

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**WRIT PETITION NO 60 (S/B) OF 2021
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 67/NB/DB/2022]**

1. Priyanka Singh, aged about 38 years, w/o Sri Bhupendra Kumar Singh, presently working as In-charge Chief Agriculture Officer, Almora.
2. Vinod Kumar Sharma, aged about 36 years, s/o Sri Ramesh Chandra Sharma, presently posted as Agriculture & Soil Conservation Officer, Badechhina, Almora.

.....Petitioners

WITH

**WRIT PETITION NO 93 (S/B) OF 2021
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 91/DB/2022]**

Deepak Purohit aged about 36 years s/o Shri Rakesh Chandra Purohit, presently posted as Agriculture & Soil Conservation Officer, Chakrata, Dehradun.

.....Petitioner

VS.

1. The State of Uttarakhand through Secretary, Ministry of Agriculture and Farmer Welfare, Uttarakhand Govt., State Secretariat, Dehradun
2. Secretary, Personnel Department, Uttarakhand Govt., State Secretariat, Dehradun.
3. Director, Agriculture Department, Uttarakhand, Dehradun..

.....Respondents

In claim Petition No. 67/NB/DB/2022

Present: Sri S.C. Virmani and Sri S.K.Jain, Advocates, for 1st Petitioner.
 Sri Amar Murti Shukla, Advocate, for 2nd Petitioner .
 Sri Kishore Kumar, A.P.O., for Respondents (Virtual)
 Sri Ajai Veer Pundir, Advocate, for the intervener. (Virtual)

In claim Petition No. 91/DB/2022

Present: Sri Amar Murti Shukla, Advocate, for the Petitioner
 Sri V.P.Devrani, A.P.O., for Respondents
 Sri Manish Kumar Singh, Advocate, for the intervener

JUDGMENT

DATED: AUGUST 31, 2022

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSB No. 60 of 2021, on 01.08.2022, as follows:

“The petitioners have preferred the present writ petition to seek the following reliefs:-

“a) issue a writ, order or direction in the nature of mandamus directing and holding that suspending the promotional exercise for the post of Deputy Director / Chief Agriculture Officer after initiation thereof in the name of amending the service rules in vogue so as to benefit the selected few is bad in law.

b) issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to revive the suspended promotional exercise for the post of Deputy Director / Chief Agriculture Officer and forthwith convene the DPC meeting to consider the petitioners for promotion in accordance with the service rules presently in force.”

2. The pleadings in the matter are complete.

3. As we hear the matter, we realize that the Uttarakhand Public Services Tribunal has the jurisdiction to deal with the issues raised by the petitioners in the present writ petition.

4. We are, therefore, not inclined to entertain the present writ petition at this stage. We direct that the complete record of the writ petition, along with all the pending application(s), after retaining a copy thereof in this Court, be transmitted to the Uttarakhand Public Services Tribunal, which shall hear the matter as a claim petition.

5. Since the matter relates to promotions, we request the Tribunal to take-up the matter for hearing on an early date.

6. The present writ petition stands disposed of accordingly.”

2. Hon’ble High Court, on the same date *i.e.* on 01.08.2022 passed the following order in WPSB No. 93 of 2021:

“The petitioner has preferred the present writ petition to seek the following reliefs:-

“a) issue a writ, order or direction in the nature of mandamus directing and holding that suspending the promotional exercise for the post of Deputy Director / Chief Agriculture Officer, after initiation thereof in the name of amending the service rules in vogue so as to benefit the selected few is bad in law.

b) issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to revive the suspended promotional exercise for the post of Deputy Director / Chief Agriculture Officer and forthwith convene the DPC meeting to consider the petitioner for promotion in accordance with the service rules presently in force.

2. The pleadings in the matter are complete.

3. As we hear the matter, we realize that the Uttarakhand Public Services Tribunal has the jurisdiction to deal with the issues raised by the petitioner in the present writ petition.

4. We are, therefore, not inclined to entertain the present writ petition at this stage. We direct that the complete record of the writ petition, along with all the pending application(s), after retaining a copy thereof in this Court, be transmitted to the Uttarakhand Public Services Tribunal, which shall hear the matter as a claim petition.

5. Since the matter relates to promotion, we request the Tribunal to take-up the matter for hearing on an early date.

6. The interim order dated 10.01.2022 operating in the matter shall continue to operate till the matter is taken up by the Tribunal.

7. The present writ petition stands disposed of accordingly”

3. Writ Petition No. 60 (S/B) of 2021 and Writ Petition No. 93 (S/B) of 2021 are, accordingly, reclassified and renumbered as Claim Petitions No. 67/NB/DB/2022 and 91/DB/2022, respectively. Since the reference in this Tribunal shall be of the writ petition filed before the Hon’ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as ‘petition’ and petitioner shall be referred to as ‘petitioner’, in the body of the judgment.

4. By means of petition number 67/NB/DB/2022, Priyanka Singh and another vs. State of Uttarakhand others and petition number 91/DB/2022, Deepak Purohit vs. State of Uttarakhand and others, the petitioners seek the following reliefs:

- a) Issue a writ, order or direction in the nature of mandamus directing and holding that suspending the promotional exercise for the post of Deputy Director/ Chief Agriculture Officer after initiation thereof in the name of amending the service rules in vogue so as to benefit the selected few is bad in law.
- b) Issue a writ, order or direction in the nature of mandamus commanding an directing the respondents to revive the suspended promotional exercise for the post of Deputy Director/ Chief Agriculture Officer and forthwith convene the DPC meeting to consider the petitioners for promotion in accordance with the service rules presently in force.
- c) Issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the present case.
- d) Award costs in favour of the petitioners.

5. Since the factual matrix of the above noted claim petitions along with law governing the field is the same, therefore, both the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience. Claim Petition No. 67/NB/DB/2022 Priyanka Singh and another vs. State and others shall be the leading case .

6. Facts giving rise to present petition are as follows:

6.1 The petitioners are substantively appointed Class-2 gazetted officers in the Agriculture department of the State of Uttarakhand. In terms of the applicable service rules, the petitioners are eligible to be considered for promotion to the higher post of Deputy Director/ Chief Agriculture Officer. The Personnel Department of the State Govt. *vide* its order dated 31.08.2020 had issued specific directions to all the Govt. departments to ensure to conclude the promotional exercises as early as possible. The grievance of the petitioners, by way of the present petition, is that despite the specific directions of the Govt., Departmental Promotion Committee meeting is not being held for promotion of Class-2 officers in the Agriculture Department.

6.2 1st petitioner possesses the academic qualification of M.Sc. in Botany with specialization in Plant Pathology. On being selected by the Uttarakhand Public Service Commission in the Combined State Civil/ Upper Subordinate Service Examination-2004, she was appointed as Agriculture

Service Class-2 (Plant Protection Branch) Section 'C' vide order No. 866 (ii) dated 17.11.2009 of the State Govt. in the Agriculture Department in the pay scale of Rs.15600-39100/- plus grade pay Rs.5400/-. After successfully completing the probation period of two years, she continued to serve as Plant Protection Officer in the department. At the time of filing the petition, the 1st petitioner is serving as In-charge Chief Agriculture Officer, Almora.

