant considerations to exclude the appellants from the feeder cadre was ex facie illegal and arbitrary.

13. On the other hand, Mr. P.S. Narasimha, learned senior counsel for the respondents submitted that:

(i) The amendment in the rules is based on a conscious decision taken by the Government upon consideration of the representations of both the sides.

(ii) The ratio in Rangaiah's case (supra) will not be applicable in the facts of this case. No selection before

the amendment had taken place in this case.

(iii) The right of the candidate is to be considered under the Rules in force on the date the consideration takes place. In support of his submission, he relied on the decisions of this Court in the cases of Jai Singh Dalal & Ors. Vs. State of Haryana & Anr.1, Rajasthan Public Service Commission Vs. Chanan Ram & Anr.2, State of M.P. & Ors. Vs. Raghuveer Singh Yadav & Ors.3, H.S. Grewal Vs. Union of India & Ors.4 and Dr. K. Ramulu & Anr. Vs. S.Suryaprakash Rao & Ors. (supra).

(iv) The Officers have only a right of consideration under the Rules in force.

(v) In this case, there is no acquired or vested right of the appellants which has been taken away. He relied on the decisions of this Court in the cases of High Court of Delhi & Anr. Vs. A.K. Mahajan & Ors.5, New India Sugar Works Vs. State of U.P.6 and Dr. K. Ramulu (Supra).

(vi) The issue herein is squarely covered by the judgment in Dr. K. Ramulu's case (supra). The cases relied upon by the appellants have been explained in the case of Rajasthan Public Service Commission (Supra).

(vii) The State is conscious of the loss of promotion avenue to the posts of Senior Technical Officer (STO) and Senior Statistical Officer (SSO). The Court can issue

1 1993 (Supp) 2 SCC 600

2 (1998) 4 SCC 202

3 (1994) 6 SCC 151

4 (1997) 11 SCC 758

5 (2009) 12 SCC 62

6 (1981) 2 SCC 293

necessary directions to the State to remove any stagnation on the aforesaid two posts.

14. Mr. Dinesh Dwivedi, learned senior counsel for the State submits that the ratio in the case of Y.V. Rangaiah (supra) is not applicable in the facts of this case.

There is no requirement under Rule 7 of the applicable rules in this case to prepare a year wise panel of the

selected candidates. Therefore, no acquired or vested right of the appellants has been taken away. Under Rule 7, the vacancies have only to be identified. The right accrues only at the time of consideration for promotions. Therefore, the amendment has not been given a retroactive effect. The matter is covered by the judgment in the case of Dr. K. Ramulu (supra) as a conscious decision has been taken by the State to exclude the two parts of STO and SSO from the feeder cadre for promotion as DEC.

15. We have considered the submissions made by the learned counsel for parties. Service conditions of the appellants and the respondents are governed by U.P. Excise Group 'A' Service Rules, 1983, framed in exercise of the powers conferred by the proviso of Article 309 of the Constitution of India. Therefore, it would be appropriate to notice the relevant provisions of the Rules at this juncture.

Rule 2:- Status of the Service - The Uttar Pradesh Excise Group 'A' Service is a State service comprising Group 'A' posts.

Rule 3(g):- "Service" means the Uttar Pradesh Excise Group 'A' Service;

(h); "Substantive appointment" means an appointment, not being an adhoc appointment on a post in the cadre of the service after selection in accordance with the rules and, if there are no rules, in accordance, with the procedure prescribed for the time being by executive instructions issued by the Government;

(i) "Year of recruitment" means a period of twelve months

commencing from the first day of July of a calendar year.

Rule 4: Cadre of Service - (1) the strength of the service shall be such as may be determined by the Government from time to time.

(2) The strength of the service shall, until orders varying the same are passed under sub-rule (1), be as follows:

Name of the post Posts		Number of
Temporary	Permanent	
Joint Excise Commissioner	-	
6		
Deputy Excise Commissioner	11	
6		

Provided that -

[i] The appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensation;

[ii] The Governor may create such additional permanent or temporary posts as he may consider proper.

Rule 5(2): Recruitment to the post of Deputy Excise Commissioner shall be made by promotion from amongst substantively appointed Assistant Excise Commissioners and Technical Officers who have completed two years service as such, on their respective posts, on the first day of the year of recruitment.

