2022 INSC 605

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9746 of 2011

STATE OF HIMACHAL PRADESH & ORS. ...APPELLANT(S)

VERSUS

RAJ KUMAR & ORS. …RESPONDENT(S)

WITH

CIVIL APPEAL NO. 9747 of 2011

ANURAG SHARMA AND ORS. ...APPELLANT(S)

VERSUS

STATE OF HIMACHAL PRADESH & ORS. …RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1.1 These appeals arise out of the decision of the High Court of Himachal Pradesh allowing the writ petition and directing the State to consider the case of the writ petitioners, Respondents no. 1 to 3 herein, for promotion under Rules that existed when the vacancies arose and not as per the subsequently amended rules. These directions were based on the decision of this Court in the case of *Y.V. Rangaiah v. J. Sreenivasa Rao*[1]. As we noticed a number of decisions of this Court that have followed *Rangaiah,* and far more decisions

[1] *Y.V. Rangaiah v. J. Sreenivasa Rao* (1983) 3 SCC 284, hereinafter referred to as *'Rangaiah'.*

that have distinguished it, we had to examine the issue afresh. The question is whether appointments to the public posts that fell vacant prior to the amendment of the Rules would be governed by the old Rules or the new Rules. After examining the principle in the context of the constitutional position of *services under the State*, and having reviewed the decisions that have followed or distinguished *Rangaiah* in that perspective, we have formulated the legal principles that should govern services under the State. Applying the said principles, we have held that the broad proposition formulated in *Rangaiah* does not reflect the correct constitutional position. We have thus allowed the appeals following the principles that we have laid down.

1.2 We will first refer to the facts leading to the present controversy.

Facts:

1.3 The Himachal Pradesh Recruitment and Promotion Rules, 1966[2] dated 01.03.1966 made in exercise of the powers under Article 309 of the Constitution govern the post of Labour Officer. There were 5 posts of Labour Officers and these were to filled by promotion from (i) *factory Inspectors*, (ii) *labour inspectors* and (iii) *sectt. superintendents*, being the feeder category. On 20.07.2006, Secretary, Labour and Employment Department addressed a letter to the Labour Commissioner intimating sanction for

[2] hereinafter referred to as the '1966 rules'.

creation of additional posts in the department which *interalia* included 7 more posts for Labour Officers. As a consequence of the said decision, the total posts for Labour Officers increased from 5 to 12. At this point in time Respondents No. 1 to 3 were working as Labour Inspectors in the service of the State.

1.4 Within four months from the sanction of the additional posts, the 1966 Rules came to be amended on 25.11.2006. Under the New Rules called the H.P. Labour and Employment Department, Labour Officers, Class-II (Gazetted) Ministerial Services R & P Rules, 2006[3], recruitment to the post of Labour Officer is to be made by promotion as well as direct recruitment in the ratio of 75 per cent and 25 per cent respectively. The effect of the New Rules coupled with the 7 new posts for Labour Officers is that, from out of the total number of 12 posts of Labour Officers, the promotional posts increased from 5 to 9 (being 75 per cent) and direct recruitment posts came to 3 (being 25 per cent). Immediately thereafter, the Government issued a notification creating 12 Labour zones in the State.

1.5 It is in the above-referred background, that Respondents No. 1 to 3 approached the Administrative Tribunal challenging the proposed action of the State Government in filling up 25 per cent of the posts of Labour Officers by direct recruitment. They contended that the vacancies arose in July 2006,

[3] hereinafter referred to as 'the New Rules'.

which is before the promulgation of the New Rules and therefore all the vacancies must be filled only by promotion. By its order dated 24.01.2007, the Tribunal directed the State Government to consider the grievance raised in the Original Application as if it is a representation to it. The representation was considered and rejected by the Government on 27.06.2007. Challenging the rejection, the second Original Application was filed by the Respondents before the State Administrative Tribunal.

1.6 While the matter was pending before the Tribunal, the State Government proceeded further and issued an advertisement through the H.P. Public Service Commission, calling for applications for filling up the 3 posts of Labour Officers under the quota of direct recruitment. The Public Service Commission completed the recruitment process and recommended the names of Respondents No. 4 to 6. The recommendation was accepted and the said Respondents were appointed. It is not in dispute that they joined duties on the 4th and 5th of November, 2008. Questioning the legality and validity of the said appointments, Respondents No. 1 to 3 filed Civil Writ Petition No. 3028/2008 before the High Court of Himachal Pradesh, which came to be allowed by the Division Bench of the High Court by the impugned order on 28.12.2009. Challenging the decision of the Division Bench the State of Himachal Pradesh preferred a Special Leave Petition before this Court, from which the present Civil Appeal arises pursuant to leave being granted on 08.11.2011. Similarly, the direct recruit appointees, Respondents No. 4 to 6

also filed a Special Leave Petition, which is numbered Civil Appeal no. 9747/2011 after leave was granted.

2. The solitary argument advanced on behalf of Respondents No. 1 to 3, which was accepted by the Division Bench was that the vacancies which arose prior to the promulgation of New Rules were to be filled only as per the 1966 Rules and not as per the New Rules. The High Court formulated the issue and proceeded to allow the Writ Petition on the ground that it is covered by the decision of this Court in *Y.V. Rangaiah v. J. Sreenivasa Rao* (supra). The operative portion of the judgment is extracted herein for ready reference:

> "*The question whether the vacancies occurring before the amendment to the Recruitment and Promotion Rules are to be filled up as per the old Recruitment and Promotion Rules or by way of new Recruitment and Promotion Rules is no more res integra in view of the law laid down by their Lordships of this Court in Y.V. Rangaiah and others versus J. Sreenivasa Rao, (1983) 3 SCC 284.*"

Submissions:

3.1 In these appeals, we heard Shri P.S. Patwalia, Senior Advocate assisted by Advocate-on-Record Shri Abhinav Mukerji, for the Appellant-State and Shri. Prasanjit Keshvani, Ld. Advocate representing the Respondents and also Shri. Ravindra Kumar Raizada, Senior Advocate assisted by Ms. Divya Roy, Advocate-on-Record appearing for some other Respondents.

3.2 Shri P.S. Patwalia, learned Senior Advocate for the Appellant-State made the following submissions. At the outset, he would submit, that there

was no challenge to the legality of the New Rules and therefore the Respondents cannot seek a relief which is contrary to the Rules i.e., filling up the posts by way of promotion as per the Old Rules. Secondly, the inter-departmental letter dated 20.07.2006 followed by the notification dated 02.01.2007 creating the posts was in furtherance of the new policy which was brought into effect by the amendments made to the Rules. It was therefore contended that the inter-departmental letter dated 20.07.2006 cannot be seen as a standalone event and that it is part of the larger policy to restructure the cadre. Thirdly, there is no vested right to promotion, though there is only a right to be considered for promotion as per the rules which are in force at the time of such consideration. Fourthly, the recruitment exercise undertaken by the State is completely based on the policy consideration of the State which the High Court failed to take into account. In support of this submission, reliance was placed on judgments of this Court in *K. Ramulu*[4], *Deepak Agarwal*[5] and *Krishna Kumar*[6]. It was finally contended that the High Court erred in applying the decision of *Rangaiah* which was the case of promotion, while the present case is about direct recruitment to the post of Labour Officers.

3.3 Shri Keshwani followed by Shri Raizada, Senior Advocate for the Respondents made the following submissions. They would contend that the

[4] *Dr. K. Ramulu & Anr v. Dr. S Suryaprakash Rao* (1997) 3 SCC 59.
[5] *Deepak Agarwal v. State of U.P* (2011) 6 SCC 725.
[6] *Union of India v. Krishna Kumar* (2019) 4 SCC 319.

7 new posts were created before the promulgation of the New Rules and there was no Governmental Policy regarding the applicability of the New Rules retrospectively. Secondly, there is no evidence to show that the State made a conscious decision to keep the posts vacant, to be filled as per the New Rules. On the contrary, they would submit that the communication dated 20.07.2006 sanctioning the creation of the posts stated that they must be filled on a regular basis. Thirdly, the High Court was right in applying the decision of *Rangaiah* which settled the law on appointments to posts falling vacant prior to the amendment of the rules by holding that they must be governed by the old rules and not the new rules. Finally, to apply the New Rules to the pending vacancies, the appointing authority must demonstrate that they had (i) taken a conscious decision not to fill the vacancies until the promulgation of the new rules and (ii) such a decision must be for a good and a valid reason. For this purpose, reliance is placed on judgments of this Court in *K. Ramulu*[7], *Deepak Agarwal*[8] and *D. Raghu*[9] to demonstrate that no such effort was made.

Issue:

4.1 The real question is whether the vacancies which arose prior to the promulgation of the new rules are to be filled only as per the old rules and not as per the amended rules? It is argued that this principle is no more *res-integra* as the Supreme Court recognised such a right in *Rangaiah's* case and

[7] *Dr. K. Ramulu & Anr v. Dr. S Suryaprakash Rao* (1997) 3 SCC 59.
[8] *Deepak Agarwal v. State of U.P* (2011) 6 SCC 725.
[9] *D. Raghu v. R. Basaveswarudu* 2020 SCC Online 124.

it has been followed in a large number of subsequent decisions. A list of such judgments was forwarded to the Court by the Respondents. On the other hand, while submitting that there is no such right, an even larger list of decisions of this Court that distinguished *Rangaiah* was forwarded to us on behalf of the State.

