



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 18th December, 2023*

+ W.P.(C) 16309/2023 & CM Appls. 65678/2023 and 65679/2023

(52) THE EMPLOYEES STATE INSURANCE CORPORATION
THROUGH ITS DIRECTOR GENERAL
AND OTHERS

..... Petitioners

Through: Mr. Manish Kumar Saran, Mr. Satya
Prakash Sharma and Ms. Ananya
Tyagi, Advs.

versus

VIDYNAND KUMAR

..... Respondent

Through: Mr. Gautam Narayan, Mr. Prateek
Dhanda and Mr. Sarthak Kaushik,
Advs.

+ W.P.(C) 16335/2023 & CM Appls. 65744/2023 and 65745/2023

(59) EMPLOYEES STATE INSURANCE CORPORATION THROUGH
ITS DIRECTOR GENERAL AND
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..... Petitioners

Through: Mr. Manish Kumar Saran, Mr. Satya
Prakash Sharma and Ms. Ananya
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versus

ANIL KUMAR AND OTHERS

..... Respondents

Through: Mr. Gautam Narayan, Mr. Prateek
Dhanda and Mr. Sarthak Kaushik,
Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA



V. KAMESWAR RAO, J. (ORAL)

CM APPL. 65679/2023 IN W.P.(C) 16309/2023

CM APPL. 65745/2023 IN W.P.(C) 16335/2023

Allowed, subject to just exceptions.

Applications disposed of.

W.P.(C) 16309/2023

W.P.(C) 16335/2023

1. These two writ petitions have been filed challenging the order dated February 28, 2023 passed in O.As. 2319/2018 and 2222/2018, whereby, the Tribunal has allowed the O.As., in favour of the respondents herein, by stating in paragraphs 17 and 18 as under:-

*“17. We find the facts of the present cases squarely covered by the judgment of Hon’ble Supreme Court in **Union of India Vs. C.N.Ponnappan** (1996) 1SCC 524, wherein the Hon’ble Apex Court held that services rendered by an employee at a place from where he was transferred is a regular service, and is no different from the service rendered at the transferred place. The dictum of the Hon’ble Supreme Court was followed by the High Court of Gujarat in its judgment dated 07.01.2015 in SCA No.4698 of 2010, referred above. Therefore, any contrary conditions laid down in policy guidelines would be violation of the directions of the Hon’ble Supreme Court, and hence cannot be upheld and have to be set aside. We order accordingly.*

18. Consequently, these OAs are allowed. The impugned orders are quashed and set aside to the extent of not counting the past service of the applicants rendered in another region for purposes of eligibility for appearing in the LDCE. The respondents are directed to count the services rendered by the applicants rendered in another region before transfer to Delhi for eligibility to appear in



LDCE, and if declared successful in the LDCE, to promote them to the post of Assistant, with consequential benefits flowing therefrom. This exercise shall be done by the respondents within a period of six weeks from the date of receipt of a certified copy of this order. There shall be no order as to costs."

2. The challenge of the respondents before the Tribunal was with regard to orders dated April 23, 2018, March 05, 2013 and November 14, 2008, to the extent of not counting their past service rendered in the grade of UDC in another region before their transfer to the Headquarters/Delhi Region for the purpose of eligibility for appearing in LDCE for promotion to the post of Assistant.

3. Suffice to state that the appointment to the post of Assistant is regulated by the Recruitment Rules ('Rules', for short) framed by the petitioner under Section 17 of the Employees' State Insurance Act, 1948, ('ESIC', for short). The relevant provision in respect of eligibility for appointment reads as under:-

POST OF HEAD CLERK/ASSISTANT IN E.S.I. CORPORATION

Period of Probation if any	Method of Recrt. Whether by Direct Recrt. or by Promotion or by Deputation/Transfer & % of the Vacancy to be Filled by Various Methods.	In Case of Recrt. by Promotion/Deputation/Transfer. Grades from which Promotion/Deputation/Transfer to be Made.	If a DPC exists what is its Composition	Circumstances in which U.P.S.C. to be Consulted in Making Recruitment
(10)	(11)	(12)	(13)	(14)
N.A.	(1) 75% by Promotion on the Basis of Seniority Subject to Rejection or Unfit. (2) 25% by Promotion on Merit on the Basis of Departmental Competitive Examination Confined to UDCs with 3 years of Regular Service. NOTE: The Inter-se-Seniority among those Promoted through DPC and Through Limited Competitive Examination shall be determined according to the Rotation of Vacancies which shall be based on the Quota of Vacancies Reserved for each Category of Posts in the Recruitment Regulations.	PROMOTION From UDC/UDC-Cashier with Three Years of Regular Service in the Grade. THROUGH COMPETITIVE DEPARTMENTAL EXAMINATION By Limited Competitive Departmental Examination Confined to UDC/UDC-Cashier with three years Regular Service in the Grade. NOTE 1: The eligibility of the Candidate for Promotion will be reckoned with reference to 1st October of the financial year of vacancies. NOTE 2: The Eligibility or Admission to be Limited Competitive Departmental Test will be reckoned from the Date Notified in the Memorandum Calling for Applications for the Said Examination.	GROUP C DPC FOR PROMOTION 1. Regional Director Gr. A(3)/ Director Gr. A/ Director (Medical) Chairman 2. Joint Director (Admin./ Insp./ Fin./ VEG, D.C., Dy. Director (Admin./ Insp./ Fin./ Trg.) Member 3. One Representative from the Employees' Provident Fund Organisation of Equivalent status. Member	N.A.