6.3 2nd petitioner did his B.Tech. in Agriculture Engineering from G.B. Pant University of Agriculture and Technology, Pantnagar in 2005 and thereafter he completed his M.Tech. degree in Soil and Water Conservation Engineering from IIT Kharagpur in 2008. He was declared successful by the Uttarakhand Public Service Commission for Uttarakhand Agriculture Service Class-2 Section 'D' (Engineering Branch) in the Combined State Civil/ Upper Subordinate Service Examination- 2010. On the basis of the recommendation of the Public Service Commission, he was given appointment in the Engineering Branch by the State Govt. *vide* its composite order no. 2287 dated 01.01.2015 in the pay scale of Rs. 15600-39100/- plus grade Rs.5400/-. 2nd petitioner successfully completed his probation period of two years and has been serving on the post of Agriculture and Soil Conservation Officer.

6.4 In the erstwhile composite State of U.P., the recruitment and service conditions of persons in U.P. Subordinate Agriculture Group 'B' Service were regulated by the U.P. Subordinate Agriculture Group 'B' Service Rules, 1995 framed under *proviso* to Article 309 of the Constitution of India. As per Rule 3(b), 'appointing authority' means the Governor. Sub clause (d) of Rule 3 defines 'commission' as the U.P. Public Service Commission. Rule 5 states that the recruitment to the various categories of posts in Service shall be made from the sources mentioned against them in Appendix 'A' & 'B'. Rule 8 states that for direct recruitment to various posts in service the candidates should have the academic qualifications indicated against the posts in Appendix 'A' & 'B'. By a notification dated 08.11.2002 the aforesaid Service Rules were adopted by the State of Uttarakhand with necessary modification and adaptation. Copies of the U.P. Subordinate Agriculture Group 'B' Service Rules, 1995 and Uttaranchal (U.P. Agriculture Group 'B'

Posts Service Rules, 1995) Adaptation and Modification Order, 2002 are enclosed as Annexures: 1 & 2 to the petition. In the erstwhile State of U.P., the recruitment and service conditions of persons in U.P. Agriculture (Group 'A' Posts) Service were regulated by the U.P. Agriculture (Group 'A' Posts) Service Rules, 1992. The said Service Rules framed under Article 309 were in supersession of all rules and orders in existence on that point of time. Rule 5 of the said Rules provides for source of recruitment. The petitioners herein are concerned with the post of Deputy Director mentioned at Sl. No. 5 under Rule 5. The aforesaid Service Rules were adopted by the State of Uttarakhand *vide* a notification dated 08.11.2002, with necessary modification and adaptation. Copy of the U.P. Agriculture (Group 'A' Posts) Service Rules, 1992 and Uttaranchal (U.P. Agriculture (Group 'A' Posts) Service Rules, 1992) Adaptation and Modification Order, 2002 (for short, Rules of 1992) are enclosed as Annexures: 3 & 4 to the petition.

6.5 *Vide* notification dated 02.08.2003 of the State Govt. (Annexure: 5), the earlier notifications dated 04.10.2001 and 27.10.2001 regarding the re-organization of the Agriculture Department were superseded and new reorganized cadre structure of Agriculture Department was issued creating 2609 posts in the department. The said reorganization was made with a view to speed up the development in the remote and inaccessible places of the State. By the said notification, 18 posts of Deputy Agriculture Director/ Chief Agriculture Officer in the pay scale of Rs.10,000-15,200/- were sanctioned.

6.6 **In the Agriculture Department of the State of Uttarakhand, there are as many as seven branches at the Class-2 level. These are- Development, Engineering, Plant Protection, Statistical, Chemical, Botanical and Marketing. The immediate higher promotional post of Deputy Director/ Chief Agriculture Officer (which the petitioners are presently concerned with) is filled up by way of promotion of the Class-2 Officers of different branches who have completed five years service as such on the first July of the recruitment year.**

The branch-wise cadre strength in Class-2 and Class-1 (Deputy Director/ Chief Agriculture Officer) in the department, is as follows:

Sl. No.	Name of the branch	Class-2 Sanctioned posts	Class-1 Sanctioned posts Dy. Dr./ C.A.O.	Vacancies in Class-1 posts Dy. Dr. / C.A.O.
1.	Development Branch	30	7	2
2	Engineering Branch	14	4	2
3.	Plant Protection Branch	14	3	1
4.	Statistical Branch	4	2	2
5.	Chemical Branch	4	1	
6.	Botanical Branch	1		
7.	Marketing Branch	1		
	Total	68	18	7

6.7 From the above table it would reveal that as against 18 sanctioned posts of Deputy Director/ Chief Agriculture Officer, presently 11 posts are occupied and seven posts are lying vacant. Out of the said vacant posts, two posts are to be filled up by promotion from amongst eligible officers belonging to Development Branch, two posts are to be filled up by promotion from amongst officers belonging to Engineering Branch, one post is to be filled up by promotion from amongst eligible officers belonging to Plant Protection Branch and two posts are to be filled up by promotion from amongst eligible officers belonging to the Statistical Branch. It is relevant to add here that there is no eligible officer available in the Statistical Branch for promotion to the post of Deputy Director/ Chief Agriculture Officer.

6.8 The qualifications prescribed for appointment in various branches at Class-2 level are branch specific. Therefore, separate branch-wise seniority lists of officers are maintained and accordingly, at the promotional stage of Deputy Director/ Chief Agriculture Officer, quotas for various branches have been earmarked. As the qualifications for direct recruitment in different branches are also different, the rule makers have

consciously provided for quotas in promotion for the individual branches.

The petitioners are having unblemished service record to their credit. Each of the petitioners has already completed more than five years of service on the Class-2 post. They are thus eligible to be considered for promotion to the post of Deputy Director/ Chief Agriculture Officer, against the available vacancies in terms of the Services Rules of 1992.

6.9 Final seniority list of Class-2 Officers in Development Branch was issued by the Govt. *vide* O.M. No. 1279 (1) dated 27.10.2019 (Copy: Annexure-6). Out of the 34 officers figuring in the seniority list, 12 officers have been shown retired long back and one officer relieved for U.P. Final seniority list of Class-2 Officers in Plant Protection Branch was issued by the State Govt. *vide* O.M. No.227 dated 03.07.2020 (Copy: Annexure-7), by which it can be seen that 1st petitioner at Sl. No. 4 is the senior most officer among the officers serving the department. Final seniority list of Class-2 Officers in Engineering Branch was issued by the State Govt. *vide* O.M. No. 1644 dated 30.09.2020 (Copy: Annexure- 8). In the said list, the name of 2nd petitioner is at Sl. No. 19 . The officers shown above at Sl. No.19, had either got promotion to class-1 long back or retired or relieved for Uttar Pradesh. 2nd Petitioner is practically at Sl. No.1 in the seniority of the officers belonging to Engineering Branch.