4.2 We have taken note of the fact that there are a large number of decisions that have either followed the principle in *Rangaiah* or have distinguished it. The principle in *Rangaiah's* case has given rise to a number of decisions, most of them have disapplied *Rangaiah* and have in fact, watered-down the principle while distinguishing it. In this view of the matter, and for clarity and certainty, it is necessary for us to review the subject and restate the principle in simple and clear terms.

4.3 We will first examine the principle laid down in *Rangaiah* itself. We will verify it in the context of the constitutional position provided in Chapter XIV of the Constitution relating to services under the State. We will thereafter examine the decisions that followed *Rangaiah* and also those that have distinguished it. After restating the principle, we will apply it to the facts of the case for arriving at our decision.

The decision in the case of *Y.V. Rangaiah v. J. Sreenivasa Rao*:

5.1 The Petitioners in *Rangaiah's* case were working as LDCs in the Department of Registration and Stamps, Government of A.P. Under Rule 4(a)(1)(i) of the A.P. Registration and Subordinate Service Rules,

appointments to the promotional posts of Sub-Registrar Grade II from LDCs were to be made from the panel of "approved candidates" made under Rule 34 (c). The panel was to be prepared by the *prescribed authority* in the month of September every year and it could operate till a list for the subsequent year was prepared. Importantly, the list had to contain names of as many persons as there are vacancies. As the approved list was not prepared within the prescribed time, promotions could not take place in time. In the meanwhile, the amended rules came into force, as per which the petitioners lost their chance to be considered for promotion. They contended before this Court that their right to be considered for appointment for promotion would not be lost with the advent of new rules as the vacancies occurring prior to the amendment of the rules were to be filled under the unamended rules. In other words, the contention was that the mandatory requirement under the old rules was violated. It is in this context that the Court observed as under:-

> "*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 respondents 3 to 15 would not have been deprived of their right 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 State-wide basis and, therefore, there was no question of challenging the*

> *new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.*"
>
> (emphasis supplied)

5.2 The question that arose in *Rangaiah's* case related to the mandatory obligation under the old rules to prepare an approved list of candidates and also the number of persons to be placed in the list as per the vacancies available. It is in this context that the Court observed that *the vacancies would be governed by the old rules*. This decision is not to be taken to be laying down an invariable principle that vacancies occurring prior to the amendment of the rules are to be governed by old rules. It is important to note that the Court has not identified any *vested right* of an employee, as has been read into this judgment in certain subsequent cases.

5.3 However, as the observation in *Rangaiah's* case has been construed as a general principle that vacancies arising prior to the amendment of rules are to be filled only as per the old rules, it is necessary for us to examine the correct position of law. For this purpose, we will examine the constitutional position and the *status* that governs the relationship between an employee and the State.

Status of persons serving the Union and the States:

6.1 The relationship between the State and its employees is provisioned in Part XIV of the Constitution. The provisions of this Part empower the Union and the States to make *Laws* and executive *Rules,* to regulate the recruitment, conditions of service[10], tenure[11] and termination[12] of persons serving the Union or the States.

6.2 Article 310 provides that, except as expressly provided in the Constitution, every person serving the Union or the States holds office during the *pleasure* of the President or the Governor.

6.3 The legislative power conferred on the Parliament or a State Legislature, to make *Laws,* or the executive power conferred on the President or the Governor to make *Rules* under Article 309 is controlled by the doctrine of *pleasure* embodied in Article 310. This is clear from the fact that Article 309 opens with the restrictive clause, *'subject to the provision of the Constitution*. It is for this reason that the power of the legislature to make *laws* and the executive to make *Rules*, for laying down conditions of services of a public servant is always subject to the *tenure at the pleasure* of the President or the Governor under Article 310.

[10] Article 309, Constitution of India.
[11] Article 310, Constitution of India.
[12] Article 311, Constitution of India.

7.1 The Constitutional provision to provide public employment on the basis of *tenure at pleasure* of the President or the Governor is based on 'public policy', 'public interest' and 'public good'. The concept of holding public employment at *pleasure* is explained in Constitution Bench decision of this Court in *Union of India v. Tulsiram Patel*[13]. The relationship between the Government and its employees, as explained in this judgment can be formulated as under[14] :-

> *I. Unlike in the United Kingdom, in India it is not subject to any law made by Parliament but is subject only to what is expressly provided by the Constitution.*[15]
>
> *II. The pleasure doctrine relates to the tenure of a Government servant… , … means the period for which an incumbent of office holds it.*[16]
>
> *III. The position that the pleasure doctrine is not based upon any special prerogative of the Crown but upon public policy has been accepted by this Court in State of U.P. v. Babu Ram Upadhya and Moti Ram Deka v. General Manager, N.E.F., Railways, Maligaon, Pandu*[17].
>
> *IV. The only fetter which is placed on the exercise of such pleasure is when it is expressly so provided in the Constitution itself, that is when there is an express provision in that behalf in the Constitution. Express provisions in that behalf are to be found in the case of certain Constitutional functionaries in respect of whose tenure special provision is made in the Constitution as, for instance, in clauses (4) and (5) of Article 124 with*

---

[13] *Union of India v. Tulsiram Patel* (1985) 3 SCC 398.
[14] The relevant propositions in *the Tulsiram* case, as identified and extracted in *'Law Relating to Public Services'*, Samaraditya Pal, 3rd Edition, Lexis Nexis, 2011 is adopted for convenience.
[15] (1985) 3 SCC 398 @ 439
[16] *Ibid* at 440.
[17] *Ibid at 441*

respect to Judges of the Supreme Court, Article 218 with respect to Judges of the High Court. Article 148(1) with respect to the Comptroller and Auditor-General of India, Article 324(1) with respect to the Chief Election Commissioner, and Article 324(5) with respect to the Election Commissioners and Regional Commissioners.[18]

V. Clauses (1) and (2) of Article 311 impose restrictions upon the exercise by the President or the Governor of a State of his pleasure under Article 310(1). These are express provisions with respect to termination of service by dismissal or removal as also with respect to reduction in rank of a civil servant and thus come within the ambit of the expression Except as otherwise provided by this 'Constitution' qualifying Article 310(1). Article 311 is thus an exception to Article 310 and was described in Parshotam Lal Dhingra v. Union of India,[19] *as operating as a proviso to Article 310(1) though set out in a separate Article.*[20]

VI. Article 309, is however, not such an exception. It does not lay down any express provision which would derogate from the amplitude of the exercise of pleasure under Article 310(1). It merely confers upon the appropriate legislature or executive the power to make laws and frame rules but this power is made subject to the provisions of the Constitution. Thus, Article 309 is subject to Article 310(1) and any provision restricting exercise of the pleasure of the President or Governor in an Act or rule made or framed under Article 309 not being an express provision of the Constitution, cannot fall within the expression 'Except as expressly provided by this Constitution' occurring in Article 310(1) and would be in conflict with Article 310(1) and must be held to be unconstitutional.[21]

VII. Clauses (1) and (2) of Article 311 expressly restrict the manner in which a Government servant can be

[18] *Ibid* at 447.
[19] *Ibid at 447*
[20] *Ibid at* 447.
[21] *Ibid* at 447

> *dismissed, removed or reduced in rank and unless an Act made or rule framed under Article 309 also conforms to these restrictions, it would be void. The restrictions placed by clauses (1) and (2) of Article 311 are two- (i) with respect to the authority empowered to dismiss or remove a Government servant provided for in clause (1) of Article 311, and (ii) with respect to the procedure for dismissal, removal or reduction in rank of a Government servant provided for in clause (2).*[22]
>
> (emphasis supplied)

7.2 Regardless of its origin, the *doctrine of pleasure* incorporated under our constitutional scheme is to subserve an important public purpose. In Para 44 and 45 of *Tulsiram Patel* (supra), this Court has explained the purpose and object of incorporating this principle:

> *"44. Ministers frame policies and Legislatures enact laws and lay down the mode in which such policies are to be carried out and the object of the legislation achieved. In many cases, in a Welfare State such as ours, such policies and statutes are intended to bring about socio-economic reforms and the uplift of the poor and disadvantaged classes. From the nature of things the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is, therefore, vitally interested in the efficiency and integrity of such services. Government servants are after all paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes. Those who are paid by the public and are charged with public administration for public good must, therefore, in their turn bring to the discharge of their duties a sense of responsibility. The efficiency of public administration does not depend only upon the top echelons of these services. It depends as much upon all the other members of such services, even on those in the most subordinate posts. For instance, railways do not run because of the members of the*

