

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 475 of 2015

Smt. Reeta Singh W/o. Shri Pradeep Singh, Aged About 33 Years R/o. Ward No. : 17, New Chandaniya Para, P. S. : Janjgir, Janjgir, Dist. Janjgir Champa (Chhattisgarh).

----Appellant

Versus

1. State Of Chhattisgarh Through The Department Of Panchayat And Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur (Chhattisgarh).
2. Collector, Janjgir Champa, District Janjgir Champa (Chhattisgarh)
3. Block Education Officer, Block : Nawagarh, Dist. : Janjgir Champa (Chhattisgarh).
4. Chief Executive Officer, Zila Panchayat, Janjgir Champa, Dist. : Janjgir Champa (Chhattisgarh)

---- Respondents

And

Writ Appeal No. 476 Of 2015

Smt. Poornima Yadav W/o Shri Badri Narayan Yadav Aged About 31 Years R/o C/o Shri Lav Kumar Yadav, Ward No. 7, New Chandaniya Para, P. S. Janjgir, Janjgir, Dist. Janjgir-Champa (Chhattisgarh)

----Appellant

Vs

1. State Of Chhattisgarh Through The Department Of Panchayat And Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur (Chhattisgarh)
2. Collector, Janjgir-Champa, Dist. Janjgir-Champa (Chhattisgarh)
3. Block Education Officer, Block Baloda, Dist. Janjgir-Champa (Chhattisgarh)
4. Block Education Officer, Block Nawagarh, Dist. Janjgir-Champa (Chhattisgarh)
5. Chief Executive Officer, Zila Panchayat, Janjgir-Champa, Dist. Janjgir-Champa (Chhattisgarh)

---- Respondents

And

Writ Appeal No. 477 Of 2015

Pramod Kumar Sahu S/o Shri Chandrasen Sahu, Aged About 43 Years R/o Village & Post Kirit, P. S. Nawagarh, Nawagarh, Distt. Janjgir-Champa, (Chhattisgarh)

---- Appellant

Vs

1. State Of Chhattisgarh Through The Department Of Panchayat And Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, (Chhattisgarh)
2. Collector, Janjgir- Champa, Distt. Janjgir Champa, (Chhattisgarh)
3. Block Education Officer, Block Nawagarh, Distt. Janjgir- Champa, (Chhattisgarh)
4. Chief Executive Officer, Zila Panchayat, Janjgir- Champa, Distt. Janjgir- Champa, (Chhattisgarh)

---- Respondents

For Appellants:

Shri N. Naha Roy, Advocate

For Respondents/State:

Mr. B. Gopa Kumar, Dy. Advocate
General

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

29/10/2015

1. The present appeals arise from a common order dated 28.8.2015 in Writ Petition (S) No.4340/2014 following the earlier orders passed in Writ Petition (S) No.2354/2013 on 11.9.2014 (Prakash Chandra Pradhan & Another vs. State of Chhattisgarh & Others).
2. Learned Counsel for the Appellants submitted that re-fixation of the seniority pursuant to a transfer on request and eligibility to be considered for promotion are two separate aspects. Even if there is loss of seniority pursuant to a transfer on request, the service rendered earlier will have to be taken into consideration for reckoning eligibility to be considered for promotion in accordance with the reduced seniority.
3. Referring to order dated 8.8.2014 issued by the Chief Executive Officer, Zilla Panchayat, Janjgir-Champa, he submits that the condition

imposed that the eligibility for seven years must be acquired at the transferred place of posting was unjustified.

4. Learned Counsel for the State submits that paragraph-24 of the order in *Prakash Chandra Pradhan (Supra)* is clear on the issue that loss of seniority and eligibility to be considered for promotion were two different matters.

5. We have considered the submissions on behalf of the parties. Rule 27 of the Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules 2012 provides for request transfer in which event, loss of seniority only would follow at the transferred place of posting. The Learned Single Judge has correctly observed that loss of seniority due to request transfer and the eligibility to be considered for promotion by taking into account the earlier period of service before transfer were two separate issues and the latter had to be taken into consideration for determining eligibility to be considered for promotion as distinct from seniority.

6. Considering a similar issue with regard to calculation of the time period for grant of time bound promotion in a case relating to transfer upon request, it was observed in (1999) 2 Supreme Court Cases 119 (*Dwijen Chandra Sarkar v. Union of India*) as follows:

“17. On the facts of the present case and especially in view of the aforesaid decisions, we are of the view that when the transfer is in public interest and not on request, the two employees transferred cannot be in a worse position than those in the above rulings who have been transferred on request and who in those cases accepted that their names could appear at the bottom of the seniority list. Even in cases relating to request transfers, this Court has held, as seen above, that the past service will count for

eligibility for certain purposes though it may not count for seniority.

18. Hence the transfer order and circular concerned of 1983 which required that the past service should not count for seniority, cannot have any bearing on eligibility for time-bound promotion. Seniority and time-bound promotions are different concepts, as stated above.

19. For the above reasons, we hold that the past service of the appellants is to be counted for the limited purpose of eligibility – for computing the number of years of qualifying service, to enable them to claim the higher grade under the Scheme of Time-bound Promotions. “

7. The candidature of the Appellants for promotion has to be considered in light of the aforesaid discussion, if not already done.

8. The appeal is disposed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE