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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 429 of 2013**

1. State of Madhya Pradesh (Now State of Chhattisgarh) Through the Secretary to Government of Madhya Pradesh (Now Chhattisgarh) Tribal Welfare Department, Bhopal, Now Mahanadi Bhawan, Naya Mantralaya, Raipur, Chhattisgarh.
2. The Deputy Commissioner, Tribal Welfare, Bilaspur.
3. The Principal, Government Higher Secondary School, Sondka, P.S. Kharsiya, Tahsil Kharsiya, District Raigarh Chhattisgarh.

---- Appellant

Versus

Liladhar Patel, Aged about 41 years, Son of Parathram Patel, Occupation Teacher, Government Higher Secondary School, Sondka (Middle Section) P.S. Kharsiya, Tahsil Kharsiya, District Raigarh Chhattisgarh.

---- Respondent

For Appellants : Shri Prafull N. Bharat, Additional Advocate General.
 For Respondent : Shri Akhilesh Kumar, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****30/04/2015**

1. The present appeal arises from order dated 10.04.2013 in Writ Petition No. 241 of 2005. The Learned Single Judge set aside the order for reversion directing Respondent to be considered as having been promoted on the post of Upper Division Teacher with effect from 6.5.1989 inclusive of all benefits of promotion including arrears of pay etc. to be granted to him.

2. Learned Additional Advocate General submits that on 23.8.1980 the State Government ordered that Teachers transferred from the Education Department to Tribal Welfare Department at their own request would loose

their seniority in the latter department. The Respondent was transferred from the Education Department to Tribal Welfare Department on 24.5.1986 at his own request. The Respondent gave his consent for transfer on mutual basis well aware of the condition in letter dated 23.8.1980. The fact that he may have submitted a representation subsequently on 2.8.1986 that he was not willing to surrender seniority in the Education Department and was willing to go to the Tribal Welfare Department only if that condition was relaxed, was inconsequential. He could have declined his willingness for transfer to the Tribal Welfare Department. On 21.8.1986 orders for posting of the Respondent in the Tribal Welfare Department were passed without incorporating any condition of relaxation under the instructions dated 23.8.1980.

3. The law stands well settled that when transfer takes place from one department to another on the consent of the employee, loss of seniority is necessarily entailed. The Learned Single Judge therefore erred in holding that non-disposal of the representation of the Respondent dated 2.8.1986 by a specific order tantamounted to his not consenting for loss of seniority and the non-disposal of the same was erroneous granting benefit to the Respondent.

4. Learned Counsel for the Respondent submits that he has no further instructions.

5. The Respondent had moved the erstwhile Madhya Pradesh State Administrative Tribunal at Jabalpur instituting O.A. No. 615 of 1990. Consequent to the winding up of the Tribunal combined with the reorganization of the State, it was transferred to this Court, registered as W.P. No. 241 of 2005. The age of the Respondent mentioned in the O.A. filed in 1990 was 41 years. It is therefore apparent that he has retired on or about 2011 and presumably for that reason, he has lost interest in the matter.

6. Leaving the larger question open for consideration in an appropriate case, considering the superannuation of the Respondent, we are of the opinion that this appeal has become infructuous in so far as the present Respondent is concerned.

7. The appeal is dismissed as infructuous.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P.Sam Koshy)
JUDGE