[22] *Ibid at 447*

Railway Board or the General Managers of different railways or the heads of different departments of the railway administration. They run also because of engine-drivers, firemen, signalmen, booking clerks and those holding hundred other similar posts. Similarly, it is not the administrative heads who alone can see to the proper functioning of the post and telegraph service. For a service to run efficiently there must, therefore, be a collective sense of responsibility. But for a Government servant to discharge his duties faithfully and conscientiously, he must have a feeling of security of tenure. Under our Constitution, this is provided for by the Acts and rules made under Article 309 as also by the safeguards in respect of the punishments of dismissal, removal or reduction in rank provided in clauses (1) and (2) of Article 311. It *is, however, as much in public interest and for public good that Government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and rules made under Article 309 and by Article 311 be not abused by them to the detriment of public interest and public good. When a situation as envisaged in one of the three clauses of the second proviso to clause (2) of Article 311 arises and the relevant clause is properly applied and the disciplinary inquiry dispensed with, the concerned Government servant cannot be heard to complain that he is deprived of his livelihood. The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is provided by the public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the latter. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown which has been inherited by India and transposed into our Constitution adapted to suit the constitutional set-up of our Republic but because public policy requires, public interest needs and public good demands that there should be such a doctrine.*

> *45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by clauses (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good."*

8. The principle of a public servant holding office *at the pleasure of the President or the Governor* is incorporated in the Constitution itself (under Article 310). This has a direct bearing on the powers of the Parliament or the legislature to make *Laws* or the executive to make *Rules* for specifying conditions of service provided under Article 309. This position is clearly explained in the above-referred passages. In *B.P. Singhal v. Union of India*[23] this Court explained the consequence of holding the office during the *pleasure* of the President or the Governor:

> *"33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result, when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism".*

[23] *B.P. Singhal v. Union of India* (2010) 6 SCC 331.

9. It is in this background that the employment of a public servant is to be understood. Though the relationship between the employee and the State originates in contract, but by virtue of the constitutional constraint, coupled with the legislative and executive rules governing the service, the relation attains a unique position. Identifying such a relationship as being a '*status*', as against a contract, this Court in *Roshan Lal Tandon v. Union of India*[24], explained what such a *'status'* constitutes. We have extracted hereinbelow the exposition of the concept of '*status'* as explained by the Constitution Bench for ready reference. In this case, the petitioner Roshan Lal Tandon was appointed as Train-Examiner – Grade 'D'. At the time when he joined the service, the promotion to the next post in Grade 'C' was governed by certain rules which later came to be amended. Questioning the amendment, he contended that he had a right to be promoted to Grade 'C' when he joined the service and such a right could not have been altered by way of a subsequent amendment. Rejecting this argument, this Court explained the relationship of Government employment as a *'status'* as under:

> "*6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of*

[24] *Roshan Lal Tandon v. Union of India* (1968) 1 SCR 185.

service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to ***a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties****. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be* ***unilaterally altered*** *by the Government without the consent of the employee****.*** *It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are* ***fixed by the law*** *and in the enforcement of these duties, society has an interest…*

7. We are therefore of the opinion that ***the petitioner has no vested contractual right in regard to the terms of his service*** *and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case.*"

10. The principle laid down in *Roshan Lal Tandon's* case is followed in a number of decisions of this Court.[25] The following are the propositions emanating from the principles laid down in these precedents.

(i) Except as expressly provided in the Constitution, every person employed in the civil service of the Union or the States holds office during the *pleasure* of the President or the Governor (Article 310). *Tenure at pleasure* is a constitutional policy for rendering *services under the state* for public interest and for the public good, as explained in *Tulsiram Patel* (supra).

(ii) The Union and the States are empowered to make laws and rules under Articles 309, 310 and 311 to regulate the recruitment, conditions of service, tenure and termination. The rights and obligations are no longer determined by consent of the parties but by the legal relationship of rights and duties imposed by statute or the rules. The services, thus, attain a *status.*

(iii) The hallmark of *status* is in the legal rights and obligations imposed by laws that may be framed and altered unilaterally by the Government without the consent of the employee.

(iv) In view of the dominance of rules that govern the relationship between the Government and its employee, all matters

[25] *Union of India v. Arun Kumar Roy*, (1986) 1 SCC 677; *Narayana v. Purushotham* (2008) 5 SCC 416; *Brij Lal Mohan v. Union of India* (2012) 6 SCC 502.

concerning employment, conditions of service including termination are governed by the rules. There are no rights outside the provision of the rules.

(v) In a recruitment by State, there is no right to be appointed but only a right to be considered fairly. The process of recruitment will be governed by the rules framed for the said purpose.

(vi) Conditions of service of a public servant, including matters of promotion and seniority are governed by the extant rules. There are no vested rights independent of the rules governing the service.[26]

(vii) With the enactment of laws and issuance of rules governing the services, Governments are equally bound by the mandate of the rule. There is no power or discretion outside the provision of the rules governing the services and the actions of the State are subject to judicial review.[27]

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

[26] *Syed Khalid Rizivi V Union of India* 1993 Supp (3) SCC 575 ; *Hardev Singh v Union of India* 2011(10) SCC 121

[27] *Rajasthan Public Service Commission* v. *Chanan Ram*, (1998) 4 SCC 202.

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.[28] As there are a large number of judgments which followed *Rangaiah* under the assumption that an overarching principle has been laid down in *Rangaiah,* we have to necessarily examine the cases that followed *Rangaiah.* We will now examine how subsequent decisions understood, applied or distinguished *Rangaiah*.

Decisions that followed *Y.V. Rangaiah & Ors. v. J. Sreenivasa Rao*

12.1 The first case which followed *Rangaiah* is *P. Ganeshwar Rao v. State of A.P.*[29] The Court was concerned about recruitment to the post of Assistant Engineer governed by the special rules.[30] The question that arose for consideration was whether the vacancies arising in the category of Assistant Engineers before the amendment to the special rules were to be considered as per the amended or the unamended rules. Having considered *explanation (c)* and the *proviso* of the special rules which used the expression "*vacancies arising in the category*", the Court concluded that the intendment of the

[28] In fact, the case of *Dr. K. Ramulu & Anr v. Dr. S Suryaprakash Rao* (supra) is exactly this where there was a specific requirement in the new amended rules to fill up the old vacancies as per the new amended rules. The repealed rules had a provision for filling up the past vacancies as per the new rules. Also, in *P. Ganeshwar Rao* v. *State of A.P.*, 1988 Supp SCC 740 the intendment was to fill the vacancies as per the old rules.
[29] *P. Ganeshwar Rao* v. *State of A.P.*, 1988 Supp SCC 740.
[30] AP Panchayat Raj Engineering Services (Special) Rules, 1963.

amended rule itself is to fill vacancies based on the rules that existed prior to the amendment of the rules. This is a case that turned on the wording of the amended rule itself. The Court observed as under:

> "*7. ...The only question which has now to be considered is whether the amendment made on April 28, 1980 to the Special Rules applied only to the vacancies that arose after the date on which the amendment came into force or whether it applied to the vacancies which had arisen before the said date also. The crucial words in the Explanation which was introduced by way of amendment in the Special Rules on April 28, 1980 were "37 1/2 per cent of the substantive vacancies arising in the category of Assistant Engineers shall be filled by the direct recruitment". If the above clause had read "37 1/2 per cent of the substantive vacancies in the category of Assistant Engineers shall be filled by the direct recruitment" perhaps there would not have been much room for discussion. The said clause then would have applied even to the vacancies which had arisen prior to the date of the amendment but which had not been filled up before that date. We feel that there is much force in the submission made on behalf of the appellants and the State Government that the introduction of the word "arising" in the above clause made it applicable only to those vacancies which came into existence subsequent to the date of amendment."*

12.2 The decision, in this case, is based on the position of the amended rule. Even in this case, the Court has not identified any general principle of *vested right* of a public servant to be considered for vacancies arising prior to the amendment of the rules. Without any analysis, the Court observed that the principle as laid down in *Rangaiah* is applicable and proceeded with the interpretation of the new rules.

13.1 *N.T. Devin Katti v. Karnataka Public Service Commission*[31], is a case concerning appointment to the post of Tehsildar, a selection post governed under 1975 Rules[32], to be filled from in-service candidates. While the advertisement was issued in May 1975, the procedure for selection of candidates by following the rules of reservation in favour of SC/ST candidates was brought into force on 09 July 1975. The Court held that as the advertisement expressly stated that the selection shall be made in accordance with the existing rules, the candidates who have appeared in the written test and have undergone *viva voce* acquired a vested right for being considered for selection in terms of the advertisement. The Court held that, as the rules have no retrospective effect, the recruitment process cannot be affected. It is in this context, that the Court referred to the case of *Rangaiah* and *P. Ganeshwar Rao*. The Court also relied on *Calton*[33] which was related to the appointment for the post of Principal under the U.P. Intermediate Education Act, 1921, and *Mahenderan's* [34] case which was related to the recruitment process for direct appointment to the post of Motor Vehicle Inspector. Changes made to the rules after the issuance of the advertisement was the question under consideration. The Court observed:

> "11. *There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the*

[31] *N.T. Devin Katti* v. *Karnataka Public Service Commission*, (1990) 3 SCC 157.
[32] Karnataka Administrative Services (Tehsildars) Recruitment (Special) Rules, 1975.
[33] *A.A. Calton v. Director of Education and Anr* (1983) 3 SCC 33.
[34] *P. Mahendran and Ors v. State of Karnataka* (1990) 1 SCC 411.

advertisement expressly states that selection shall be made in accordance with the existing rules or Government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and Government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

13.2 This case concerns appointment to the post pursuant to an advertisement prescribing certain qualifications. Candidates who have applied on the basis of such qualifications have a right to be considered on the basis of the advertisement and such a right cannot be taken away without making a retrospective amendment to rules is the ratio of this case. The issue involved in this case is different from the one confronting us. The case does not throw much light on the issue involved in the present case.

