

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 6927/2009
B.S.N.L.& ANR. Appellant(s)
VERSUS
KISHORE & ANR. Respondent(s)

WITH
C.A. No. 6698/2009

C.A.No. 8538 of 2014
(@SLP(C) No. 26078/2008)

C.A. No. 959/2010

C.A.No. 8540 of 2014
(@SLP(C) No. 9906/2011)

C.A.No. 8541 of 2014
(@SLP(C) No. 19067/2011)

O R D E R

Leave granted in SLP(C) No. 26078 of 2008, SLP

Signature Not Verified

(C) No.9906 of 2011 and SLP(C) No. 19067 of 2011.

Digitally signed by
Vinod Kumar
Date: 2014.09.08
15:41:34 IST

Reason:

The instant appeal i.e. Civil Appeal No.6927

of 2009, is filed against the judgment and or
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dated 27.08.2007 passed by the High Court of

Judicature at Bombay, Nagpur Bench, Nagpur, in Writ

Petition No. 2724 of 2007 granting relief a writ of

mandamus to the respondent directing the appellants to give promotion in favour of the respondent to the post of Stenographer (II) considering his past service in the previous circle from where he was transferred to another circle. The connected appeals arise out of impugned orders of the different High Courts wherein reliance has been placed on the decision dated 27.08.2007, rendered by the High Court of Bombay, Nagpur Bench, Nagpur in Writ Petition No.2724 of 2007, to consider the claim of the respondents herein for promotion with effect from the date when other eligible candidates have been promoted to the post.

The common question of law which arises for consideration in these appeals is whether prohibition under Rule 38 of the P&T Manual against counting of past service for the purpose of seniority and also operates against counting the past service for the purpose of requisite experience for promotion.

For disposal of all the instant appeals, the reference has been made to the facts of Civil Appeal

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No. 6927 of 2009. The appellants herein were directed by the High Court, after taking into consideration the eligibility criteria of five years' past service, to consider and grant the promotion to the respondent herein to the post of Stenographer (Grade-II) before transferring him from Madhya Pradesh Circle to Maharashtra Circle from the date on which roster Point No.9 was filled in after transfer in Maharashtra Circle when a vacancy was available in the post or whichever be earlier in time.

The aforesaid orders of the High Court have been challenged in these appeals urging various grounds.

We have heard learned counsel for the parties.

Learned counsel for the appellants, Bharat Sanchar Nigam Limited (for short 'BSNL'), has placed reliance upon Rule 38 of the P&T Manual, Volume-IV and made submission that every cadre in the BSNL has its own area of jurisdiction for working, namely, SSA level, Circle level, All India level. Since the cadre of stenographer/P.A. are circle cadre, it is imperative that the concerned official is required to put in the prescribed minimum service in the grade in

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that circle only to become eligible for promotion through competitive examination etc. for selection against posts of the concerned circle. By referring to the judgment of this Court in the case of Dwijen Chandra Sarkar v. Union of India, (1999) 2 SCC 199, the learned counsel for the appellant submitted that in that case this Court has dealt with the aspect of counting of past service rendered in the earlier department and further held that the past service of the appellant is to be counted for limited purpose of eligibility for computing the number of years of qualifying service, to enable him to claim the higher grade under the scheme of time bound promotions. According to him, in the Dwijen Chandra Sarkar (supra), this Court has propounded the principle of counting of past service rendered in the earlier circle for the purpose of giving time bound promotion only, and not for seniority whereas the instant case is for selection against a post in another circle

based on the requisite length of service rendered in the new circle/unit. The learned counsel for the

appellant further submitted that the opportunity of counting the past service rendered by an employee in the earlier circle from where he got transferred for the purpose of giving time bound promotion only is not for seniority for selection against a post in

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another circle on the requisite length of service rendered in the new circle where he was transferred.

He has also placed reliance upon another judgment of this Court in the case of Union of India v. V.N.

Bhat, (2003) 8 SCC 714, which reaffirmed the view taken in the case of Dwijen Chandra Sarkar (supra).

Per contra, learned counsel for the respondent sought to justify the order impugned in this appeal.

