

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2938 of 2018

Dilip Kumar Markande S/o Shri Dev Prasad Markande Aged
About 30 Years Presently Posted As Assistant Teacher
(Panchayat) At Government Primary School Khainda (D) ,
Janpad Panchayat Balodabazar , R/o Village Dotopan, Tahsil -
Balodabazar , District Balodabazar Bhatapara Chhattisgarh.,
District : Balodabazar-Bhathapara, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary Department Of
Panchayat And Rural Development Mantralaya , Mahanadi
Bhawan Naya Raipur District Raipur Chhattisgarh., District :
Raipur, Chhattisgarh
2. Chief Executive Officer Zila Panchayat Baloda Bazar
Bhatapara , District Baloda Bazar Bhatapara Chhattisgarh.,
District : Balodabazar-Bhathapara, Chhattisgarh
3. Chief Executive Officer Janpad Panchayat Bhatapara District
Baloda Bazar Bhatapara Chhattisgarh., District : Balodabazar-
Bhathapara, Chhattisgarh

---- Respondents

For Petitioner : Mr. Ishan Verma, Advocate.

For State : Mr. Ramakant Mishra, Dy. AG

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Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

11/04/2018

1. The matter in issue is squarely covered by the judgment rendered by the Division Bench of this Court in the matter of Smt. Reeta Singh vs State of Chhattisgarh and others, passed in Writ Appeal No.475/2015, decided on 29.10.2015.

2. In the above matter of Reeta Singh (supra), it is held that for the purpose of eligibility, the length of service is required to be considered irrespective of transfer, however, benefit of seniority may not be given.

The order passed by the Division Bench in the aforesaid case clearly holds that:-

“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.”

3. The legal issue stands adjudicated by the Division Bench, it only requires application in the case of petitioner on its own facts. Therefore, in these circumstances, instead of keeping the matter pending, it would be appropriate to dispose of the writ petition with liberty to the petitioner to prefer a fresh representation before the respondent No.2 within a period of one month from today, who shall consider the petitioner's representation with regard to his eligibility for being considered for promotion keeping in view of the legal position adumbrated by the Division Bench in case of Smt. Reeta Singh (supra) and takes decision on its own merit in accordance with law.

4. With the aforesaid observation, the writ petition is disposed off.

Sd/-

(Manindra Mohan Shrivastava)

Judge