14. In *State of Rajasthan v. R. Dayal*[35], selection for 9 existing vacancies which were to be filled by the Rajasthan Service of Engineers (Building and Roads Branch) Rules 1954 was in question. In a short order, relying on *Rangaiah*, this Court observed that vacancies existing prior to the amendment of the rules are required to be filled in accordance with the law existing as on the date when the vacancies arose. It was held:

> ***"6.*** *As a consequence, any appointment made as on that date should be consistent with the above Rule. In support thereof, he placed reliance on the decision of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao.*
>
> …
>
> ***8.*** *Therefore, it is not in dispute and cannot be disputed that while selecting officers, minimum requisite qualifications and experience for promotion specified in the relevant column, should be taken into consideration against vacancies existing as on 1st April of the year of selection. But since the Rules came to be amended and the amendment became effective with immediate effect and clause (11-B) of Rule 24-A indicates that options have been given to the Government or the Appointing Authority, as the case*

[35] *State of Rajasthan v. R. Dayal* (1997) 10 SCC 419.

may be, to revise the select list as existing as per the law as on the date of the appointment or as may be directed by a competent court, selection is required to be made by the concerned DPC. An appointment made, after selection as per the procedure, to the vacancies existing prior to the amendment, is valid. But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore. This Court has considered the similar question in para 9 of the judgment above-cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose. Undoubtedly, the selection came to be made prior to the amendment of the Rules in accordance with law then existing since the anticipated vacancies also must have been taken into consideration in the light of Rule 9 of the Rules. But after the amended Rules came into force, necessarily the amended Rules would be required to be applied for and given effect to. But, unfortunately, that has not been done in the present case. The two courses are open to the Government or the Appointing Authority, viz., either to make temporary promotions for the ensuing financial year until the DPC meets or in exercise of the power under Rule 24-A(11-B), they can revise the panel already prepared in accordance with the Rules and make appointments in accordance therewith."

15.1 In *B.L Gupta v. M.C.D.*[36], appointment to the post of Assistant Accountant of DESU under MCD was under consideration. These posts were to be filled in accordance with the statutory rules framed in 1978 which provided for an examination. 171 vacancies arose for the said posts in 1993. Only 79 persons who appeared in the examination were appointed. Writ petitions were filed in the High Court of Delhi praying for all 171 vacancies to be filled as per the examination. During the pendency of the writ petitions, the rules were amended in 1995 which provided that 80% of the posts to be filled by promotion and the remaining 20% by examination. The High Court while deciding these writ petitions held that 79 posts were validly filled and the remaining vacancies were to be filled as per the amended rules. The question was whether the remaining vacancies are to be filled as per the amended rules or the unamended rules. Allowing the appeals the Court held:

> "*9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr Mehta to a decision of this Court in the case of N.T. Devin Katti v. Karnataka Public Service Commission [(1990) 3 SCC 157]. In that case after referring to the earlier decisions in the cases of Y.V. Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284] , P. Ganeshwar Rao v. State of A.P. [1988 Supp SCC 740] and A.A. Calton v. Director of Education [(1983) 3 SCC 33] it was held by this Court that the vacancies which had occurred prior to the*

[36] *B.L.Gupta* v. *M.C.D* (1998) 9 SCC 223.

> *amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed. This being the correct legal position, the High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done.*
>
> *10. ...The Rules of 1978 prescribe the mode in which the promotions can be made. This mode has to be followed before the appointments could be made. If no statutory rules had existed, it may have been possible, though we express no opinion on it, that the existing incumbents may have been regularised. Where, however, statutory rules exist, the appointments and promotions have to be made in accordance with the statutory rules specially where it has not been shown to us that the Rules gave the power to the appointing authority of relaxing the said Rules. In the absence of any such power of relaxation, the appointment as Assistant Accountant could only be made by requiring the candidates to take the examination which was the method which was prescribed by the 1978 Rules.*"

15.2 In this short judgment, the Court proceeded on the premise that *Rangaiah* and the subsequent decisions such as *N.T. Devin Katti* held that vacancies occurring prior to the amendment should be governed by the old rules. There is neither a discussion on the Constitutional position, nor is there a reference to the principle governing service conditions of a Government servant as laid down in *Roshan Lal Tandon's* case. Suffice to say that the Court has in its order referred to and followed *Rangaiah*. This is the fourth case which has merely followed *Rangaiah* without examining the principle.

16.1 In *Arjun Singh Rathore v. B.N. Chaturvedi*,[37] the Court followed *Rangaiah* in its short order. The case related to promotion to the post of Area Managers or Senior Managers under the relevant Rules of 1988. While 15 vacancies were available for promotion, the rules came to be amended in 1998. Reversing the decision of the High Court, this Court observed that the vacancies had to be filled as per the vacancies that existed prior to the amendment of the rules under which the process of interviews and selection had already taken place. The Court followed *Rangaiah* and observed:

> "*6. The above legal position has not been seriously disputed by the learned counsel for Respondents 6 and 7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein*..."

16.2 It is only to ensure a detailed analysis and review of the decisions that have followed *Rangaiah* that we are referring to each of these judgments. We notice that the follow up cases have simply referred to *Rangaiah* when the Court felt that the selection process must be as per the rules which existed prior to the amendment. None of these cases recognise the existence of any vested right, nor do they referred to Constitutional position or the principle laid down in *Roshan Lal Tandon's* case.

[37] *Arjun Singh Rathore* v. *B.N. Chaturvedi*, (2007) 11 SCC 605.

17.1 In *State of Bihar v. Mithilesh Kumar*,[38] the Court was concerned with the appointment to the posts of Instructors and Assistant Instructors as per an advertisement published on 30.12.2001. Pursuant to the advertisement, the writ petitioner applied and was called for an interview on 09.11.2002. Thereafter, on 14.11.2002, instructions were issued not to send any further recommendations to the said post as the scheme under which the appointments to the post were called for was no longer valid. The respondent therein was declared successful in the interview but was not appointed and therefore he approached the Court. While upholding the decision of the High Court and dismissing the appeal, this Court following *Rangaiah* held:

> "*14. The learned counsel submitted that the conditions of the advertisement inviting applications for filling up the posts of Assistant Instructor (Electronics) in Kamla Nehru Social Service Institute for Handicapped and Rehabilitation Training Centre, Patna, could not have been altered to the prejudice of the respondent on account of a decision taken subsequently to have persons with disabilities trained by professionally established NGOs/institutions. Reliance was placed on the decision of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao, where this Court in similar circumstances had held that when service rules are amended, vacancies which had occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules.*
> …..
> *23. While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the respondent to be appointed had been*

[38] *State of Bihar* v. *Mithilesh Kumar* (2010) 13 SCC 467.

negated by a change in policy after the selection process had begun."

17.2 This is a case of selection by way of an advertisement and not promotion of a Government servant from a post held by him. The Court observed that the terms of the advertisement could not have been altered to the prejudice of the respondent on the basis of a decision taken subsequently. There was no occasion for the Court to consider the *status* of a public servant in the context of rules governing his service.

18. In *Kulwant Singh v. Daya Ram*[39], the Punjab Police Rules, 1934 dealt with the promotion of Constables to the post of Head Constables. The 1982 amendment to the Rule 13.7 mandated that constables considered for promotion to be sent to a promotional course on the basis of seniority-cum-merit. A batch of 15 constables was selected on the basis of the 1982 rules and was sent for the course in April 1988. Thereafter, 71 vacancies arose and another amendment to the rule in 1988 was made which provided for sending constables to the promotional course on merit-cum-seniority basis. The issue arose when the Senior Superintendent of Police issued a letter to the effect that new rules would apply to the said promotions. Interdicting the decision and reiterating the decision of the Tribunal which followed *Rangaiah* and the subsequent decisions referred to in paras 38 to 41, the Court observed:-

"41. In B.L. Gupta [B.L. Gupta v. MCD, (1998) 9 SCC 223] the Court reiterated the principle stated in Y.V.

[39] *Kulwant Singh* v. *Daya Ram*, (2015) 3 SCC 177.