4. There is no dispute that the respondents herein were working as UDC in a different region. However, all of them were later on transferred on their own request to Delhi/Headquarters. The respondents, thereafter, had participated in process of appointment to the post of Assistant under the 25% quota, by promotion on merit, on the basis of LDCE confined to UDCs with 3 years of regular service.

5. It is noted from the Rules that the eligibility to appear in the LDCE is, that an incumbent should have 3 years of regular service in the UDC grade. It is also a conceded position that all the respondents were working as UDCs, since November 01, 2011. In that sense, they had rendered 3 years of service, even before they were transferred to Delhi/Headquarters.

6. The learned counsel for the petitioner has drawn our attention to page 60 of the paper book in *W.P. (C) 16309/2023*, where, 'Inter Regional Transfer Policy for Ministerial Staff upto Assistant Cadre in ESIC', of the petitioners has been annexed. More specifically, he has relied upon, Clauses 9, 12 and 15 of the same, which reads as under:-

“9. Qualifying service condition for the purpose of granting promotion to the next post would be counted from the date of his/her joining in the new region.

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12. She/he will not claim any benefit/seniority etc in respect of the services rendered in earlier region from where she/he has been transferred on IRT basis,

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15. The individual while submitting request for inter regional transfer would be required to submit on undertaking regarding acceptance of terms 86 conditions of inter Regional transfer Policy.”



7. The submission of learned counsel for the petitioners is that the respondents having accepted the terms and conditions, more specifically, Clauses 9 and 12 and an undertaking in terms of Clause 15, having been given, they now, cannot state that service put in by them in the UDC grade before transfer need to be treated as eligibility for appearing in LDCE. He states that no attempt was made by the respondents to even challenge the stipulation as stated in Clause 9.

8. We are unable to accept such a plea of the learned counsel for the petitioner for the simple reason that in the case in hand, the Rules clearly states that the incumbent should have put in 3 years of regular service in the UDC grade. In that sense, the respondents had rendered 3 years of service in the requisite grade i.e., UDC, even before they were transferred to Delhi/Headquarters.

9. That apart, Mr. Gautam Narayan, learned counsel appearing for the respondents has rightly relied upon the judgment of the Supreme Court in the case of ***Union of India Vs. C.N.Ponnappan, (1996) 1SCC 524***, wherein in paragraph 4, it has been held as under:-

“4. The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not



rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.”

(emphasis supplied)

10. Similarly, he has also placed reliance on another judgment of the Supreme Court in the case of ***State of Maharashtra and Others v. Uttam Vishnu Pawar, (2008) 2 SCC 646***, where, in paragraph 13, it has been held as under:-

“13. Therefore, in view of the consistent approach of this Court, it is no more res integra that the incumbent on transfer to the new department may not get the seniority but his experience of the past service rendered will be counted for the purpose of other benefits like promotion or for the higher pay scale as per the Scheme of the Government.”

(emphasis supplied)

11. Reliance is also placed on the judgment of the High Court of Gujarat in the case of ***Union of India v. Vijayita Sinha, 2015 SCC OnLine Guj 1373***, wherein, in paragraphs 6, 7 and 9, which have been reproduced below, the Court after referring to the decisions of the Supreme Court has held as under:-

“6. The short question therefore, calls for consideration is was the department correct in holding that the employee was not eligible for appearing in limited departmental examination from Gujarat region? This is solely on the basis that she had completed three years as LDC in Delhi region and not in Gujarat region. Undisputedly, the rules require minimum service of three years for an LDC to be eligible for appearing in the limited departmental



examination for accelerated promotion to the post of UDC. Nothing has been brought to our notice to point out that the statutory regulation prescribed any such requirement insisting that such service must be in the region from where the candidate seeks such promotion.