He submitted that the respondent having been transferred on 19.06.2000, though by way of request

transfer, but the said transfer being from one unit to another, in the same department, therefore, he

will retain all the rights in the circle where he was working prior to his transfer including the right of

counting of past service for the purpose of promotion to the post of Stenographer(II). To support his

submission he has placed reliance upon the decision of this Court in the case of Renu Mullick v. Union of

India, (1994) 1 SCC 373. According to him, the case

of Renu Mullick (supra) squarely applies to the instant case. As per the said judgment, the

respondent is eligible for the promotion by taking into account the past services rendered by him before

his transfer to Nagpur. However, the appellants have

ignored the services of the respondent and only

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counted the services from the date he joined at

Nagpur. During the course of submission, the learned counsel has also placed strong reliance upon Para 4 of the judgment of this Court in the case of Union of India v. C.N. Ponnappan, (1996) 1 SCC 524, which is reproduced hereunder:

"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."

In support of his contention, learned counsel for the respondent submitted that if the respondent is transferred from one circle to another circle at
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his insistence, he will not lose his seniority for the purpose of considering his claim for promotion to the next higher post of Stenographer (Grade-II). He further submitted that it is an undisputed fact that as on the date when the respondent's claim was considered, he had put in five years' of service which is the eligibility criteria and he fulfilled the same.

We have carefully considered the rival submissions and the records of the case.

In the absence of a rule that the past service rendered by the respondent shall not be considered for the purpose of promotion in the circle where he has been transferred voluntarily at his instance though he will be junior employee in the seniority list of the cadre, if he has completed the required number of years of service of eligibility criteria for promotion to the next cadre, there is no justification on the part of the appellant-BSNL to take the plea that he has not completed five years of service in the Maharashtra Circle. No such rule is brought to our notice from the recruitment rules. In

the absence of the same, the High Court has rightly placed reliance on the decision of this Court in the

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case of C.N. Ponnappan (supra) and Renu Mullick (supra) and held that for the purpose of promotion, experience gained by the respondent from the past service can be taken into consideration. Further, the respondent was promoted to the said post after participating in the required examination conducted by the appellant-BSNL and subsequently he has been promoted to the next higher grade in the organisation, which is a relevant consideration for this Court not to interfere with the impugned judgment and order.

In the connected appeals, the claim of the respondents have been considered by the High Court and direction was issued by the High Court qua them in the impugned orders. Since the view taken by the High Court is in consonance with the law laid down by

this Court in the case of Renu Mullick (supra), we do not find any ground to interfere with the impugned orders and the same cannot be found fault with by this Court.

In view of the aforesaid, we see no reason to interfere with the impugned judgments and orders and the appeals of the appellant-BSNL are devoid of any

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merit. Hence, all the appeals are liable to be dismissed, which we order accordingly.

.....J.

(V.GOPALA GOWDA)

.....J.

(ADARSH KUMAR GOEL)

NEW DELHI
AUGUST 27, 2014

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ITEM NO.103

COURT NO.13

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6927/2009

B.S.N.L.& ANR.

Appellant(s)

VERSUS

KISHORE & ANR.

Respondent(s)

(with appln. (s) for vacating stay and office report)

WITH

C.A. No. 6698/2009

(With Office Report)

SLP(C) No. 26078/2008

(With Office Report)

C.A. No. 959/2010

(With Interim Relief and Office Report)

SLP(C) No. 9906/2011

(With Interim Relief and Office Report)

SLP(C) No. 19067/2011

(With Interim Relief and Office Report)

Date : 27/08/2014 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s)

Mr. Rakesh Garg, Adv.
Ms. Shweta Garg, Adv.
Mr. Ashish Gopal Garg, Adv.

Mr. Ankur Mittal, Adv.
Mr. U.C. Mittal, Adv.

Mr. Rahul Kaushik, Adv.
Mrs. Bhuvneshwari Pathak, Adv.

For Respondent(s)

Mr. Sanjeev K. Bhardwaj, Adv.
Mrs Lalita Kaushik, Adv.

Mr. Navin Prakash, Adv.

Mr. Praveen Jain, Adv.

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Mr. Siddharth Jain, Adv.

Mr. T. Mahipal, Adv.

Mr. C. N. Sree Kumar, Adv.
Mr. Rahul Kumar, Adv.

Mr. Triloki Nath Razdan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted in SLP(C) No. 26078 of 2008, SLP (C) No.9906 of
2011 and SLP(C) No. 19067 of 2011.

All the appeals are dismissed in terms of the signed order.

(VINOD KUMAR)
COURT MASTER

(SAROJ SAINI)
COURT MASTER

(Signed order is placed on the file)