Rangaiah [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284] , P. Ganeshwar Rao [P. Ganeshwar Rao v. State of A.P., 1988 Supp SCC 740] and A.A. Calton v. Director of Education [(1983) 3 SCC 33] wherein it had been held that the vacancies which had occurred prior to the amendment of rules were governed by the old rules and not by the amended rules. In Arjun Singh Rathore [Arjun Singh Rathore v. B.N. Chaturvedi, (2007) 11 SCC 605] the views stated in Y.V. Rangaiah [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284] and R. Dayal [State of Rajasthan v. R. Dayal, (1997) 10 SCC 419] were reiterated.

42. The reference to the aforesaid proposition of law makes it vivid that the decision rendered by the Tribunal in Acchhar Chand case was in accordance with the precedent of this Court and, in fact the Tribunal clearly meant that."

19.1 In *Richa Mishra v. State of Chhattisgarh*[40], the issue related to appointment to the post of DSP. The State Government sent a requisition for filling up various vacancies including the post of DSP in accordance with the 2000 Rules. Thereafter, the Chhattisgarh Police Executive (Gazetted) Service Recruitment and Promotion Rules, 2005 were published. The appellant therein participated in the selection process and she qualified at each stage. However, her name was still not included in the list of successful candidates since the 2000 Rules provided that the upper age limit for appointment to the post of DSP was 25 years and she had already crossed the said age limit and therefore was ineligible for the post in question. The question that arose for consideration was whether the 2000 rules or the 2005 rules would apply.

[40] *Richa Mishra* v. *State of Chhattisgarh*, (2016) 4 SCC 179.

Having examined the requisition for appointment, which was made prior to the advent of the new rules and further applying the principle of *Rangaiah* the Court observed as under:

> "*18. The High Court held that the first and second requisitions to commence recruitment process against the vacant seats to the post of DSP were made when the 2000 Rules were in force. Therefore, recruitment was rightly undertaken under the 2000 Rules. The admitted facts are that the process of selection started before the 2005 Rules were promulgated with the requisitions dated 27-9-2004 and 26-3-2005 sent by the State Government to CPSC. At that time, the 2000 Rules were in vogue. For this reason, even in the requisition it was mentioned that appointments are to be made under the 2000 Rules. Further, it is also an admitted fact that the vacancies in question which were to be filled were for the period prior to 2005. Such vacancies needed to be filled in as per those Rules i.e. the 2000 Rules. This is patent legal position which can be discerned from Y.V. Rangaiah v. J. Sreenivasa Rao [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284]….*"

19.2 As is evident from the above, this decision also applied *Rangaiah* in the context of the facts and without any reference to the Constitutional position of the employment of a Government servant and the principle laid down in *Roshan Lal Tandon's* case.

Analysis:

20.1 Except in the case of *P. Ganeshwar Rao,* which not only followed *Rangaiah* but also observed that the new Rules enabled the vacancies to be filled as per the Rules that existed prior to the amendment, all the other judgments adopted the principle in *Rangaiah* and directed appointments to be

made as per the rules that existed when the vacancies arose. These cases do not discuss any source of such a right of a Government employee. There is also no reference to any rule, be it old or new, to enable effectuation of such a right. None of these cases refer to constitutional position of *status* or the principle laid down in *Roshan Lal Tandon's* case.

20.2 We will now discuss cases that have distinguished *Rangaiah.* These decisions adopt different reasons for not following the principle laid down in *Rangaiah.*

Decisions that have distinguished *Rangaiah's* case:

21. In *Union of India v. S.S. Uppal*[41] the respondent therein was being considered for absorption to IAS for a vacancy that arose in 01.02.1989. The Indian Administrative Services (Regulation of Seniority) Rules, 1987 were amended on 03.02.1989. The respondent who was appointed on 15.02.1989 claimed that his seniority must be calculated from the date on which the vacancy arose, i.e., 01.02.1989 and for this purpose he relied on the decision in *Rangaiah* and that was accepted by the Tribunal. Reversing the decision of the Tribunal, this Court held that *Rangaiah* has no application at all. Further, relying on the decision in *Shankarshan Dash v. Union of India*[42], which held that the existence of a vacancy does not give rise to a legal right to a selected candidate, the Court held as under:

---

[41] *Union of India* v. *S.S. Uppal*, (1996) 2 SCC 168.
[42] *Shankarshan Dash v. Union of India* (1991) 3 SCC 47.

> "*15. The facts in the case before us are entirely different. There has been no infraction of any rule or violation of any instruction issued by the Government. Respondent 1 has not been able to point out any violation of rules or regulations on the part of the Government by which he was prejudicially affected.*
> ....
> *17. ... He was actually inducted into the service on 15-2-1989. The rules which were in force on that day for determination of seniority will clearly apply to his case. It is true that Uppal's name was included in a panel drawn up sometime in August 1988. But mere inclusion of his name in the panel did not confer upon him any right to automatic appointment to the IAS. Nor can it be said that he was to be treated as to have been appointed from the date when a suitable post fell vacant. ... The seniority of an officer appointed into the IAS is determined according to the seniority rules applicable on the date of appointment to the IAS. Weightage in seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time...*"

22. *State Bank of India v. Kashinath Kher*[43] is again a case where the employee relied on the principle in *Rangaiah* to contend that promotion to the post of Middle Management Grade Scale- II is to be made on the basis of vacancies that arose in 1988, 1989 and 1990 without applying the new policy that came into effect from 1990. In the first place, this is a case involving service under the State Bank of India, not being a service under the State governed by laws or rules made under Article 309. However, as we are considering the principle laid down in *Rangaiah* and also the decisions that followed and dissented it, we have examined this case. It is interesting to

[43] *State Bank of India* v. *Kashinath Kher* (1996) 8 SCC 762.

note that the learned Judges assumed that *Rangaiah's* case considered a question of "retrospective application of the rule to the vacancies existing prior to the rules". In fact, *Rangaiah* does not observe anything like that and we would leave it at this. This Court observed:

> "*14. The learned counsel for the respondents is not right in contending that the vacancies have arisen in 1988, 1989 and 1990 and that the rule of relaxation cannot be given in 1990 to the vacancies that have arisen in 1988, 1989 and 1990 and be considered according to the rules in vogue when the vacancies had arisen. It is seen that the policy decision was taken for the first time on 21-3-1990 effective from 1-8-1988. In other words, the promotions are required to be considered retrospectively in the light of the decision to fill up the vacancies existing as on August 1988. Therefore, it is not a case of applying a rule which was made later to a vacancy which was existing anterior thereto. Equally, it is not correct to state that this principle is an unjust principle. It is true that this Court in Y.V. Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284] had considered the question of retrospective application of the rule to the vacancies existing prior to the rules, in paragraphs 7 and 8 of the judgment. But in that case, the rule was in vogue for Sub-Registrars Grade II in Registration Department of Andhra Pradesh. But no list was prepared, promotion was not made according to the existing rules. The list of eligible candidates was prepared according to the amended Rules, consequential to the zonal system introduced in Andhra Pradesh under Article 371-D of the Constitution and Presidential Order. It was held that the vacancies that had arisen prior to making the amendment to the Rules should be filled in accordance with the rules that were in vogue prior to the amendment and vacancies that arose subsequently should be filled according to the amended Rules. That situation does not apply to the factual matrix.*"

23.1 *K. Ramulu v. S. Suryaprakash Rao*[44], is an important decision. The issue related to applicability of the A.P. Animal Husbandry Services Rules, 1996 (which repealed the existing 1977 rules) to vacancies that arose before the 1996 amendment to the promotional post of Assistant Director. Under Rule 4, the Government was to prepare and operate the panel for the year 1995-96 for promotion to the said post. However, a conscious decision was taken in 1988 by the Government not to fill up any vacancies until the repealed rules were duly amended. In light of this, the Government did not prepare and finalise the panel for promotion to the post of Assistant Veterinary Surgeons to Assistant Director for the year 1995-96. It was held that:

> "*12. ...But the question is whether the ratio in Rangaiah case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. It is true, as contended by Mr H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are P. Ganeshwar Rao v. State of A.P., P. Mahendran v. State of Karnataka, A.A. Calton v. Director of Education, N.T. Devin Katti v. Karnataka Public Service Commission, Ramesh Kumar Choudha v. State of M.P. In none of these decisions, a situation which has arisen in the present case had come up for consideration.*
>
> *13. It is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the respondent...*

[44] *K. Ramulu* v. *S. Suryaprakash Rao* (1997) 3 SCC 59.

> ….
> *15. Thus, we hold that the first respondent has not acquired any vested right for being considered for promotion in accordance with the repealed Rules in view of the policy decision taken by the Government which we find is justifiable on the material available from the record placed before us. We hold that the Tribunal was not right and correct in directing the Government to prepare and operate the panel for promotion to the post of Assistant Directors of Animal Husbandry Department in accordance with the repealed Rules and to operate the same.*"

23.2 This judgment clearly recognises the principle that a policy decision taken by the Government in public interest would prevail over any claim to fill up the vacancies. Further, when such a decision is taken, the employee has no vested right for being considered for promotion in accordance with repealed rules.

