

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6434 of 2008

- Smt. Meena Shrivastava, W/o Shri V.P. Khare, aged about 44 years, Assistant Teacher, at Multipurpose Higher Secondary School, Dayalband, Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through the Secretary, Department of Education, Dau Kalyan Singh Bhawan, Raipur, District Raipur (Chhattisgarh)
3. The Principal Multipurpose Higher Secondary School, Bilaspur, Dayalband, Bilaspur (Chhattisgarh)
4. Director, Directorate, Public Instruction, Raipur, District Raipur (CG)
5. District Education Officer Bilaspur (CG)

---- Respondent

For Petitioner	Mr. Animesh Verma, Advocate
For Respondent /State	Mr. Ramakant Mishra, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/10/2017

1. The present writ petition was earlier disposed of vide order 17.4.2017, however, Review Petition No.63/2017 preferred by

the State Government was allowed by this Court on 3.10.2017 and the order dated 17.4.2017 was recalled. The matter has now been posted for further hearing.

2. Heard learned counsel for the parties.
3. Petitioner was appointed as Assistant Teacher on 5.1.1984 by the District Education Officer, Tikamgarh. On account of her marriage on 8.7.1992, she was required to stay at Bilaspur, therefore, she applied for transfer from District Tikamgarh to District Bilaspur, which was allowed vide order dated 26.6.1993, where-under, she was transferred to Bilaspur, however, there was a condition in the transfer order that the petitioner shall be placed at the bottom of the seniority list of Assistant Teachers working in Bilaspur District.
4. In this petition, the petitioner has prayed for restoration of her seniority from the date of initial appointment and accordingly for grant of promotion on the post of Teacher from the date her juniors have been promoted.
5. A similar matter i.e. **Smt. Reeta Singh Vs. State of Chhattisgarh and others**, decided on 29.10.2015 in WA No.475 of 2015 and another connected appeal, has been considered by the Division Bench of this Court, wherein, it was held thus in para 6 and 7 :

“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.”

6. It is thus settled that even in cases relating to request transfers, the past service will count for eligibility for certain purpose though it may not count for seniority as held by the Supreme Court in the matter of **Dwijen Chandra Sarkar** (supra). It is also clear that the seniority and time bound promotions are different concepts, as stated above.

7. Therefore, the present writ petition is disposed of with observation that the petitioner's prior services at District Tikamgarh is to be counted for the limited purpose of eligibility - for computing the number of years of qualifying service for any further promotion. However, it may not count for seniority

as a whole as held by the Division Bench in para 6 of the order passed in **Smt. Reeta Singh** (supra).

8. The petitioner may represent the matter before the competent authority raising her grievance regarding supercession in the matter of promotion.

Sd/-

Judge

(Prashant Kumar Mishra)

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