

(2008) 12 CHH CK 0004
In the Chhattisgarh High Court

Smt. Asha Sahu and Tripti Sharma

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Citation : (2009) 1 MPHT 102

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—The above petitions are being disposed of by this common order, as in both the petitions common question of law is involved for adjudication.

2. The petitioners by the instant petition have impugned the transfer policy of Shiksha Karmis contained in Circular of Annexure P- I , dated 27-10-2005 issued by respondent No. 1 whereby superceding earlier guidelines fresh guidelines have been issued for transfers of Shiksha Karmis and it has been decided that the Shiksha Karmis who are transferred on their own request to another Janpad Panchayat shall be junior in their category at the transferred Janpad Panchayat.

3. Briefly stated facts in both the petitions are that the petitioners were appointed as Shiksha Karmi Grade III on 30-7-1998 and their services were regularized on 1-7-2002. Both the petitioners were transferred on their request for mutual transfer by Janpad Panchayat Baloda Bazar & Janpad Panchayat Kasdol vide orders dated 21-8-2003 and 24-12-2003 (Annexure P-4). Grievance of the petitioners is that the transfer policy of Annexure P-1 cannot be made applicable in the cases of the petitioners as their transfers took place in the year 2003, whereas, subsequent policy came into force in the year 2005 and the same cannot be given retrospective effect and their seniority is to be considered from the date of their initial appointment and not from the date when they joined in a different Janpad Panchayat after their transfer on request. Further grievance

of the petitioners is that as per C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 (for short "Rules, 1966") after completion of 7 years in service, they are entitled for benefit of promotion.

4. Learned Counsel for the petitioners argued that the petitioners were appointed under the M.P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 (for short "Rules, 1997") and therefore, their seniority cannot be affected except on the grounds mentioned in the Rules, 1997.

5. On the other hand, the respondents in their separate returns have made identical submissions that the petitioners were transferred from one Janpad Panchayat to another Janpad Panchayat on their own request. Where a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration for the purposes of seniority. However, where a Government servant is transferred on his own request to a different cadre in that case such employee has to forego his seniority till the date of his transfer and he shall be placed at the bottom below the junior most employee in the new cadre of the department. Such employee cannot be permitted to disturb the seniority of the employees in the department to which he is transferred.

6. Mr. Pankaj Shrivastava, learned Counsel for the respondent Nos. 3 and 4 contends that in the present case since the petitioners got themselves transferred to a different Janpad Panchayat, their seniority in the transferred Janpad Panchayats shall be reckoned from the date of their joining and they shall be placed at the bottom below in their category. Reliance is placed on the judgment of Hon"ble Apex Court in the matter of K.P. Sudhakaran and Another Vs. State of Kerala and Others, .

Mr. Shrivastava, repelling the arguments of learned Counsel for the petitioners that service condition of the petitioners shall be governed by the Rules, 1997 and the guidelines dated 14-5-2003 (Annexure P-7) issued for transfer of Shiksha Karmis and the guidelines of Annexure P- I , dated 27-10-2005 cannot be given retrospective effect, it was argued that Rules, 1997 does not contain any specific provision regarding transfer of Shiksha Karmi from one Janpad Panchayat to another Janpad Panchayat. Provisions of the C.G. Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (for short "Rules, 1999") would be applicable in the present case according to which where an appointment is made by the Appointing Authority on an application made by any employee of the Panchayat Service, the person so appointed shall receive the junior most rank for the purposes of seniority in the cadre of post on which he is appointed. Guidelines of Annexure P-7 only provides a procedure to be followed for transfer of a Shiksha Karmi and the seniority is to be governed by Rule 27 of the Rules, 1999.

7. I have heard learned Counsel for the parties.

8. The only question for consideration in these petitions is whether the petitioners, who are appointed as Shiksha Karmi in one Janpad Panchayat, subsequently regularized in the said Janpad Panchayat and after regularisation they were transferred to another Janpad Panchayat, can claim their seniority from the date of their original appointment even after their transfer to another Janpad Panchayat on their own request.

9. Document of Annexure P-7, i.e., circular issued on 14-5-2003, only gives guidelines regarding transfer of Shiksha Karmis and it does not provide for the manner in which the seniority of Shiksha Karmis is to be decided. Rules, 1997 also does not contain any provision which deals with the transfer of Shiksha Karmis. Rule 11 provides for general conditions of service and the same is reproduced herein below:

11. General Conditions of Service.- Conditions of service other than mentioned above, shall be the same as applicable to other employees of the Janpad Panchayat or Zila Panchayat, as the case maybe.

Rule 27 of Rules, 1997, reads thus:

27. Appointment of Panchayat employ to and his Panchayat.-

Notwithstanding anything contained in these rules, the Appointing Authority on application made by any employee of Panchayat Service of other Panchayat, may appoint such employee to a same or equivalent post in the Panchayat service on such terms and conditions as may be mutually agreed upon between the two Panchayats, and subject to the following conditions, namely:

(i) Such appointment shall not be made to post to be filled by promotion,

(ii) The person so appointed shall received the junior most rank, for the purpose of seniority, in the cadre of the post to which he is appointed, as it stands on the date of such appointment." The above provisions are also applicable to the service conditions of Shiksha Karmi Grade III by virtue of Rule 11 of Rules, 1997.

10. In view of the above provisions, it is clear that the impugned circular dated 27-10-2005 only clarifies the provisions of Rules 27 of Rules, 1999.

11. Even otherwise, it is settled law that where employee is transferred to another department/unit on his own request, seniority of such employee has to be reckoned only from the date of his joining duties in the new department and he has to forego the past service.

12. In the matter of K.P. Sudhakaran and another (supra), in Para 11 the Hon"ble Supreme Court has held thus:

11. In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into

consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior most employee in the category in the new cadre or department. This is because a Government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service rules.

13. For the aforesaid reasons, the contention of the petitioners that the transfer policy of Annexure P-1 does not have retrospective application and the petitioners' service conditions are governed by the circular of Annexure P-7 issued in the year 2003 wherein no specific provision is there that on transfer of Shiksha Karmi to another Janpad Panchayat, on his own request, his seniority would be reckoned from the date he joins at the transferred place is without any substance. This circular of Annexure P-1, dated 27-10-2005 only contains guidelines as to under what circumstances Shiksha Karmis can be transferred and reiterates provisions of Rule 27 of Rules, 1999 that such transferred Shiksha Karmis shall be treated as junior most in the category where they joined after transfer.

14. According to the Rules, 1997, Shiksha Karmi Grade III is entitled for promotion only if the candidate is graduate and possesses seven years teaching experience. Since the petitioners' seniority is to be reckoned from the year 2003, their case for the promotion can be considered only after completion of seven years of mandatory teaching experience.

15. For the aforesaid reasons, there is no substance in these petitions, the same deserve to be dismissed and are accordingly dismissed. No order as to costs.

16. A copy of this order be placed in W.P. No. 3276/06, Tripti Sharma v. State of Chhattisgarh and Ors.