

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 1542 of 2017**

1. Smt. Ela Patel W/o Shri Pawan Kumar Patel, Aged About 29 Years Presently Posted As Assistant Teacher (Panchayat), Government Primary School, Khamhardadar (Jamhar), Block Pithora, District Mahasamund (Chhattisgarh).
2. Digree Lal Patel S/o Benudhar Patel, Aged About 42 Years Presently Posted As Assistant Teacher (Panchayat), Government Primary School, Charbhatha, Block Saraipali, District Mahasamund (Chhattisgarh)
3. Neha Chandrakar W/o Shri Sanjay Kumar Chandrakar, Aged About 29 Years Presently Posted As Assistant Teacher (Panchayat), Government Primary School, Bhawa, Block Mahasamund, District Mahasamund (Chhattisgarh)
4. Mamta Sinha W/o Shri Kaushal Kishore Sinha, Aged About 39 Years, Presently Posted As Assistant Teacher (Panchayat), Government Primary School, Fulwari (Sindhori), Block Mahasamund, District Mahasamund (Chhattisgarh)
5. Horilal Sahu S/o Dheluram Sahu, Aged About 47 Years Presently Posted As Assistant Teacher (Panchayat), Government Primary School, Khirsali, Block Mahasamund, District Mahasamund (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh)
2. The Chief Executive Officer, Zila Panchayat, Mahasamund, District Mahasamund (Chhattisgarh)

---- Respondent

For Petitioners	Mr. Rahul Mishra, Advocate
For Respondent /State	Mr. Adhiraj Surana, Dy. GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/11/2017

(1) Heard.

(2) It is not disputed that the petitioners' were transferred from one Janpad Panchayat to another Janpad Panchayat or Zila Panchayat, as the case may be and they have been accorded bottom seniority.

(3) In the matter of **Smt. Reeta Singh Vs. State of Chhattisgarh and others** (WA No.475 of 2015 and other connected appeals, decided on 29.10.2015), this Court has passed the following order vide para 5, 6 & 7 :

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.

(4) In the present case, the petitioner's cases were considered in the light of the judgment passed by the Division Bench in the matter of **Smt. Reeta Singh (supra)**. While they have been held eligible for consideration by counting their previous services for the purpose of eligibility, they have not been accorded the seniority by counting their previous services. In other words, at the transferred Janpad Panchayat or Zila Panchayat, as the case may be, the petitioners have been placed at the bottom seniority. This action

of the respondents is under challenge in this writ petition.

- (5) Considering the order passed by the Division Bench of this Court in the matter of **Smt. Reeta Singh (Supra)**, the impugned action cannot be faulted with. However, the petition is disposed of with observation that the petitioners shall be considered for promotion along with other eligible candidates whenever their turn comes.

Sd/-

Judge

(Prashant Kumar Mishra)

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