6.10 The Govt. of Uttarakhand by issuing different G.Os. from time to time, directed all the Addl. Chief Secretaries, Principal Secretaries/ Secretaries, H.O.Ds./ Principal Heads of offices, Commissioner Garhwal/Kumaon Region, D.Ms. and M.Ds. of all the Corporations/Establishments to ensure necessary steps relating to promotion against the vacant posts for promotion in all departments in accordance with the provisions contained in the G.O. dated 05.09.2012 and also to report back to the Personnel and Vigilance Department of the action taken. *Vide* G.O. dated 05.09.2012, it was also directed that promotions shall be made without applying the reservation roster for SCs and STs in promotions. Subsequently, the Addl. Secretary, Personnel and Vigilance *vide* communication dated 15.09.2020 brought to

the notice of all the Secretaries of Govt. of Uttarakhand that Hon'ble Chief Minister was to be apprised of the overall situation regarding the cadre-wise promotions made in different departments. Subsequent to the aforesaid Govt. communication dated 15.09.2020, promotional exercise for the post of Deputy Director/ Chief Agriculture Officer was apparently initiated by the administrative department of the Govt. The Director, Agriculture, *vide* his communication no. 4367 dated 21.11.2020 (Annexure: 13) submitted the proposal to the Secretary, Agriculture, for promotion to the post of Deputy Director/ Chief Agriculture Officer, in which it was pointed out that against 18 sanctioned posts of Deputy Director/ Chief Agriculture Officer, 07 posts are lying vacant and promotions are to be made against the branch-wise vacancies. It is also clarified in the communication dated 21.11.2020 that against the 07 posts earmarked for Development Branch, 02 posts were lying vacant, against 03 posts earmarked for Plant Protection Branch, 01 post was lying vacant, against 04 posts earmarked for Engineering Branch, 02 posts were lying vacant and against 02 posts earmarked for Statistical Branch, both the posts were lying vacant. The Director also submitted the names of senior most 05 officers of each of the three branches namely: Development Branch, Engineering Branch and Plant Protection Branch for being considered for promotion by the D.P.C.

6.11 The Joint Secretary, Agriculture and Farmer Welfare, Govt. of Uttarakhand, *vide* communication dated 29.12.2020 (Annexure: 14) brought to the notice of the Addl. Secretary, Personnel Department and the Director, Agriculture that D.P.C. meeting for Deputy Director/ Chief Agriculture Officer in Agriculture Service Class-1 was scheduled to be held on 19.01.2021 from 11:00 AM in the Chairmanship of Secretary, Agriculture and Farmer Welfare Department, Govt. of Uttarakhand. By the said communication a request was also made to the said authorities to participate in the proposed D.P.C. meeting. On 31.12.2020, a representation (Annexure: 15), at the behest of the few officers of Development Branch, was made to the Hon'ble Minister, Agriculture, to make the provision of Single Window System on Class-2 post and till then no promotions be made. On 31.12.2020 itself, Hon'ble Minister directed the Secretary, Agriculture to

forthwith submit the proposal of restructuring/ reorganizing the various branches in Class-B Service into a Single Window System for being placed before the Cabinet and till then the promotional exercise on Class-1 post in the department be kept in abeyance (Copy: Annexure-16).

6.12 When petitioners came to know that the promotional exercise has been kept in abeyance on the ground of proposed amendment in the Service Rules, they made a representation dated 08.01.2021 (Annexure: 17) to the Chief Secretary, thereby pointing out that the branch-wise promotional provision has been in existence in the Service Rules of 1992 prior to the creation of Uttarakhand. Petitioners requested that the D.P.C. meeting be convened in accordance with the relevant Service Rules and also keeping in view the G.O. No. 254 dated 31.08.2020, issued by the Personnel Department. Thereafter on 11.01.2021 the 1st petitioner made a representation (Annexure: 18) through proper channel to the Secretary, Agriculture, Govt. of Uttarakhand requesting that the promotional exercise being in accordance with the Agriculture Service Group-A Service Rules, 1992, was Constitutional and in accordance with law. 2nd Petitioner also submitted a representation dated 10.01.2021 (Annexure: 19) to the Hon'ble Minister by which a similar request was voiced.

6.13 On 14.01.2021, the Joint Secretary, Agriculture wrote a letter (Annexure: 20) to the Addl. Secretary, Personnel Department, Govt. of Uttarakhand and Director, Agriculture, Uttarakhand that the D.P.C. meeting for promotion to the vacant Class-1 posts of Deputy Director/ Chief Agriculture Officer, under the Chairmanship of the Secretary, Agriculture and Farmer Welfare, Govt. of Uttarakhand, scheduled to be held on 19.01.2021, was being suspended/ stayed due to unavoidable reason. Since the promotional process had already been initiated and it was stalled mid-way as per the instructions of the Hon'ble Minister, it appears that pursuant to the directions from the highest level, the administrative department decided to convene the D.P.C. meeting for promotion as per the prevailing Service Rules. Accordingly, by letter dated 29.01.2021 of Deputy Secretary, Agriculture (Annexure: 21), intimation was given to the Addl. Secretary,

Personnel and Director, Agriculture that for promotion against the vacant posts of Deputy Director/ Chief Agriculture Officer, D.P.C. meeting would be held on 2.02.2021 at 09:30 AM under the Chairmanship of Secretary, Agriculture and Farmer Welfare in his official chambers. Addl. Secretary, Personnel and Director, Agriculture were requested to participate in the said D.P.C. meeting. However, the D.P.C. was not held even on this date.

6.14 The Personnel Department of the State Govt. is the nodal department in the matters of framing Rules for Govt. employees. It can issue policy related directions on behalf of the State Govt. to all the Govt. departments and G.O. dated 31.08.2020 is binding on all the departments. The promotional process cannot be suspended for amending the service rules to give benefits to a few employees. The chances of promotion of officers belonging to all feeding cadres need not be the same, inasmuch as the qualifications prescribed for appointment to the posts in various feeding cadres are also different. If an employee fulfills the requisite requirements for promotion prescribed under the relevant Service Rules and he falls within the zone of consideration, such employee is entitled to be considered for promotion against the available vacancy. In the instant case, the petitioners who are eligible to be considered for promotion in terms of the Service Rules are not being considered on the pretext of amending the rules, which is totally arbitrary and illegal.

6.15 It is settled law that no employee has a fundamental right for promotion, but right to be considered for promotion is a fundamental right, envisaged under Article 16 (1) of the Constitution of India, therefore, consideration cannot be suspended after initiation of the promotional process on the pretext of amending the Service Rules. In such view of the matter the grievance of the officers of Development Branch, who would not be promoted under the presently applicable Service Rules (*i.e.* Rules of 1992), is thoroughly misconceived and meritless.

6.16 The State Govt., by way of a policy decision, has already decided to fill up the vacant posts of promotion in all the departments, which decision of the State Govt. is binding on all the concerned including the State

Govt. itself. The State Govt.'s directions do not give any liberty to the concerned administrative departments enabling them to first amend the Service Rules to the satisfaction of the selected few and then initiate the promotional process.

6.17 It is the submission of Ld. Counsel for the petitioners that respondents be directed to forthwith convene the D.P.C. meeting to consider the petitioners for promotion to the post of Deputy Director/ Chief Agriculture Officer in accordance with the Service Rules, as prevalent on the date s of vacancies or else the petitioners will suffer irreparable loss and injury. The petitioners have, therefore, filed present petition for the reliefs, which have been mentioned in Para 4 of this judgment.

