

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4565 of 2009**

- Prem Singh Rathiya S/o Butiya Singh Rathiya, aged about 52 years, Occupation Service As Assistant Teacher, Posted At Primary School Taraimal, District Raigarh (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh, through Commissioner, Adim Jati and Anusuchit Jati Vikas, Raipur, District Raipur (CG)
2. Assistant Commissioner Adiwasi Vikas Raigarh, District Raigarh (CG)
3. Collector (Adiwasi Vikas Branch) Raigarh, District Raigarh (CG)
4. Chief Executive Officer, District Panchayat, Raigarh, District Raigarh (CG)

---- Respondent

For Petitioner : Shri Awadh Tripathi, Advocate.
For Respondent/State : Miss Sunita Jain, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****02/05/2017**

1. The petitioner is an Assistant Teacher having been appointed on 17.1.1983 when Jashpur was part of Raigarh District. The petitioner was thereafter transferred from Jashpur to Raigarh on 5.11.2001, therefore, the petitioner's service at Jashpur has not been considered for fixation of his seniority, which has now been fixed in the Raigarh District, as if the petitioner was appointed on 5.11.2001 or on 20.11.2001 when he joined pursuant to his transfer to Raigarh.

2. In the year 2009, persons junior to the petitioner that is to say those Assistant Teachers appointed after 17.1.1983 were promoted, therefore, the petitioner has filed this writ petition for consideration of his case for promotion for the post of UDT with effect from 18.2.2009.
3. According to the respondents, the petitioner having himself opted for transfer from Jashpur to Raigarh in the year 2001, he shall lose his seniority in view of the State Government's circular dated 24.6.1976.
4. Similar issue had fallen for consideration before the Division Bench of this Court in the matter of **Smt. Reeta Singh Vs. State of Chhattisgarh & Others** (WA No.475/2015 & other connected matters) wherein the following has been observed in paras-5 & 6:-

“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 any 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.”

5. The law has thus been settled by the Division Bench 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 the eligibility to be considered for promotion as distinct from the seniority, meaning thereby that past service will be considered for eligibility but not for reckoning seniority at the transferred place.
6. In view of the legal position settled by the Division Bench, the present writ petition is also disposed of in terms of the order passed by the Division Bench in Writ Appeal No.475/2015, referred to above.

Sd/-
Judge
(Prashant Kumar Mishra)