Rule 7: Determination of vacancies - The Appointing Authority shall determine the number of vacancies to be filled during the course of the year as also the number of vacancies, if any, to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes and other categories under Rule 6.

Rule 8(3): The Appointing Authority shall prepare the eligibility list of the candidates in accordance with the Uttar Pradesh Promotion by Selection (on posts outside the purview of the Public Service Commission) Eligibility List Rules, 1986 and place it before the Selection Committee along with their character rolls and such other records pertaining to them as may be considered necessary.

NOTE:- For the purpose of promotion to the post of Deputy Excise Commissioner, under Rule 5(2), a combined eligibility list shall be prepared by arranging the names of Assistant Excise Commissioners and Technical Officer in order of seniority as determined by the dates of their substantive appointment.

16. A perusal of the aforesaid rules would show that Rule 5, recruitment to the post of Joint Excise Commissioner shall be made by promotion from amongst substantively appointed Deputy Excise Commissioner. Under Rule 5(2), recruitment to the post of Deputy Excise Commissioner shall be made by promotion from amongst substantively appointed Assistant Excise Commissioners and Technical Officers, who have completed two years of service on their respective posts on the first day of the year of recruitment.

17. The short question that arises for consideration is as to whether the appellants were entitled to be considered for promotion on the post of Deputy Excise Commissioner under the 1983 Rules, on the vacancies, which occurred prior to the amendment in the 1983 Rules on 17th May, 1999. Under the unamended 1983 Rules, the petitioners would be eligible to be considered for promotion by virtue of Rule 5(2). By virtue of the Note to Rule 8, a combined eligibility list has to be prepared by arranging the names of Assistant Excise Commissioner and Technical Officers in order of seniority as determined by the date of their substantive appointment. The appellants were, therefore, clearly in the feeder cadre of the post for promotion to the post of Deputy Excise Commissioner. Rule 7 provides that the Appointing Authority shall determine the vacancies to be filled during the course of the year and the number of vacancies. There is no statutory duty cast upon the State to complete the selection process within a prescribed period. Nor is there a mandate to fill up the posts within a particular time. Rather the proviso to Rule 2 enables the State to leave a particular post unfilled.

18. However, it is a matter of record that the promotions under the 1983 Rules were to be made on the basis of the criteria's laid down in the Uttar Pradesh Government Criterion for Recruitment by Promotion Rules, 1994. Rule 4 of these Rules provided that "Recruitments by promotion.....shall be made on the basis of seniority subject to the rejection of the unfit." Consequently, the appellants would have been eligible for promotion on the basis of seniority, as determined under the Note to Rule 8. The aforesaid right for consideration to be promoted

on the post of Deputy Excise Commissioner has been taken away by the Uttar Pradesh Excise Group 'A' Service (5th amendment) Rules, 1999.

19. The unamended and the amended Rule 5(3) of the 1983 Rules are as under:

COLUMN 1	COLUMN 2
Existing sub-rule [3] Deputy Excise Commissioner - By promotion from amongst substantively appointed Assistant Excise Commissioners, Technical Officers and Statistical Officers who have completed two years service as such, on their respective posts, on the first day of the year of recruitment.	Sub-rule as hereby substituted [3] Deputy Excise Commissioner - By promotion from amongst substantively appointed Assistant Excise Commissioners who have completed two years service as such on the first day of the year of recruitment.

From the above, it is evident that under the existing sub-rule 3, substantively appointed Assistant Excise Commissioner, Technical Officers and Statistical Officers, who have completed two years of service as such on their respective posts were entitled to be considered for promotion on the post of Deputy Excise Commissioner. By substitution of sub-rule 3, only Assistant Excise Commissioner, who have completed two years service as such are made eligible for consideration for promotion as Deputy Excise Commissioner. It is also a matter of record that 12 vacancies existed on the post of Deputy Excise Commissioner for the year 1997-98 and 1998-99. Out of these 12 vacancies, 10 had arisen prior to 17th May, 1999 and two vacancies arose on 30th June, 1999. By virtue of the amendment in sub-rule 3 of Rule 5, the appellants have been deprived of the right to be

considered for promotion on the post of Deputy Excise Commissioner. Respondents have been promoted by the impugned order dated 26th May, 1999 under the amended Rules.