7. Sri G.N.Upreti, Deputy Secretary, Agriculture and Farmer Welfare Department, Govt. of Uttarakhand, has filed Counter Affidavit on behalf of Respondent No.1. Sri Gauri Shankar, Director, Agriculture Department, Uttarakhand, Dehradun, has filed Counter Affidavit on behalf of Respondent No.3. Each and every material averment in the claim petition has been denied, save and except as specifically admitted. The following has been mentioned in the C.A./W.S.:

7.1 Rule 5 of the Service Rules, 1992 deals with source of recruitment and Rule 5(5) provides that recruitment on the post of Deputy Director, Agriculture shall be made by promotion through Departmental Selection Committee from amongst substantively appointed members of the Uttar Pradesh Agricultural Class-II Service, who have completed at least 05 years of service as such on the first day of July of the year of recruitment. *Provided* that the representation of members promoted from various Sections of the Uttar Pradesh Agricultural Class-II Service shall be maintained in the same proportion as the sanctioned strength of the Uttar Pradesh Agricultural Class-II Service, as it stands on the first day of the relevant year of recruitment. Further, the posts of Deputy Director of Agricultural Statistics shall be filled from amongst the members of the Agricultural Statistics Section of the Uttar Pradesh Agricultural Class-II Service only.

7.2 As per the provisions provided in the Service Rules of 1992, the Directorate *vide* letter No. 4367 dated 21.11.2020 (Copy: Annexure- CA-1), submitted branch-wise proposal for initiating promotional exercise for making promotion on Group 'A' post i.e., Deputy Director/ Chief Agriculture Officer amongst the members of Agricultural Class-II Service. Pursuant to the proposal dated 21.11.2020 of the Directorate, the officers appointed in the year 2009 and 2014 were included against the branch-wise vacancies as per the provisions of the Service Rules. Consequently, in some branches, where there being no vacancy or less vacancies, the names of officer appointed in the year 2005 could not be included in the said proposal, inasmuch as *proviso* to Rule 5(5) of the Service Rules of 1992 provides representation of members to be maintained in the same proportion as the sanctioned strength as it stands on the first day of the relevant year of recruitment. |

7.3 In response to the representation of Association of the Uttarakhand Agriculture Officers, dated 31.12.2020, Hon'ble Minister, Agriculture, Govt. of Uttarakhand, *vide* letter No. 2008 dated 31.12.2020 directed the Secretary, Agriculture and Farmers Welfare, Govt. of Uttarakhand, to submit a proposal immediately for restructuring the posts under the Agriculture Group-II Service into a single window system in place of posts under various Branches, before the Cabinet and till then promotional exercise for promotion on the posts under Agriculture Group-I Services be kept in abeyance. Direction was give to Director, Agriculture, Uttarakhand by Secretary, Agricultural, Govt. of Uttarakhand *vide* letter dated 05.01.2021 (Annexure: CA-2) to forward clear proposal with immediate effect regarding restructuring/ reorganizing the posts under Agriculture Group-II Service into single window system. In response to the proposal submitted by the Directorate of Agriculture, the State Govt. *vide* letter dated 19.01.2021 sought clarification regarding Points No. 7 & 8 and pursuant to the said clarifications, the Directorate *vide* letter No. 5823 dated 28.01.2021 forwarded the amended proposal regarding restructuring of the existing structure to the Govt. for amending the relevant Service Rules.(Copies of letters dated 19.01.2021 and 28.01.2021 are collectively

filed as Annexure: CA-4). In such view of the matter, the petition filed by the petitioner is devoid of merits and is liable to be dismissed.

8 Rejoinder Affidavit has also been filed by the petitioners, reiterating the same averments as were mentioned in the petition.

9. Petitioners have prayed for their promotion in accordance with the Rules of 1992.

10. Ld. A.P.O. submitted that new Rules have since been notified on 10.12.2021, therefore, D.P.C. will be held as per the Rules of 2021. Ld. A.P.O. also submitted that the petitioners have not challenged the new Rules of 2021, therefore, reliefs sought for by the petitioner in present petition cannot be granted to them. Ld. Counsel for the petitioners, on the other hand, submitted that the vacancies arose before promulgation of the Rules of 2021, therefore, their promotion should be held as the Rules of 1992. Ld. Counsel for the petitioners also submitted that the petitioners are not seeking quashing of Rules of 2021, instead they are praying for their promotion on the vacancies which arose before promulgation of Rules of 2021, according to the Rules of 1992.

11. Sri Ajay Veer Pundir, Ld. Counsel for the intervener (Sri Vijay Deorari), submitted that the petition is not maintainable, inasmuch as the petitioners have not challenged the new Rules of 2021, which have already come into force on 10.12.2021. Ld. Counsel for the intervener submitted that promotion is the valuable right of the intervener and since the petitioners have not challenged new the Rules of 2021 in the petition, therefore, the promotional exercise can only be done under the Rules of 2021, which remain unchallenged.

12. In reply to the submissions of Ld. Counsel for the intervener, Ld. Counsel for the petitioners submitted that the intervention application is not maintainable, inasmuch as the intervener filed a writ petition before the Hon'ble High Court, which writ petition was dismissed by the Hon'ble Court on the ground of alternate remedy. According to Ld. Counsel for the petitioners, the intervener was relegated to Uttarakhand Public Services

Tribunal, but he has not filed the claim petition in this Tribunal. Ld. Counsel for the intervener admitted that he has not filed the claim petition before this Tribunal because there was no requirement of filing the same. He, however, pressed his intervention application. Ld. Counsel for the intervener was permitted to argue the case of the intervener.

13. **The sole question, which arises for consideration of this Tribunal is- whether the promotional exercise for the post of Dy. Director/ Chief Agriculture Officer should be conducted according to the Rules of 1992 or the new Rules of 2021?**

14. This question is no longer *res integra* and is subject matter of a catena of decisions. In the decision of *Y.V. Rangaiiah and others vs. J.Sreenivasa Rao and others, AIR 1983 SC 852*, Hon'ble Apex Court has observed as follows:

“5. The claims of the petitioners in the representation petitions were resisted on various grounds : (1) that the Inspector-General of Registration and stamps was under an obligation to prepare the panels of the Sub-Registrars from time to time, but he was not obliged to prepare the same annually; (2) that the delay in the preparation of the panel as on 1st September, 1976 was not actuated by any motive but it was consequent upon the implementation of the new rule where under the posts of Sub-Registrars which were of state wide cadre, were made zone-wise with effect from 18th of October, 1975, and (3) that the allocation of posts and personnel among the zones had to be made by the Government.

6. The Tribunal on consideration of the materials on record came to the conclusion that the vacancies that arose between the preparation of the panels in December, 1975 and April, 1977 were eight, and that there was no reason why panel for that period should not have been drawn up at all. It is true that after 18th of October, 1975 the zones came into existence and, therefore, promotions to the grade of Sub-Registrar were required to be made on zonal basis, but after the personnel had been allocated to various zones, the task of preparing the annual panel with reference to the vacancies arising during the period 1976-77 should have been taken up on the basis of the seniority list for zone IV. Had such a list been prepared according to the Andhra Pradesh Registration and Subordinate Service Rules, the eligibility of the candidates would naturally have been considered without reference to the amendment issued in March, 1977. On these findings the Tribunal held that the action taken by the Inspector-General of Registration and Stamps to make appointments against vacancies arising during the period 1976-77 from amongst the 'leftovers' of the panels drawn up in April, 1975 and to dispense with the preparation of panel for 1976-77 was in violation of the rules and thus liable to be set aside, and it directed the State of Andhra Pradesh and the Inspector-General of Registration and Stamps to draw up a fresh panel for the year 1976-77 with reference to the vacancies that arose during that period, strictly in accordance with the rules as they existed at the time, and the vacancies pertaining to that period should be filled on the basis of such a panel. Since the amendment to the rules was made in March, 1977, it follows that for vacancies relating to the panel year 1977-78 and subsequent years the panels will have to be prepared in accordance with the rules as they were amended by G.O.Ms. No 265-Revenue (UI) dated 22nd March, 1977.