24.1 In *Rajasthan Public Service Commission v. Chanan Ram*[45] an advertisement for direct recruitment to 23 posts of Assistant Director (Junior) under Rules, 1986[46] was released on 05.11.1993. The respondent therein applied in pursuance of the said advertisement. Further, the last date for applying in pursuance of this advertisement was 31.12.1993. However, on 28.12.1993, three days prior to the last date for applications, the State Government asked the RPSC not to proceed with the recruitments. Thereafter, on 19.04.1995, the rules were amended and consequently, the

[45] *Rajasthan Public Service Commission* v. *Chanan Ram*, (1998) 4 SCC 202.
[46] Rajasthan Agricultural Marketing Services Rules, 1986.

aforementioned advertisement was cancelled. Another consequence of the amendment was that the post of Assistant Director (Junior) was abolished and restructured as Marketing Officer. A fresh advertisement for 26 posts of Marketing Officer was released and the 23 posts, in respect of which the advertisement was issued, were carried forward. The respondent successfully contended before the High Court that the recruitment must be based on the rules that existed at the time of vacancies by relying on the decision on *Rangaiah* and the subsequent cases that followed it. Rejecting the argument and allowing the appeal this Court held:

> *"15.....On the contrary a three-Judge Bench judgment of this Court in the case of Jai Singh Dalal v. State of Haryana would squarely get attracted on the facts of the present case. A.M. Ahmadi J., speaking for the three-Judge Bench in para 7 of the Report relying on an earlier judgment of this Court in case of State of Haryana v. Subash Chander Marwaha laid down that when the special process of recruitment had not been finalised and culminated into select list the candidate did not have any right to appointment. In this connection, it was observed that the recruitment process could be stopped by the Government at any time before a candidate has been appointed. A candidate has no vested right to get the process completed and at the most the Government could be required to justify its action on the touchstone of Article 14 of the Constitution.*
> *16. In the facts of the present case it cannot even be suggested that the action of the State of Rajasthan was in any way arbitrary in intercepting the earlier recruitment process pursuant to the first advertisement dated 05-11-1993 Annexure P-1 as the Rules themselves had got amended and the posts earlier advertised had ceased to exist."*

24.2 As is evident from the above, after referring to the decisions in *Rangaiah, P. Ganeshwar* and other decisions, the Court adopted the principle that the State has a right to stop a recruitment process at any time before the appointment takes place. This is to say that there is no vested right to get the process completed. This is important for the reason that while it holds that there is no right of an employee, it recognises the obligation of a State to justify its action on the touchstone of the Article 14 of the Constitution.

25.1 In *G. Venkateshwara Rao v. Union of India*[47] the appellant therein expected appointment by promotion against a vacancy that arose in 1991, being the very next candidate on the panel. However, the proposal remained pending till 1993 and in the meanwhile cadre restructuring took place and as a result of which another candidate became eligible to be appointed. Relying on *Rangaiah* he contended that vacancies must be filled as per the rules that existed prior to the restructuring. Rejecting the argument, the Court observed as under:

> "*4....the learned advocate appearing in support of this appeal reiterated the same contentions and urged that the view taken by CAT, Hyderabad is erroneous and cannot be sustained. While dealing with the first contention, he urged that if the Railway Board were to take the decision expeditiously, the appellant could have been accommodated on such dereserved vacancy. He urged that there was no impediment in taking the decision of dereservation and it was merely an inaction on the part of the Railway Board which had deprived the appellant of being appointed against the vacancy.*

[47] *G. Venkateshwara Rao* v. *Union of India* (1999) 8 SCC 455.

> *We do not set any substance in this contention because nothing has been pointed out to us from the record which would justify this contention. The learned counsel for the appellant drew our attention to the decision of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284 : 1983 SCC (L&S) 382] and in particular, he relied upon paras 4 and 9. We have gone through the judgment and in our opinion, the ratio thereof has no application. It was a case dealing with delay in preparing panel for promotional cadre under the then existing rules which were substituted by new rules. The panel was prepared under the new rules.*
> *5. Coming to the second contention as regards restructuring of the cadre, it is quite clear that the restructuring appears to have been made for the efficient working in the Workshop Unit. We, therefore, do not see any substance in this contention.*"

25.2 While distinguishing *Rangaiah's* principle this Court recognised yet another factor on the basis of which the Government need not fill up the vacancies as per the old rules. The reason mentioned in this case is restructuring the cadre. While upholding the contention that restructuring is undertaken for efficient working of the unit, this Court justified the decision of the Government not to fill up the vacancies as per the principle in *Rangaiah.*

26.1 In *Delhi Judicial Services Association v. Delhi High Court,*[48] the Court formulated the issue as, "*in view of the submission made at the Bar, the first question that requires consideration is whether the temporary posts having been created prior to the amendment of Rules, is it the law that require those*

[48] *Delhi Judicial Services Assn.* v. *Delhi High Court*, (2001) 5 SCC 145.

posts to be filled up only in accordance with the unamended Rules and not otherwise?" Rejecting the contention and distinguishing *Rangaiah* on the facts of the case, the Court held as under:

> "*5… In Rangaiah case [(1983) 3 SCC 284] this Court on a consideration of the relevant rules as well as the instructions issued by the Government, came to hold that a list of approved candidates was required to be prepared as of 1-9-1976 for making appointments to the grade of Sub-Registrar Grade II by transfer, but no such list having been prepared and instead, the same having been drawn up in 1977, by which time the amended rules had come into force, it was held that the legitimate right and expectations of those who were entitled to be included in the list which ought to have been prepared in September 1976 cannot be frustrated on account of the fact that the panel had not been prepared and it was so prepared only in the year 1977. It is on this conclusion, the Court had held that the vacancies available prior to 1-9-1976 ought to be filled up under the unamended rules. The aforesaid decision will have no application to the case in hand inasmuch as in the Delhi Higher Judicial Service there is no requirement of preparation of any panel or list of candidates eligible for promotion by any particular date. Then again, merely because posts were created under Rule 16, it was not obligatory for the appointing authority to fill up those posts immediately…*"

26.2 This decision recognised yet another exception to the application of the principle in *Rangaiah* case. Court held that even if vacancies were created prior to the amendment of the Rules, there is no obligation upon the authorities to fill those vacancies immediately. The decision made direct inroads into the principle of *Rangaiah.*

27.1 In *Shyama Charan Dash v. State of Orissa*[49] the appellant therein was working as a Block Level Extension Officer which is a feeder category to the post of Sub-Assistant Registrar. While he was eligible to be appointed to the vacancies in the post of Sub-Registrar, the rules came to be amended in 1991 reducing his chances to be appointed. Relying on *Rangaiah* he contended that the vacancies that arose prior to the amendment must be filled as per the rules existing prior to the amendment. This Court held that:

> "*5. It is appropriate at this stage to make reference to some of the decisions relied upon by the learned counsel on either side. Y.V. Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284] being a case where not only there was omission to prepare the promotion panel in time as per rules then in force but the amended rules dispensed with the original provision for considering LDCs along with UDCs for promotion, adversely affecting their promotional prospects, has no application to the case on hand…*
> *….*
> *9. …As long as the IPOs, as a class or category, are rendered eligible even from 1986 and that is not challenged, the differences, if any, existing and based on the scales of pay among them, when resolved to be done away with in the undoubted exercise of its power by the State, as a matter of policy, cannot be legitimately challenged by the appellants merely because due to the enlargement of the horizon of consideration resulting therefrom, the chances of consideration for promotion of Industrial Supervisors become diminished. The reasons, which weighed with the State Government in doing so, are found to be genuine, real and substantive and meant to do substantial justice to all categories or grades of posts equated for purposes of Rule 7 of the Rules. The fact that in different proceedings where claim for identical scales of pay came to be contested by the Government*

[49] *Shyama Charan Dash* v. *State of Orissa*, (2003) 4 SCC 218.

> *or rejected by the Tribunal, is no justification to countenance the claim of the appellants in these proceedings inasmuch as the criteria to be applied in dealing with such claims are totally different or, at any rate, may be one only among several requirements to be satisfied. Consequently, the challenge on behalf of the appellants has no merit whatsoever and shall stand rejected.*"

27.2 This is again a case where the Court upheld the decision of the Government not to fill up the vacancies as per the old rules. The decision of the Government was upheld because the Court found that the policy decision is genuine, real and substantive and meant to do substantial justice to all categories or grades of posts equated for the purpose of Rule 7. These decisions demonstrate that this Court never applied the principle in *Rangaiah's* case when the policy decision of the Government required amendment of rules for a justifiable reason.

28.1 In *State of Punjab v. Arun Kumar Aggarwal*,[50] the second issue in the case was *"whether the old 1941 Rules or the new 2004 Rules, which became effective from 09.07.2004 will be applied for filling up the vacancies which arose during 2000-2001 under the old 2001 Rules for promotion to the post of SDO in the State of Punjab".* The respondents therein contended that they have an indefeasible right to be promoted to the post of SDO as per the decision in *Rangaiah* case. Rejecting the argument, the Court held as under:-

> "*30. There is no quarrel over the proposition of law that normal rule is that the vacancy prior to the new Rules*

[50] *State of Punjab* v. *Arun Kumar Aggarwal* (2007) 10 SCC 402.

would be governed by the old Rules and not by the new Rules. However, in the present case, we have already held that the Government has taken conscious decision not to fill the vacancy under the old Rules and that such decision has been validly taken keeping in view the facts and circumstances of the case.

