

STATE OF MAHARASHTRA & ORS.

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v.

UTTAM VISHNU PAWAR

(C.A. No. 1021 of 2002)

JANUARY 17, 2008

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(A.K. MATHUR AND H.S. BEDI, JJ.)

*Service Law:*

*Time bound promotion – Government of Maharashtra Resolution dated 8.6.1995 – Providing 12 years period for time bound promotion – Claim of incumbent to count service rendered by him in previous department – HELD: Rightly allowed by Tribunal as also the High Court.*

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*Dwijen Chandra Sarkar and Anr. Vs. Union of India and Ors. [1999] 2 SCC 119; Raksha Mantri vs. V.M. Joseph [1998] 5 SCC 383; A.P. State Electricity Board vs. R. Parthasarathi [1998] 9 SCC 425; Union of India vs. V.N. Bhat [2004] AIR SCW 1399 – relied on.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1021 of 2002.

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From the final Judgment and Order dated 20.10.2000 of the High Court of Judicature at Bombay in W.P. No. 5494/2000.

WITH

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C.A. Nos. 515 and 518 of 2008 and 2917 and 3083 of 2006.

Asha G. Nair, Mukesh K. Giri (N.P.) and Aniruddha P. Mayee for the Appellants.

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Sushil Karanjkar, Venkateshwara Rao Anumolu, V.D. Bhavsar, Chander Shekhar Ashri, S.D. Singh, Vijay Kumar and Vishwajit Singh for the Respondent.

The following order of the Court was delivered :

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## ORDER

1. Heard learned counsel for the parties.
2. Delay condoned in SLP(C) No. 20630/2006.
3. Leave granted in the special leave petitions.

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4. All these appeals involve similar question of law therefore they are clubbed together and are being disposed of by a common order.

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5. The facts given in C.A. No. 1021/2002 (State of Maharashtra & Ors. Vs. Uttam Vishnu Pawar) are taken into consideration for disposal of these appeals.

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6. The respondent-Uttam Vishnu Pawar filed Original Application No. 930/1999 before the Maharashtra Administrative Tribunal Mumbai and sought a direction that his services which have been rendered by him in the earlier department may be counted for computing the period of 12 years service for Time Bound Promotion as per Government Resolution dated 8.6.1995. The Tribunal vide its order dated 14th March, 2000 allowed the claim of the respondent and held that the services rendered by the incumbent in the previous department shall be counted in computing the period of 12 years for Time Bound Promotion Scheme. Aggrieved against the order passed by the Tribunal, the State of Maharashtra-appellant herein filed a writ petition before the High Court. The Division Bench of the High Court of Bombay after hearing both the parties affirmed the order of the Tribunal dated 14.3.2000.

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7. The respondent herein was working as a Telephone Operator in Irrigation Department of the State of Maharashtra. Thereafter he made a request for his transfer from Mumbai Zone to Kolhapur Zone. The request of the respondent was acceded to and he was transferred on his own request from Mumbai Zone to Kolhapur Zone and he lost his seniority in Mumbai Zone and he joined in Kolhapur Zone on 14.6.1990 as a Junior Clerk at zero seniority. Thereafter, the State Government passed a Resolution dated 8.6.1995 giving a Time Bound Promotion to the persons who are stagnated in the Group C and D cadres

for a long period. As per the said Resolution those persons who have put in 12 years of service and who fulfill other conditions laid down in the said Resolution were eligible for the next higher scale of pay. We are not concerned with the other conditions laid down in the Resolution dated 8.6.1995. We are only concerned with the limited question that whether the respondent is entitled to count his service rendered in the Mumbai Zone when he was transferred to Kolhapur Zone for purposes of computing 12 years of service so as to enable him to get the benefit of this Resolution. The Tribunal granted the benefit of past service to the respondent and the same was affirmed by the Division Bench of the High Court.

8. Learned counsel for the State of Maharashtra submitted that since the incumbent was at zero seniority in the Kolhapur Zone therefore his services rendered in the Mumbai Zone cannot be counted for computing the period of 12 years so as to give him the benefit of Time Bound Promotion Scheme as per Resolution dated 8.6.1995.

9. As against this, learned counsel for the respondent submitted that the incumbent has already lost his seniority and as per the transfer order he has been placed at the zero seniority level but it does not mean that he will lose the service put in by him in the Mumbai Zone. Learned counsel for the respondent has invited our attention to a series of cases of this Court where a view has been taken that if an incumbent is transferred to another zone either by way of public interest or on his own request in either situation the incumbent will get the benefit of past service without getting any benefit of seniority. In this connection our attention was invited to the case of *Dwijen Chandra Sarkar and Another Vs. Union of India And Others* (1999) 2 SCC 119. In that case the incumbent was transferred from Rehabilitation Department to P & T Department in public interest at zero level seniority in the P & T Department but his past services were counted for giving him the benefit of the Scheme on completion of 16 years of service. In the said case the Court relied on an earlier decision of this Court in the case of *Renu Mullick Vs. Union of India* (1994) 1 SCC 373 wherein in

A identical situation the transferee was not permitted to count her service rendered in former Collectorate for the purpose of seniority in the new charge but she was permitted to count the service rendered by her in earlier Collectorate for other purposes except seniority. Similarly, in the case of Scientific  
B Advisor to *Raksha Mantri Vs. V.M. Joseph* (1998) 5 SCC 305 it was held by this Court that the service rendered in another department which helps for determination of eligibility for promotion will be counted but not for seniority. Again, in the case of *A.P. State Electricity Board Vs. R. Parthasarathi* (1998) 9  
C SCC 425, the government servant was transferred and absorbed in the Electricity Board. It was held that the services rendered in the previous department could be counted towards requisite experience of 10 years for eligibility for promotion. Our attention was also invited to the case of *Union of India Vs. V.N. Bhat* 2004 AIR SCW 1399. In that case also in identical situation  
D the incumbent was transferred from one department to another. He lost his seniority in the new department but his service was counted for purposes of promotion. 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  
E 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 payscale as per the Scheme of the government.

F 10. In this view of the matter, we are of the opinion that the view taken by the Tribunal and affirmed by the Division Bench of the High Court is correct and there is no ground to interfere with the impugned judgment and order of the High Court. Consequently, the appeal is dismissed. No order as to costs.

G C.A. No. 515/2008 (arising out of SLP(C) 12097/2006)  
C.A. No. 3083/2006, C.A. No. 2917/2006 and  
C.A. No. 518/2008 (arising out of SLP(C) 20630/2006)

11. For the reasons stated herein above, these appeals are also dismissed. No order as to costs.

H R.P.

Appeals dismissed.