7. The order of the Tribunal has given rise to two sets of appeals mentioned above, one by Y.V. Rangaiah and others, and the other by the State of Andhra Pradesh and another.

8. The contention on behalf of the appellants herein is that by the time the list was prepared in May, 1977 Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules was amended and the list prepared was in accordance with the rules then prevailing at the time of preparation, and therefore there was nothing wrong with the preparation of the panel. It was further contended that the petitioners in the two representation petitions having not challenged the validity of the amendment to Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules, it was not open to them to challenge the list prepared in May, 1977 which is in accordance with rules prevailing at that time.

9. Having heard the counsel for the parties, we find no force in either of the two contentions. 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-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their 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]

15. In *State of Rajasthan vs. R. Dayal and others*, decided on 17th February, 1997, Hon'ble Supreme Court has observed, as below:

“.....The question, therefore, is: whether the view taken by the High Court in the impugned judgment is correct in law? It is true, as contended by Shri Aruneshwar Gupta, that the determination of vacancies is required to be done under Rule 9 of the Rules and the selection has to be made in accordance with the criteria prescribed under Rule 23 of the Rules. Even Rule 23-A of the Rules prescribes the same procedure and the criteria thereunder was also followed. The revised criteria of eligibility and procedure for promotion of the officers has been prescribed under Rule 24-A of the Rules. Sub-rule (2) of Rules 12 envisages as under:

"The persons enumerated in Column 5 or the relevant Column regarding 'posts from which promotion is to be made.' as the case may be of the relevant Schedule shall be eligible for promotion to posts specified against them in Column 2 thereof to the extent indicated in Column 3 subject to their possessing minimum qualifications and experience on the first day of the month of April of the year of selection as specified in Column 6 or in the relevant Column regarding "minimum qualification and experience for promotion", as the case may be."

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 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 paragraph 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 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 Rule and make appointments in accordance therewith.

It is contended by Shri Das that one of the persons, namely, H.L. Meena was appointed against a carried forward post as per the existing Rules and, therefore, his appointment cannot be challenged. We find it difficult to give acceptance to the contention. Even a carried forward vacancy is required to be considered in accordance with the law existing unless suitable relaxation is made by the Government. As on that date, when the appointment came to be made, the selection was required to be made on the basis of the Rules as existing on the date the vacancy arose. Since, admittedly, that has not been done, the appointment of Shri Bhatnagar and H.L. Meena must be treated to be only temporary appointments pending consideration of the claims of all the eligible persons belonging to General and Reserved quota separately as per Rules.

Equally, one B.L. Kankas (Scheduled Tribe) was appointed by promotion on July 28, 1995, after the amended Rules came into force, and retired from service on July 31, 1995, Since he has already retired, his appointment has not been challenged, though direction to the contra was given by the Division Bench. To that extent, the judgment of the High Court stands set aside and his promotion is ordered to remain undisturbed. As regards others, the Government is required to constitute the DPC which would consider the claims of eligible candidates as per Rules. It would make fresh selection and appointments in accordance with law. Whatever benefits have been given under the impugned order cannot be taken away although the orders are being hereby quashed. But seniority and other criteria would be subject to the decision that would be taken by the Government. The Government is directed to constitute the DPC within a period of eight weeks from the date of the receipt of the order and take speedy action accordingly.

The appeal is accordingly disposed of. No costs.”

[Emphasis supplied]

16. In the decision of *B.L.Gupta and another vs. M.C.D., (1998) 9 SCC 223*, following has been observed by Hon’ble Supreme Court in Paras 9, 10 and 11:

“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*. In that case after referring to the earlier decisions in the cases of *Y.V. Rangaiah v. J. Sreenivasa Rao*, *P. Ganeshwar Rao v. State of A.P.* and *A.D. Calton v. Director of Education* it was held by this Court that the vacancies which had occurred prior to the 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. We are unable to agree with Shri Sanghi that by virtue of their length of service while holding current duty charge as Assistant Accountants, his clients should be regularised in the said posts. Merely because the same posts have been upgraded from Senior Clerks to Assistant Accountants, it would not mean that persons who were given the current duty charge could be regularised without selection. The client of Mr. Sanghi presumably hold lien in the posts of Senior Clerks. If they were to be regularised as Assistant Accountants, the effect would be that they would be promoted to the said posts. 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.

11. We are informed at the Bar by Dr. Singhvi, on the basis of instructions received by him, that now there are about 323 posts of Assistant Accountants. Out of these about 80 have been filled on the basis of the December 1973 examination. The respondents are directed to fill 91 more vacancies on the basis of December 1993 examination which they have already conducted. This will leave a balance of 152 vacancies. The number of persons who are holding these posts on current duty charge appears to be less than the number of vacancies so available. Therefore, there will be no immediate danger of Mr. Sanghi's clients being reverted to the post of Senior Clerks. The respondents will be at liberty to continue to retain them in the higher post, but it is made clear that the vacancies which had arisen prior to amendment of the Rules in 1995 can only be filled in accordance with the 1978 Rules, which means that if Mr. Sanghi's clients want to be regularly appointed as Assistant Accountants, they will have to compete

with and take the examination under the 1978 Rules. This is with regard to the vacancies which remain and are required to be filled under the 1978 Rules. Any vacancies which arise after 1995 will have to be filled as per the amended Rules. It is but obvious that the seniority in all these cases will have to be fixed according to the seniority rules which are applicable.”

[*Emphasis supplied*]

17. In Para 30 of *State of Punjab and others vs. Arun Kumar Aggarwal and others, (2007) 10 SCC 402*, following has been observed by Hon'ble Supreme Court:

“ 30. There is no quarrel over the proposition of law that normal Rule is that the vacancy prior to new Rules 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.”

[*Emphasis supplied*]

18. In the decision of *Arjun Singh Rathore & others vs. B.N. Chaturvedi*, rendered on 12.October, 2007, following has been observed by Hon'ble Supreme Court:

“6. Mr. Calla, the learned senior counsel for appellants has argued that the matter was fully covered by the judgment of this Court in *State of Rajasthan vs. R.Dayal 1997(10)SCC 419* wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in the case of *Y.V.Rangaiah vs. J.Sreenivasa Rao (1983) 3 SCC 284* it was opined as under:

This Court has specifically laid (sic) **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 accordance with the law existing as on the date when the vacancies arose.**

4. The above legal position has not been seriously disputed by the learned counsel for respondent Nos.6 &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. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly.”

19. In the decision of *Richa Mishra vs. State of Chhattisgarh and others*, (2016) 4 SCC 179, following has been observed by Hon'ble Supreme Court in Para 18:

"18. The High Court held that first and second requisitions to commence recruitment process against the vacant seats to the post of Dy.S.P. was made when Rules, 2000 were in force. Therefore, recruitment was rightly undertaken under Rules, 2000.