20. Could the right of the appellants, to be considered under the unamended 1983 Rules be taken away? The promotions of the 12 vacancies have been made on 26 th May, 1999 under the amended Rules. The High Court rejected the submissions of the appellants that the controversy herein is squarely covered by the judgment of this Court in the case of Y.V. Rangaiah (Supra). The High Court has relied on the judgment of this Court in Dr. K. Ramulu (supra).

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 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 now 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).

23. All these judgments have been considered by this Court in the case of Rajasthan Public Service Commission Vs. Chanan Ram & Anr. (supra). In our opinion, the observations made by this Court in paragraphs 14 and 15 of the judgment are a complete answer to the submissions made by Dr. Rajiv Dhawan. In that case, this Court was considering the abolition of the post of Assistant Director (Junior) which was substituted by the post of Marketing Officer. Thus the post of Assistant Director (Junior) was no longer eligible for promotion, as the post of Assistant Director had to be filled by 100% promotion from the post of Marketing Officer. It was, therefore, held that the post had to be filled under the prevailing rules and not the old rules.

24. In our opinion, the matter is squarely covered by the ratio of the judgment of this Court in the case of Dr. K. Ramulu (supra). In the aforesaid case, this Court considered all the judgments cited by the learned senior counsel for the appellant and held that Y.V. Rangaiah's case (supra) would not be applicable in the facts and circumstances of that case. It was observed that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. It was also held that when the Government takes a conscious decision and amends the Rules, the promotions have to be made in accordance with the rules prevalent at the time when the consideration takes place.

25. The High Court has noticed that the post

Technical Officers and statistical Officers have been deleted from the feeder cadre for promotion

to the post of Deputy Excise Commissioner

valid reasons.

The Government was of the opinion

that the Technical Officers and Statistic

Officers were not suitable to be promoted on the

post of Deputy Excise Commissioner,

involved multifarious administrative responsibilities.

The experience gained by the

officials working on the post of Technic

Officer and Statistical Officer was of

relevance for the duties to be performed on the

post of Deputy Excise Commissioner.

Consequently, a conscious decision was taken to abolish the feeder cadre consisting of Technical Officers and Statistical Officers for promotion to the post of Deputy Excise Commissioner.

Division Bench, therefore, correctly applied the ratio laid down in Dr. K. Ramulu's case (supra) wherein this Court reiterated the ratio in Union

of India Vs. K.V. Vijeeshl that for reaso

germane to the decision, the Government

1 1996 3 SCC 139  
entitled to take a decision not to fill up the  
existing vacancies on the relevant date.

26. We are also unable to accept the submissions of

Dr. Dhawan that the conscious decision taken

herein is not grounded on the relevant facts. A  
perusal of the Counter Affidavit filed by the  
respondent herein shows that the recruitment of  
the appellant No.1 has been made purely with the  
objective of looking after the technical work  
pertaining to pharmacies and industrial units.  
Therefore, the requisite qualification for the  
post is Degree in Chemical Engineering.  
Appellant No.2 has been recruited for  
compilation, analysis and maintenance of  
statistical data of the Excise Department. The  
basic qualification for the post of Statistical  
Officer is Graduation in Statistics. It appears  
that the two categories of posts have been  
eliminated as the incumbents on the said posts do  
not have any administrative experience. The  
decision was taken clearly in public interest.  
Since the decision has been taken after taking  
into consideration the view points of both the  
sides, it can not be said to be arbitrary or  
based on irrelevant considerations. We also do  
not find any merit in the submission of Dr.  
Dhawan that the amendment has been given a  
retroactive operation as the vacancies which  
arose prior to the amendment are sought to be  
filled under the amended rules.

27.This Court in the case of Jai Singh Dalal Vs.