.....

35. All the decisions referred to above are related to amendment of the Rules. We have already held that the 1941 Rules were repealed by the 2004 Rules. The facts of those cases are, therefore, not applicable to the facts of the present case.

.....

38. We hold that the Government has taken a conscious decision not to fill up the posts under the old 1941 Rules. The impugned order of the High Court is set aside. We may at this stage point out that the problem seems to have been compounded by the inaction/casual approach of the Government detrimental to public interest. The State Government shall now fill up the vacant posts in accordance with the 2004 Rules within a period of three months from today. All the eligible candidates who satisfy the criteria laid down under the 2004 Rules shall be considered. The entire process of recommendation and appointment shall be completed within three months from today."

28.2 This is yet another case where deviating from *Rangaiah's* principle this Court recognized the decision of the Government not to fill the vacancies arising prior to the amendment as per the old rules for the reason that there is a conscious decision of the Government.

29.1 In *Deepak Agarwal v. State of U.P.*[51], the question arose as to whether the appellants therein were entitled to be considered for promotion to the post of Deputy Excise Commissioner under the U.P. Excise Group 'A' Service

[51] *Deepak Agarwal* v. *State of U.P.*, (2011) 6 SCC 725.

Rules, 1983. The prayer was for consideration to the vacancies which occurred prior to the amendment of 1999 Rules. Reliance was placed on *Rangaiah* which was rejected. The Court observed as under:-

> "*24. We are of the considered opinion that the judgment in Y.V. Rangaiah case 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 amended Rules would be governed by the old Rules and not the amended Rules.*
>
> *25. 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 of 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 as to how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to the 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 Dhavan that the vacancies, which had arisen before 17-5-1999 had to be filled under the unamended Rules.*

> *26. 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 Rangaiah case 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 cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.*
>
> *....*
>
> *28. In our opinion, the matter is squarely covered by the ratio of the judgment of this Court in Dr. K. Ramulu. In the aforesaid case, this Court considered all the judgments cited by the learned Senior Counsel for the appellant and held that Rangaiah case 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 promotion have to be made in accordance with the rules prevalent at the time when the consideration takes place.*"

29.2 This is a very important case which recognises many points of distinction. (a) The Court found that there is no statutory duty cast on the Government to prepare panels as in the case of *Rangaiah*, (b) a candidate has a right to be considered only as per the existing rules, i.e., "the rule in force",

(c) the rule applicable is the rule in force as on the date of consideration, (d) the principle in *Rangaiah* has no universal application, (e) for reasons germane to its decision, the Government is entitled to take a conscious decision about the filling of the vacancies and the rules applicable. This decision made deep inroads into the principle laid down in *Rangaiah's* case.

30.1 *M.I. Kunjukunju v. State of Kerela*[52], related to a claim made by the appellant therein to the post of Industrial Extension Officers. In this case that the selection process commenced on 25.06.1992 when the Commission invited applications and prescribed the method of appointment and qualifications for the post of Industrial Extension Officers. It was contended that the new rules issued in 2001 could not have a retrospective effect to take away the vested right. The vested right argument was considered in detail and the Court rejected the same on the ground that no vested right exists and held as under:

> *"19. Therefore, it is clear that a candidate on making application for the post pursuant to an advertisement does not acquire any vested right for selection. If he is eligible and is otherwise qualified in accordance with the relevant rules, he does acquire right for being considered for selection as per existing rules.*
>
> ....
>
> *22. In the present case, the Rules have not been framed under the proviso to Article 309 of the Constitution of India. The legislature has framed the 1968 Act in exercise of power conferred under Article 309 of the Constitution of India. Under the 1968 Act, the State Government was empowered to make Rules either*

[52] *M.I. Kunjukunju v. State of Kerala* (2015) 11 SCC 440.

> *prospectively or retrospectively to regulate the recruitment and condition of service of persons appointed to public services and posts in question with the Department of Industry and Commerce of the State of Kerala.*
> *23. In view of such delegation of power of the legislature to the State under the 1968 Act, the Special Rules framed by the State Government giving retrospective effect from 1-7-1983 cannot be held to be illegal or invalid.*
> ....
> *26. In the present case, we find that the appellants have not derived any benefit out of the old Government order which was in force at the time of advertisement. We, therefore, hold that no vested right or benefit accrued to the appellants have been taken away by sub-rule (2) of Rule 1 of the Special Rules*."

30.2 This is a case where the Government made rules which clearly applied retrospectively to facts that existed before and after the amendment. The Court held that no right subsists for consideration to the vacancies that existed prior to the commencement of the rules.

31.1 In *State of Tripura v. Nikhil Ranjan Chakraborty*,[53] the Court considered a submission that additional posts in 'Group A' and 'Group B' of Schedule IV must be considered only on the basis of the rules that existed prior to the amendment on 24.12.2011. The Court found no difficulty in straight away applying the decision of this Court in *Deepak Agarwal* (supra) which distinguishes *Rangaiah* to hold as under: -

> "*9. The law is thus clear that a candidate has the right to be considered in the light of the existing rules,*

[53] *State of Tripura v. Nikhil Ranjan Chakraborty* (2017) 3 SCC 646.

namely, "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in Deepak Agarwal in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24-11-2011.

10. In our view, the instant case is fully covered by the law laid down by this Court in Deepak Agrawal and the High Court was completely in error in allowing the writ petition and in dismissing the writ appeals. We, therefore, allow these appeals, set aside the judgment under appeal and dismiss Writ Petitions (Civil) Nos. 104, 105, 106, 153 and 181 of 2012."

31.2 The Court reiterated that there is no rule of absolute application that vacancies must be filled as per the law existing on the date when they arose. The Court held that there is neither an accrued right nor is there a mandate under the rules to fill the vacancies as per the law that existed. The Court recognised the right of the Government to stipulate the vacancies in accordance with rules as amended.

32.1 By 2019 the perspective in which this Court has considered the decision in *Rangaiah* was clear. By this time, the Court recognized many exceptions

to the principle. In *Union of India v. Krishna Kumar*[54], this Court noted that, "*the decision of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao has been construed in subsequent decisions as a case where the applicable rule required the process of promotion or selection to be completed within a stipulated time-frame".* This case relates to a claim made by Havaldars for being considered for the post of Naib Subedar for the vacancies which occurred prior to the changes that were made in the structure of Assam Rifles in 2011. The High Court accepted the submission and directed the applicants to be considered for the posts as per the pre-amended rules. Allowing the appeal this Court held as under:-

> "*10. In considering the rival submissions, it must, at the outset, be noted that it is well settled that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This Court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284 :] has been construed in subsequent decisions as a case where the applicable Rules required the process of promotion or selection to be completed within a stipulated time-frame. Hence, it has been held in H.S. Grewal v. Union of India [H.S. Grewal v. Union of India, (1997) 11 SCC 758 : 1998 SCC (L&S) 420] that the creation of an intermediate post would not amount to an interference with the vested right to promotion.....*
>
> *....*
>
> *13. In view of this statement of the law, it is evident that once the structure of Assam Rifles underwent a change*

[54] *Union of India* v. *Krishna Kumar* (2019) 4 SCC 319.

following the creation of the intermediate post of Warrant Officer, persons holding the post of Havaldar would be considered for promotion to the post of Warrant Officer. The intermediate post of Warrant Officer was created as a result of the restructuring exercise. The High Court was, in our view, in error in postulating that vacancies which arose prior to the amendment of the Recruitment Rules would necessarily be governed by the Rules which existed at the time of the occurrence of the vacancies. As the decided cases noted earlier indicate, there is no such rule of absolute or universal application. The entire basis of the decision of the High Court was that those who were recruited prior to the restructuring exercise and were holding the post of Havaldars had acquired a vested right of promotion to the post of Naib Subedar. This does not reflect the correct position in law. The right is to be considered for promotion in accordance with the Rules as they exist when the exercise is carried out for promotion."