The admitted facts are that the process of selection started before Rules, 2005 were promulgated with the requisitions dated September 27, 2004 and March 26, 2005 sent by the State Government to the CPSE. At that time, Rules, 2000 were in vogue. For this reason, even in the requisition it was mentioned that appointments are to be made under Rules, 2000. 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. Rules, 2000. This is patent legal position which can be discerned from *Y.V. Rangaiah and Others v. J. Shreenivasa Rao*[1]. As per the facts of that case a panel had to be prepared every year of list of approved candidates for making appointments to the grade of Sub-Registrar Grade-II by transfer according to the old rules. However, the panel was not prepared in the year 1976 and the petitioners were deprived of their right of being considered for promotion. In the meanwhile, new rules came into force. In this factual background, it was held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. The judgment in the case of *B.L. Gupta and Another v. M.C.D.*[2] also summarises the legal position in this behalf. The judgment in *P. Ganeshwar Rao and Others v. State of Andhra Pradesh and Others*[3] is also to the same effect. Para 9 of the judgment laying down the aforesaid proposition of law, is reproduced below:

"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*¹, *P. Ganeshwar Rao*³, 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 amendment of the Rules would be governed by the old Rules and not by the amended Rules."

[Emphasis supplied]

20. In *WPSB No.532 of 2016, Rajesh Chauhan vs. State of Uttarakhand and others*, Hon'ble High Court has observed, as below:

".....The question to be considered is, whether the vacancy, which apparently arose prior to the promulgation of the Rules of 2016 is to be filled up applying the criteria of merit under the Rules of 1979 or on the basis of seniority subject to the rejection of unfit in view of the Rules of 2016. This question is no longer res integra and is subject-matter of a catena of decisions. The earliest on this point is the decision of the Hon'ble Apex Court in the case of *Y.V. Rangaiah and others Vs. J. Sreenivasa Rao and others* reported in (1983)3 SCC 284, from which the principle emerges that in respect of the vacancy arising under the old Rules before change in the rules, it must be filled up in terms of the Rules as

they existed at the time when the vacancy occurred. In the case of State of Punjab and others Vs. Arun Kumar Aggarwal and others reported in (2007) 10 SCC 402, the Court held as follows:

“There is no quarrel over the proposition of law that normal rule is that the vacancy prior to the new Rules would be governed by the old Rules and not by the new Rules. However, in the present case Government took conscious decision not to fill up the vacancies under the old Rules and that such decision has been validly taken keeping in view the facts and circumstances of the case because old Rules did not have provision for promotion of diploma-holder Junior Engineers whereas new Rules specifically provided quota for them.” Then question again arose in the recent decision of the Hon’ble Apex Court in the case of Richa Mishra Vs. State of Chhattisgarh and others reported in AIR 2016 SC 753. Therein, the Court referred to the decision in AIR 1983 SC 852 and has held as follows:-

“19. Question No. 1 The High Court held that first and second requisitions to commence recruitment process against the vacant seats to the post of Dy. S.P. was made when Rules, 2000 were in force. Therefore, recruitment was rightly under taken under Rules, 2000.

The admitted facts are that the process of selection started before Rules, 2005 were promulgated with the requisitions dated September 27, 2004 and March 26, 2005 sent by the State Government to the CPSE. At that time, Rules, 2000 were in vogue. For this reason, even in the requisition it was mentioned that appointments are to be made under Rules, 2000. 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. Rules, 2000. This is patent legal position which can be discerned from Y.V. Rangaiah and Others v. J. Shreenivasa Rao. As per the facts of that case a panel had to be prepared every year of list of approved candidates for making appointments to the grade of sub-Registrar Grade II by transfer according to the old rules. However, the panel was not prepared in the year 1976 and the petitioners were deprived of their right of being considered for promotion. In the meanwhile, new rules came into force. In this factual background, it was held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. The judgment in the case of B.L. Gupta and Another V. M.C.D. also summarises the legal position in this behalf. The judgment in P.Ganeshwar Rao and Others V. State of Andhra Pradesh and Others is also to the same effect. Para 9 of the judgment laying down the aforesaid proposition of law, is reproduced below:

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] : (AIR 1990 SC 1233). In that case after referring to the earlier decisions in the cases of Y.V. Rangaiah (AIR 1983 SC 852), P.Ganeshwar Rao (AIR 1988 SC 2068), and A.A. Calton Vs. Director of Education [(1983) 3 SCC 33] : (AIR 1983 SC 1143) it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules.”

20. No doubt, under certain exceptional circumstances, Government can take a conscience decisions not to fill the vacancies under the old Rules and, thus, there can be departure of the aforesaid general rule in exceptional cases. This legal precept was recognised in the case of Rajasthan Public Service Commission Vs. Keilla Kumar Palliwal and another in the following words:

“There is no quarrel over the proposition of law that normal rule is that the vacancy prior to the new Rules 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 cases.”

Therefore, the principle would appear to be that the ordinary rule is that the vacancies prior to the new rules would be governed by the old rules and not by the new rules. In certain exceptional circumstances, the Government may take a conscious decision to not to fill the vacancies under the old rules and there can be a deviation in exceptional cases.

Therefore, we have to examine, whether there is any scope for applying the exceptional rule or the general rule.

In this case, it appears that a requisition was sent on 20.12.2016, according to the petitioner, to the Public Service Commission, but, according to the Government, the requisition was sent on 19.12.2016. The new rules came into force on 20.12.2016. Even though, the new rules have come, there is no case set up before us that the Government has taken a conscious stand to fill up the vacancies in terms of the new rules.

Even before us, there is no case set up that the exceptional rule must prevail in this case. If that is so, the general rule, which has been followed in a number of decisions must prevail. Resultantly, we hold that in regard to the vacancies which arose prior to the promulgation of the new rules on 20.12.2016, they must be filled up in terms of the rules of 1979 by employing the criteria mentioned in the rules of 1979. Having made this clear, we direct that the needful will be done in terms of the observations, which we have made in this judgment.

The writ petition is, accordingly, disposed of.”

[*Emphasis supplied*]

21. In *WPSS No.1470 of 2018, Hema Karki vs. State of Uttarakhand and others*, Hon’ble High Court has observed, as below:

“7. Hon’ble Supreme Court in the case of State of Punjab and others Vs. Arun Kumar Aggarwal and others, reported in (2007) 10 SCC 402, has held that vacancies prior to enforcement of new Rules would be governed by the Old Rules. Paragraph no. 30 of the said judgment is extracted below:

“30. There is no quarrel over the proposition of law that normal Rule is that the vacancy prior to new Rules 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.”

5. Similarly, in the case of Y.V. Rangaiah and others Vs. J. Sreenivasa Rao and others, reported in (1983) 3 SCC 284, Hon'ble Supreme Court has held that a Government employee cannot be deprived of his right to be considered for promotion on account of delay in preparing panel for promotion. Paragraph no. 9 of the said judgment is extracted below:

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. 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-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their 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 SubRegistrar 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."