7. In that background, we may refer to the decisions of Supreme Court on the point;

1) In case of Smt. Renu Mullick v. Union of India (supra), the employee had requested for transfer outside the Collectorate. Such request was accepted on the condition that the transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the seniority. The employee had to file an undertaking to this effect. Such executive instructions and the undertaking of employee were interpreted by the Supreme Court to hold the service of previous collectorate is taken away for the purpose of counting her seniority in the new charge but that would have no relevance for judging her eligibility for promotion under Rule 4. Such eligibility would have to be judged in terms of Rule alone.

2) In case of Union of India v. C.N. Ponnappan (supra), the employee was transferred outside the seniority cadre on compassionate grounds. It was held that the services rendered previously would not be wiped out and cannot be ignored for judging the eligibility of candidate for promotion. The Supreme Court held as under:

“4. The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retrial benefits. The fact that as a result of transfer he is



placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.”

3) *In case of Scientific Advisor to Raksha Mantri v. V.M. Joseph (supra), once again similar situation arose before the Supreme Court. Supreme Court noted with approval the said decision in case of Union of India v. C.N. Ponnappan (supra). It was held and observed as under:*

“6. From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Store keeper on the ground that he had completed 3 years of regular service as Store keeper on 7th June, 1980 and, therefore, he could not be promoted earlier than 1980. In coming to this conclusion, the appellants excluded the period of service rendered by the respondent in the Central Ordnance Depot, Pune, as a Store Keeper for the period from 27th April, 1971 to 6th June, 1977. The appellants contended that, since the respondent had been transferred on compassionate ground, on his own request to the post of Store Keeper at Cochin and was placed at the bottom of the Seniority list, the period of 3 years of regular service can be treated to commence only from the date on which he was transferred to Cochin. This is obviously fallacious inasmuch as the respondent



had already acquired the status of a permanent employee at Pune where he had rendered more than 3 years of service as a Store Keeper. Even if an employee is transferred at his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors.”

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9. Under the circumstances, the decision of the department to deny promotion considering the respondent ineligible for appearing in the examination in the Gujarat region was illegal. Consequential decision not to promote her in Gujarat region was also unlawful. In fact, the decision of the department to offer promotion to the respondent in the Delhi region defies logic. By the time, such promotion was offered she had already been transferred to Gujarat region and had no roots left in Delhi region. How could an LDC from Gujarat region be promoted as UDC of Delhi region where seniority in both cadres were maintained region-wise, is a fundamental question. Be that as it may, when we hold that the respondent was eligible for appearing in the examination from Gujarat region, subsequent issues become insignificant.”

12. The Tribunal has also duly considered the judgment of the Supreme Court in **C.N.Ponnappan**, in the impugned order.

13. It may be noted here that the judgment of the High Court of Gujarat in **Vijayita Sinha**, has also been upheld by the Supreme Court in **Employees' State Insurance-Corporation and Anr. v. Vijayita**



Sinha & Anr., bearing *SLP (C) No. 16392/2015*. In that sense, the judgment in *Vijayita Sinha*, has not been interfered with.

14. Insofar as, the plea of the learned counsel of the petitioner that Clause 9 being part of the policy and the respondents having accepted the said Clause and the fact that they have been transferred, the eligibility for promotion to the post of Assistant shall have to be counted from the date of their transfer to Delhi/Headquarters and not before that date is concerned, the same though look appealing on a first blush, but in view of the settled position of law as noted above that the regular service rendered in the UDC grade has to be taken into account as part of respondents' experience for the purpose of eligibility for promotion to the post of Assistant, the principles of estoppel shall have no applicability against the respondents.

15. We are also of the view if the interpretation as sought to be given by the learned counsel for the petitioners is accepted, the same shall have serious repercussions on other aspects like ACP, MACP, pension, etc. This we say so, as the petitioners by taking such a stand trying to obliterate the service rendered by the respondents as UDC w.e.f., 2011, till their transfer to Delhi/Headquarters. Insofar as the grant of seniority from the date of transfer is concerned, the same has not been contested by Mr. Narayan.

16. In view of our discussion above, we find no merit in the present petitions. The Tribunal was right in allowing the O.As., in the manner it did, more particularly, in paragraphs 17 and 18, which we have already reproduced above.



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17. We do not see any reason to interfere with the impugned order.
The writ petitions are dismissed. No costs.

CM APPL. 65678/2023 in W.P.(C) 16309/2023
CM APPL. 65744/2023 in W.P.(C) 16335/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 18, 2023/ds