32.2 Apart from holding that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of the law that existed on the date when they arose, this Court also held that the right is to be considered for promotion in accordance with rules *as they exist when the exercise is carried out for promotion.*

33.1 In *State of Orissa v. Dhirendra Sundar Das*[55], the Court was concerned with appointment by promotion to Orissa Administrative Service, Class II Cadre. The employees contended that OAS Class II Rules, 1978 read with OAS Class II, Regulations, 1978 were in force at the time when the State decided to fill up the 150 OAS Class II posts on 28.4.2008. It was their

[55] *State of Orissa* v. *Dhirendra Sundar Das*, (2019) 6 SCC 270.

contention that the subsequent restructuring cannot affect their right to be considered for the 150 posts as per the 1978 Rules. For this purpose, reliance was placed on *Rangaiah.* Rejecting this contention, the Court allowed the appeal by holding:

> "*9.14. Reliance placed by the counsel for the respondents on Y.V. Rangaiah v. J. Sreenivasa Rao in order to submit that the vacancies which had arisen under the old Rules would be governed by the old Rules, is of no avail.*
> *9.15. A similar submission was rejected by this Court in Deepak Agarwal v. State of U.P. [Deepak Agarwal v. State of U.P., (2011) 6 SCC 725 : (2011) 2 SCC (L&S) 175] ...*
> *....*
> *10. On the aforesaid grounds, we hold that the judgment of the Division Bench is liable to be set aside since the contesting respondents did not have a vested or fructified right of promotion to OAS Class II posts which had arisen during the recruitment year 2008. The names of the contesting respondents were merely recommended for consideration. In the meanwhile, in 2009 the State had restructured the cadre, and abolished the OAS Class II cadre. The reconstituted cadre viz. the Orissa Revenue Service Group 'B' cadre came in its place. Hence, the direction of the Division Bench to appoint the contesting respondents in the vacancies which had occurred in the abolished cadre, in accordance with the repealed 1978 Rules, was contrary to law, and liable to be set aside.*"

33.2 Following the line adopted in *Deepak Agarwal v. State of U.P*. (supra) this Court held that the respondents therein do not have a vested and fructified right and therefore held that the appointments need not be made as per the old rules.

34.1 In *Rajasthan State Sports Council v. Uma Dadhich*[56], the respondent therein was appointed under the Rajasthan State Sports Council on the posts of Coach Grade-III on 20.03.1986. She was promoted to Coach Grade-II in 1990 and Coach Grade-I in 1997. Promotion to the post of Sports Officer from the Cadre of Coach Grade-I was challenged by the respondent on the ground that the posts fell vacant in the year 2003-2004, for which the 2006 Rules changed the qualification from mere seniority to seniority-cum-merit could not be applied. Allowing the appeal this Court has held as under:-

> "*5. There is merit in the submission which has been urged on behalf of the appellants that the respondent had no vested right to promotion but only a right to be considered in accordance with the rules as they existed on the date when the case for promotion was taken up. This principle has been reiterated in several decisions of this Court. (See H.S. Grewal v. Union of India [H.S. Grewal v. Union of India, (1997) 11 SCC 758], Deepak Agarwal v. State of U.P. [Deepak Agarwal v. State of U.P., (2011) 6 SCC 725], State of Tripura v. Nikhil Ranjan Chakraborty [State of Tripura v. Nikhil Ranjan Chakraborty, (2017) 3 SCC 646] and Union of India v. Krishna Kumar [Union of India v. Krishna Kumar, (2019) 4 SCC 319]).*
> *6. The judgment in Y.V. Rangaiah v. J. Sreenivasa Rao dealt with a situation where the rules required that the promotional exercise must be completed within the relevant year. Rangaiah case [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284], has hence been distinguished in the judgments noted above.*
> *7. Rule 9(4) of the Rajasthan State Sports Council Service Rules, 2006 on which reliance has been placed on behalf of the appellant does not indicate that the vacancies must be filled in on the basis of Rules as they prevail in the year in which they have occurred. Rule 9(4) is in the following terms:*

[56] *Rajasthan State Sports Council v. Uma Dadhich* (2019) 4 SCC 316.

> *"9. (4) The appointing authority shall determine the vacancies of earlier years, year-wise which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in."*

34.2 The Court considered a large number of decisions that distinguished *Rangaiah's* case and held as a matter of principle that rules that exist on the date when the case for promotion was taken up would hold the field. The Court further observed that there is no rule which specifically mandates that the vacancies prior to the amendment must be filled as per the rules that existed and not the new rules. This is a complete reversal of the principle set to have been laid down in *Rangaiah's* case.

35. Finally, the case of *D. Raghu v. R. Basaveswarudu*[57], is yet another decision that has not followed the principle in *Rangaiah's* case.

The Court held as under:-

> "*129.8. The High Court was in error in holding that it has to be necessarily held that the vacancies which arose prior to the revised Recruitment Rules coming into force has to be filled up under the then existing Rules (the 1979 Rules) relying upon case law including Rangaiah. There was a conscious decision taken to not fill up vacancies based on the restructuring, and what is more, letters dated 28-10-2002 and 14-11-2002 show that promotion to the post of Inspector was to be effected based on the new Recruitment Rules.*"

[57] *D. Raghu* v. *R. Basaveswarudu,* (2020) 18 SCC 1.

Analysis:

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.[58]
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[59].
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*

[58] *Deepak Agarwal v. State of U.P.,* (2011) 6 SCC 725, Para 26; *Union of India v. Krishna Kumar*, (2019) 4 SCC 319, Para 10.
[59] *Deepak Agarwal v. State of U.P.,* (2011) 6 SCC 725, Para 26; *Union of India v. Krishna Kumar*, (2019) 4 SCC 319, Para 10.

policy decision taken by the Government.[60] 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.[62]

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.[63]
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.[64]

37.1 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

---

[60] *K. Ramulu v. Suryaprakash Rao*, (1997) 3 SCC 59, Paras 12 and 13, *Shyam Chandra Das v. State of Orissa*, (2003) 4 SCC 218, Para 9, *State of Punjab v. Arun Kumar Aggarwal,* (2007) 10 SCC 402, Para 38; *Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, Para 28.
[61] *G. Venkateshwara Rao v. Union of India*, (1999) 8 SCC 455, Para 4.
[62] *Rajasthan Public Service Commission v. Charan Ram*, (1998) 4 SCC 202, Para 15; *K. Ramulu v. Suryaprakash Rao,* (1997) 3 SCC 59, Para 15.
[63] *In Delhi Judicial Services Association v. Delhi High Court,* (2001) 5 SCC 145, Para 5.
[64] *Deepak Agarwal v. State of U.P.,* (2011) 6 SCC 725, Para 25.

existed on the date when they arose. This only implies that decision in *Rangaiah* is confined to the facts of that case.

37.2 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*."

37.3 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;

(a) 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.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.

Application of the principle to the facts of the present case:

38.1 Returning to the facts of the present case, we have noticed that the High Court has proceeded on the premise that the vacancies occurring before the amendment of the Rules on 25.11.2006 must be governed by the 1966 Rules. The decision of the High Court took within its sweep even the 7 new posts of Labour Officers that were sanctioned by an inter-departmental letter dated 20.07.2006, which included even the 3 posts allocated for direct recruitment. The direction of the High Court to encompass even the 3 posts allocated for direct recruitment was on the ground that the posts were sanctioned on 20.07.2006, which is prior to the amendment of the Rules on 25.11.2006.

38.2 We have already held that there is no right for an employee outside the rules governing the services. We have also followed and applied the Constitution Bench decisions in *Union of India v. Tulsiram Patel* (supra) and more particularly the decision in *Roshan Lal Tandon v. Union of India* (supra) that the services under the State are in the nature of a *status*, a hallmark of

which is the need of the State to unilaterally alter the rules to subserve the public interest. The 2006 rules, governing the services of the Respondents came into force immediately after they were notified. There is no provision in the said rules to enable the Respondents to be considered as per the 1966 Rules. The matter must end here. There is no other right that Respondents no. 1 to 3 can claim for such consideration.

39.1 The alternative plea of the Government based on its policy decision to restructure the cadre by creating additional posts and also providing for direct recruitment by amending the rules, as a justification for not filling up the vacancies that arose prior to the amendment is fully supported by the following decisions of this Court.[65]

39.2 The material placed on record shows that the additional posts of Labour Officers are created on 20.07.2006 and immediately thereafter the 12 labour zones were created. This is followed by amendment to the Rules with effect from on 25.11.2006 restructuring the cadre. The facts fully justify the alternative submission made by the State and we have no hesitation in accepting the said submission.

---

[65] *K. Ramulu* v. *S. Suryaprakash Rao*, (1997) 3 SCC 59; *Rajasthan Public Service Commission* v. *Chanan Ram*, (1998) 4 SCC 202; *G. Venkateshwara Rao* v. *Union of India*, (1999) 8 SCC 455; *Shyama Charan Dash* v. *State of Orissa*, (2003) 4 SCC 218; *State of Punjab* v. *Arun Kumar Aggarwal*, (2007) 10 SCC 402; *Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725; *State of Tripura v. Nikhil Ranjan Chakraborty*, (2017) 3 SCC 646; *Union of India v. Krishna Kumar* (2019) 4 SCC 319; *State of Orissa* v. *Dhirendra Sundar Das*, (2019) 6 SCC 270; *Rajasthan State Sports Council v. Uma Dadhich*, (2019) 4 SCC 316.

40. For these reasons stated above we set aside the judgment of the High Court in CWP No. 3028 of 2008 dated 28.12.2009 and allow Civil Appeal No. 9746 and Civil Appeal No. 9747 of 2011. There shall be no order on cost.

…….J.
[UDAY UMESH LALIT]

…….J.
[S. RAVINDRA BHAT]

…….J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
MAY 20, 2022