6. Similarly, in the case of Richa Mishra Vs. State of Chhattisgarh and others, reported in (2016) 4 SCC 179, Hon'ble Supreme Court has summarized the legal position on the point in paragraph no. 18 of the judgment, which is extracted below:

"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. As per the facts of that case a panel had to be prepared every year of list of approved candidates for making appointments to the grade of Sub Registrar Grade II by transfer according to the old Rules. However, the panel was not prepared in the year 1976 and the petitioners were deprived of their right of being considered for promotion. In the meanwhile, new Rules came into force. In this factual background, it was held that the vacancies which occurred prior to the amended rules would be governed by the old Rules and not by the amended rules. The judgment in B.L. Gupta v. MCD5 also summarises the legal position in this behalf. The judgment in P. Ganeshwar Rao v. State of A.P.6 is also to the same effect. Para 9 of the judgment laying down the aforesaid proposition of law, is reproduced below: (B.L. Gupta case5, SCC p. 226)

"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 Court⁷ 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 N.T. Devin Katti v. Karnataka Public Service Commission⁸. In that case after referring to the earlier decisions in Y.V. Rangaiah⁴, P. Ganeshwar Rao⁶ and A.A. Calton v. Director of Education⁹ it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules."

10. Now, coming to the facts of the present case, this Court finds that petitioner was eligible for promotion in the year 2015 when requisition was sent to

Commandant t General, Home Guards vide letter dated 25.07.2015. The said letter indicates that there were as many as 5 vacancies on promotion quota post of District Commandant. New, Rules were enforced only on 02.06.2016.

11. Separate counter affidavits have been filed; one by respondent nos. 1 & 3 and another by respondent no. 2. In both the counter affidavits, it is stated in paragraph no. 12 that Commandant General, Home Guards was nominated as member of the Promotion Committee, which was to hold meeting on 04.11.2015 and thereafter on 03.12.2015, but, due to engagement of Commandant General, Home Guards elsewhere, the meeting of Promotion Committee could not be held on the dates fixed for the purpose.

12. It is, thus, apparent that petitioner's right to be considered for promotion could not be considered in 2015 due to unavailability of Commandant General, Home Guards on the dates fixed for meeting of Promotion Committee. Undisputedly, petitioner was eligible for promotion to the post of District Commandant in 2015. In such view of the matter, her claim for promotion deserves to be considered under the Old Rules and her eligibility for promotion cannot be taken away under, under the New Rules.

13. Consequently, the writ petition is allowed. Respondent no. 1 is directed to consider petitioner's claim for promotion to the post of District Commandant, in accordance with law, within a period of eight weeks from the date of production of certified copy of this order."

[*Emphasis supplied*]

22. In *WPSS No.556 of 2020, Smt. Seema Rawat and others vs. State of Uttarakhand and others*, Hon'ble High Court has observed, as below:

"7. Learned Senior Counsel appearing for the petitioners would submit that the petitioners were eligible for being considered for promotion when the old Rules were in existence but they were not considered at that relevant point of time, and subsequently new Rules came into force. He would submit that since the vacancies occurred prior to the new rules, the petitioners should be considered for promotion in terms of the earlier Rules. He would further submit that the Rule 5(1)(b) of the new Rules is ultra-vires to Article 14 and 16 of the Constitution of India. To buttress his arguments, learned Senior Counsel would place reliance on the following judgments, which will be adverted to in subsequent paragraphs of the judgment:-

1. **A.A. Calton v. Director of Education & Anr., reported in (1983) 3 SCC 33**
2. **Y.V. Rangaiah and Ors. Vs. J. Sreenivasa and Ors., reported in (1983) 3 SCC 284**
3. **State of Punjab and Ors. Vs. Arun Kumar Aggarwal and Ors., reported in (2007) 10 SCC 402**
4. **Arjun Singh Rathore and ors. Vs. B.N. Chaturvedi and Ors., reported in (2007) 11 SCC 605**
5. **Writ Petition (S/B) No.532 of 2016 Rajesh Chauhan vs. State of Uttarakhand and others, decided on 10.03.2017**
6. **Hema Karki vs. State of Uttarakhand and others, WPSS No.1470 of 2018, decided on 21.05.2019.**

8. *Per contra*, learned Deputy Advocate General appearing for the State of Uttarakhand would submit that the new Rules, having come into force, the Department is entitled to go ahead with the promotion, as envisaged under the Rules, according to which, there is a condition of qualifying service of ten years for being promoted to the post of Marketing Inspector, which the petitioner has not completed so far. Thus, the case of the petitioners for promotion cannot be considered.

9. As regards the submission of learned Senior Counsel appearing for the petitioners that the vacancies existed when the old Rules were in existence and as such it ought to have been filled up by way of old Rules itself, learned Deputy Advocate General would submit that it is the prerogative of the Government to take a decision to fill the vacancies as per old rules or under the new Rules.

10. In A.A. Calton, Hon'ble Supreme Court has observed as under:-

"5. It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under Section 16-F(4) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under Section 16-F of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under Section 16-F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under Section 16-F(4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16-F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the Legislature may pass laws with retrospective effect subject to the recognized constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned Counsel for the appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case."

11. In Y.V. Rangaiah, Hon'ble Supreme Court has held as under:-

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. 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-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their 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."

12. In Arun Kumar Aggarwa, Hon'ble Supreme Court has 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 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."

13. In Arjun Singh Rathore, Hon'ble Supreme Court has observed as under:-

"5. Mr. Calla, the learned senior counsel for the appellants has argued that the matter was fully covered by the judgment of this Court in State of Rajasthan v. R. Dayal wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in the case of Y.V. Rangaiah v. J. Sreenivasa Rao, it was opined as under:

This Court has specifically laid (sic) 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 accordance with the law existing as on the date when the vacancies arose."

6. The above legal position has not been seriously disputed by the learned Counsel for respondent nos.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. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly."

14. In Rajesh Chauhan, the Division Bench of this Court has observed as under:-

"The question to be considered is, whether the vacancy, which apparently arose prior to the promulgation of the Rules of 2016 is to be filled up applying the criteria of merit under the Rules of 1979 or on the basis of seniority subject to the rejection of unfit in view of the Rules of 2016. This question is no longer res integra and is subject-matter of a catena of decisions. The earliest on this point is the decision of Hon'ble Apex Court in the case of Y.V. Rangaiah and others vs. J. Sreenivasa Rao and other reported in (1983) 3 SCC 284, from which the principle emerges that in respect of the vacancy arising under the old Rules before change in the rules, it must be filled up in terms of the Rules as they existed at the time when the vacancy occurred.....

Therefore, the principle would appear to be that the ordinary rule is that the vacancies prior to the new rules would be governed by the old rules and not by the new rules. In certain exceptional circumstances, the Government may taken a conscious decision to not to fill the vacancies under the old rules and there can be a deviation in exceptional case.

Therefore, we have to examine, whether there is any scope for applying the exceptional rule or the general rule. In this case, it appears that a

requisition was sent on 20.12.2016, according to the petitioner, to the Public Service Commission, but, according to the Government, the requisition was sent on 19.12.2016. The new rules came into force on 20.12.2016. Even though, the new rules have come, there is no case set up before us that the Government has taken a conscious stand to fill up the vacancies in terms of the new rules.

Even before us, there is no case set up that the exceptional rule must prevail in this case. If that is so, the general rule, which has been followed in a number of decisions must prevail. Resultantly, we hold that in regard to the vacancies which arose prior to the promulgation of the new rules on 20.12.2016, they must be filled up in terms of the rules of 1979 by employing the criteria mentioned in the rules of 1979. Having made this clear, we direct that the needful will be done in terms of the observations, which we have made in this judgment."