State of Haryana (supra) has held as under:

"It is clear from the above pleadings that in 1990 the  
State Government resolved to resort to special  
recruitment to the Haryana Civil Service (Executive  
Branch) invoking the proviso to Rule 5 of the rules.  
Pursuant thereto, it issued the notifications dated  
December 20, 1990 and January 25, 1991. The names of the  
candidates were forwarded by the State Government to the  
HPSC for selection. The HPSC commenced the selection  
process and interviewed certain candidates. In the  
meantime, on account of an undertaking given by the  
Advocate General to the High Court at the hearing of  
C.W.P. No. 1201 of 1991 and allied writ petitions, the

State Government was required to forward the names of the candidates belonging to two other departments of the State Government. Before it could do so, the new Government came into power and it reviewed the decision of the earlier Government and found the criteria evolved by the earlier Government unacceptable and also noticed certain infirmities in the matter of forwarding the names of eligible candidates. It, therefore, resolved to rescind the earlier notifications of December 20, 1990 and January 25, 1991. It will thus be seen that at the time when the writ petition which has given rise to the present proceedings was filed, the State Government had withdrawn the aforesaid two notifications by the notification dated December 30, 1991. The stage at which the last-mentioned notification came to be issued was the stage when the HPSC was still in the process of selecting candidates for appointment by special recruitment. During the pendency of the present proceedings the State Government finalised the criteria for special recruitment by the notification of March 9, 1992. Thus, the HPSC was still in the process of selecting candidates and had yet not completed and finalised the select list nor had it forwarded the same to the State Government for implementation. The candidates, therefore, did not have any right to appointment. There was, therefore, no question of the High Court granting a mandamus or any other writ of the type sought by the appellants. The law in this behalf appears to be well settled."

28. Similarly, this view has been reiterated by this

Court in the cases of State of M.P. & Ors. Vs. Raghuveer Singh Yadav & Ors. (supra), H.S. Grewal Vs. Union of India & Ors. (supra) and Rajasthan Public Service Commission Vs. Chanan Ram & Anr. (supra). This Court in Rajasthan Public Service Commission's case (supra) has held that it is the rules which are prevalent at the time when the consideration took place for promotion, which would be applicable. In Para 17, it has been held as follows:

"In the case of State of M.P. v. Raghuveer Singh Yadav a Bench of two learned Judges of this Court consisting of K. Ramaswamy and N. Venkatachala, JJ., had to consider the question whether the State could change a qualification for the recruitment during the process of recruitment which had not resulted into any final decision in favour of any candidate. In paragraph 5 of the Report in this connection it was observed that it is settled law that the State has got power to prescribe qualification for recruitment. In the case before the Court pursuant to the amended Rules, the Government had withdrawn the earlier notification and wanted to proceed with the recruitment afresh. It was held that this was not the case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended Rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested

right against the State. Therefore, the State was 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. In the case of J&K Public Service Commission v. Dr Narinder Mohan<sup>9</sup> another Division Bench of two learned Judges of this Court consisting of K. Ramaswamy and N.P. Singh, JJ. considered the question of interception of recruitment process earlier undertaken by the recruiting agency. In this connection it was observed that the process of selection against existing and anticipated vacancies does not create any right to be appointed to the post which can be enforced by a mandamus. It has to be recalled that in fairness learned Senior Counsel, Shri Ganpule for the respondent-writ petitioner, stated that it is not his case that the writ petitioner should be appointed to the advertised post. All that he claimed was his right to be considered for recruitment to the advertised post as per the earlier advertisement dated 5-11-1993 Annexure P-1 and nothing more. In our view, the aforesaid limited contention also, on the facts of the present case, cannot be of any assistance to the writ petitioner as the earlier selection process itself had become infructuous and otiose on the abolition of the advertised posts, as we have seen earlier. The second point, therefore, will have to be answered in the negative in favour of the appellants and against the respondent-writ petitioner."

29. It may be that the removal of the two posts from the feeder cadre would lead to some stagnation for the officers working on the two aforesaid posts. In fact, the Government seems to recognize such a situation. It is perhaps for this reason that the posts have been upgraded to the post of Deputy Excise Commissioner. However, mere upgradation of the post may not be sufficient compensation for the officers working on the two posts for loss of opportunity to be promoted on the post of Deputy Excise Commissioner.

30. In such circumstances, the Government may be well advised to have a re-look at the promotion policy to provide some opportunity of further promotion to the officers working on these posts.

31. With these observations, the impugned judgment is affirmed and the appeal is accordingly dismissed with no order as to costs.

.....J.  
[B. Sudershan Reddy]

.....J.  
[Surinder Singh Nijjar]

New Delhi;  
March 31, 2011.