15. In Hema Karki, a Coordinate Bench of this Court has held as under:-

"12. It is, thus, apparent that petitioner's right to be considered for promotion could not be considered in 2015 due to unavailability of Commandant General, Home Guards on the dates fixed for meeting of Promotion Committee. Undisputedly, petitioner was eligible for promotion to the post of District Commandant in 2015. In such view of the matter, her claim for promotion deserves to be considered under the Old Rules, and her eligibility for promotion cannot be taken away under, under the New Rules."

16. The ratio of the aforesaid decisions is that the general rule is that the vacancies existing prior to the new rules would be governed by the old rules and not by the new rules, and the vacancies that has arisen after the amendment would be governed by the amended Rule. However, in certain exceptional circumstances, the Government may taken a conscious decision to not to fill the vacancies under the old rules and there can be a deviation in exceptional case.

17. Now, reverting to the facts of the instant case, a perusal of the record would reveal that the petitioners were appointed as Junior Assistants between the years 2011-2013. Thus, indisputably, all the petitioners had become eligible for promotion on the post of Marketing Inspector by the year 2018, on the basis of Rule 5(1)(b) of the old Rules, as the vacancies were also existing. Had the promotional exercise carried out before 12.05.2020, the date when the new Rules came into existence, the petitioners by virtue of their qualifying service stood a fair chance of being promoted to the post of Marketing Inspector, in accordance with the old Rules. However, the promotional exercise was not carried out for the post of Marketing Inspector, at that relevant point of time, and in the meantime, on 11.09.2019, the Government of Uttarakhand imposed a ban on promotions by a Government Order 11.09.2019. But the same has also been lifted up by another Government Order dated 18.03.2019.

18. In regard to not filling up the vacancy prior to the new Rules, it is only stated by the respondents that the process of framing the new Rules was underway and therefore the promotional exercise was not carried out for the post of Marketing Inspector and the Government thus decided to leave the vacancy unfilled, at that point of time.

19. No doubt, it is the prerogative of the Government not to fill the vacancies under the old Rules under certain exceptional circumstances, but for that there has to be a conscious decision of the Government. In the case at hand, nothing has been brought on record to show any conscious decision of the Government in not filling the post of Marketing Inspector as per old Rules.

In the absence of any conscious decision, there cannot be a departure from the aforesaid general rule.

20. In view of the foregoing discussion, I dispose of the writ petition directing the respondents to consider the petitioners' case for promotion as per the old Rules, within a period of two months from today..”

[Emphasis supplied]

23. Uttarakhand Public Services Tribunal, in the decision rendered on 21st July, 2022 in *Claim Petition No. 27/DB/2021, Kushlanand Tripathi vs. State of Uttarakhand and others* has observed, as below:

“11.....

“3. The facts of the case are not disputed. The petitioners are working as per the Uttarakhand Subordinate Education (Trained Graduate Category) Rules 2014 (hereinafter referred to as the Service Rules 2014). They were entitled to be considered for the promotion to the post of Assistant Teacher L.T. (Physical Education). Such promotion shall be taken out as per Rule 8 of Service Rule 2014. The qualification prescribed is:-

1. Graduate degree from any of the University established by law in India.
2. Having diploma in physical education (D.P.Ed/ B.P.Ed/ Vyayam Ratan from any National or Government recognized training institute/ college/ University established by law.
4. However, on 23.12.2019 an amendment was brought to this rule and by virtue of such amendment, effective from 23.12.2019, the education qualification was changed from the above two and the comparative chart is given below:

(vi) (1) Graduate degree from any University established by law in India.	vi)(1) Graduate degree from any University established by law in India.
(2) D.P. Ed diploma/Vyayam Ratan from any Government or government recognized training institute/college or degree of B.P. Ed from a University established by law. Or (1) Four year integrated course of B.P.Ed with Physical education B.P.E. from any University established by law in India	(2) Graduate of at least one year in Physical Education (B.P.Ed) [or its equivalent] from any institution recognized from National Council for Teachers Education

5. Thus, it is contended by the learned counsel for the petitioner that when the petitioners entered in service, they were guided by 2014 Rule. Even when the department took a decision to give promotion, an advertisement was issued. They were qualified. But by virtue of the amendment dated 23.12.2019 which is prospective in nature they become ineligible for the post.

6. We are of the opinion that the Service (Amendment) Rule 2014 is not retrospective in effect and the rules are supposed to come into force at once i.e. on 23.12.2019, it cannot be made applicable to the petitioners while

considering their case for promotion. It is also brought to our notice that pursuant to the order passed by this Court on 22.03.2021/02.08.2021, the petitioners were called for counselling for the post of Assistant Teacher L.T. (Physical Education) and as per the submission of the learned counsel for the petitioners they have been selected but promotional post have not been allotted because of the pendency of the writ application. However, the learned Standing Counsel do not have instructions regarding the same.

7. In that view of the matter, we dispose of both the writ applications directing the respondents to give promotion to the petitioners if they have been found suitable as per rules which prevailed before the amendment that came into force on 23.12.2019.

8. With such observations the writ petitions are disposed of. The order to be complied with within 45 days from the date of production of certified copy of the same.”

13. We have, therefore, no hesitation in coming to the conclusion that the facts of the present claim petition are squarely covered by the decision rendered by Hon’ble High Court in Bhupal Singh’s case (*supra*). The present claim petition should, therefore, be decided in terms of the aforesaid decision.

14. In view of the above, the claim petition is disposed of by directing the respondents to give promotion to the petitioner, if he is found suitable, as per the Rules prevalent before the amendment that came into force on 23.12.2019.”

24. On 21.11.2020, proposal was sent for holding D.P.C. The letter was sent on 29.12.2020 fixing 19.01.2021 for holding D.P.C. Sri Vijay Deorari, intervener moved a representation on 31.12.2020. Vacancy in case of Mrs. Priyanka Singh, 1st petitioner, is of the year 2020-21. Vacancy in case of Sri Vinod Kumar Sharma, 2nd petitioner, is of the year 2015-16 and vacancy in case of Sri Deepak Purohit, petitioner is of the year 2018-19. Since these vacancies of Deputy Director/ Chief Agriculture Officer arose in the year 2015-16, 2018-19 and 2020-21, i.e. prior to coming into force of Rules of 2021 on 10.12.2021, therefore, these vacancies arising before the notification of new Rules, should be filled up according to the Rules of 1992.

25. In view of the aforesaid, this Tribunal comes to the conclusion that the present petition is squarely covered by the decisions rendered by Hon’ble Supreme Court in *Y.V. Rangaiah and others vs. J.Sreenivasa Rao and others* ; *State of Rajasthan vs. R. Dayal and others*; *State of Punjab and others vs. Arun Kumar Aggarwal and others*; *B.L.Gupta and another vs. M.C.D. (supra)* and other decisions quoted in the body of this judgment, therefore, the petition should be decided in terms of the aforesaid decisions.

26. We, accordingly, dispose of the petitions by directing the respondents to consider promotion of the petitioners, if they are found suitable, as per the Rules prevalent before the amendment that came into force on 10.12.2021. In the circumstances, no order as to costs.

27. Let a copy of this judgment be placed on the file of Claim Petition No. 91/DB/2022 Deepak Purohit vs. State and others.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 31, 2022
DEHRADUN

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