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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 9th OF MAY, 2023

WRIT PETITION No. 26990 of 2021

BETWEEN:-

**VIDYA BHUSHAN MISHRA S/O PREMLAL MISHRA,
AGED ABOUT 42 YEARS, OCCUPATION:
ASST.CONSERVATOR OF FOREST/S.D.O.FOREST SUB
DIVISION BEOHARI NORTH SHAHDOL, FOREST
DIVISION, DISTT. SHAHDOL (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI D.K. DIXIT - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY FOREST DEPT. VALLABH
BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. PRINCIPAL CHIEF CONSERVATOR OF FOREST /
CHIEF OF THE FOREST FORCE GOVT. OF
MADHYA PRADESH SATPURA BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 3. MADHYA PRADESH PUBLIC SERVICE
COMMISSION THR. ITS SECRETARY RESIDENCY
AREA, INDORE (MADHYA PRADESH)**
- 4. UNION PUBLIC SERVICE COMMISSION THROUGH
ITS SECRETARY, DHOLPUR HOUSE, SHAHJAHAN
ROAD, NEW DELHI**

.....RESPONDENTS

***(BY SHRI MANAS MANI VERMA - GOVT. ADVOCATE FOR RESPONDENT
NO.1 & 2)***

***(BY SHIR NIKHIL BHATT - ADVOCATE FOR RESPONDENT NO.2 AND
SHRI ANOOP NAIR - ADVOCATE FOR RESPONDENT NO.4)***

***(BY SHIR AMIT SETH AND SHRI PRATAP TARUN SINGH - ADVOCATE
FOR PROPOSED INTERVENOR)***

WRIT PETITION No. 11219 of 2022

BETWEEN:-

RAJBENDRA MISHRA S/O SHRI SUDAMA PRASAD MISHRA, AGED ABOUT 40 YEARS, OCCUPATION: ASSISTANT CONSERVATOR OF FOREST SUPRINTENDENT KEN GHARIYAL SANCTURY, KHAJURAHU-PANNA TIGER RESERVE, PANNA DISTRICT- PANNA, (MADHYA PRADESH)

.....PETITIONER

(BY SHRI K.C. GHILDIYAL - SR. ADVOCATE ASSISTED BY SHRI KARNIK SINGH - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY DEPARTMENT OF FOREST VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. THE PRINCIPAL CHIEF CONSERVATOR OF FOREST, MADHYA PRADESH BHOPAL SATPURA BHAWAN, BHOPAL (MADHYA PRADESH)
3. UNION PUBLIC SERVICE COMMISSION THROUGH ITS SECRETARY DHOLPUR HOUSE, SHAHJAHAN ROAD NEW DELHI

.....RESPONDENTS

(BY SHRI MANAS MANI VERMA - GOVT. ADVOCATE FOR RESPONDENT NO.1 & 2)

(BY SHIR NIKHIL BHATT - ADVOCATE FOR RESPONDENT NO.2 AND SHRI ANOOP NAIR - ADVOCATE FOR RESPONDENT NO.4)

This petition coming on for orders this day, the court passed the following:

ORDER

These writ petitions are filed claiming directions to the respondents to correct the date of appointment of the petitioner as 03/03/2011 in impugned list Annexure-P/12 wherein name of the petitioner in W.P. No.26990/2021 is shown at serial No.175 and his initial date of appointment in service is shown as 23/7/2015 and the name of another petitioner-Rajbendra Mishra is mentioned at serial No.182.

It is submitted that in fact these petitioners were working under different departments of the State and they competed in the entrance examination which was conducted by M.P. Public Service Commission for recruitment to the post of Assistant Conservator of Forest and for the Forest Rangers. Petitioners cleared upto main examination but were not allowed to participate in the interview process on the ground that they were overage.

It is submitted that then one of the petitioners namely Vidya Bhushan Mishra filed W.P. No.1157/2011 which was allowed vide order dated 10/3/2015 whereby Coordinate Bench of this Court held that in terms of the provisions contained in Clause-7 of the advertisement which provided age relaxation upto the maximum age of 38 years even to the employees of local bodies and since Vidya Bhushan Mishra was working as a Samvida Shala Shikshak Grade-I, at Government Higher Secondary School, Teonthar, Distt. Rewa was held to be eligible for age relaxation and was permitted to participate in the interview process. He participated in the interview and was selected when result was declared by the M.P. Public Service Commission on 2nd May, 2015 as contained in Annexure-P/4. Thereafter they were given notional seniority and Vidya Bhushan Mishra was placed below serial No.5 at serial No.5A. Similarly Rajendra Mishra was placed below serial No.12 at serial No.12A.

It is petitioners' case that since they were given notional seniority w.e.f. 2011 though actual appointment order was issued on 13th July, 2015, therefore, in terms of the provisions contained in Annexure-IA/1 i.e. Indian Forest Service (Appointment by Promotion) Regulations, 1966, wherein Regulation 5(2) provides for the committee to consider for inclusion to the said list, the cases of members of the State Forest Services in the order of seniority in that service of a number which is equal to three times the number referred to sub-regulation

(1).

Thus, reading this, it is submitted that admittedly petitioners are senior and petitioner -Vidya Bhushan Mishra finds place at serial No.5A above intervenor - Amit Singh and Rishi Mishra whose name appears at serial No.6 & 8, then in the order of seniority, petitioners' names should have been recommended for consideration.

Petitioners have also challenged the order dated 29th November, 2022 (Annexure-P/20) by way of amendment for which I.A. No.5333/2023, an application for amendment, is allowed and the document is taken on record. Challenging this document, it is submitted that Union Public Service Commission vide communication dated 29th November, 2022 made to the Chief Secretary, Government of Madhya Pradesh, Bhopal has wrongly interpretation provisions contained in Regulation 5 of 1966 Regulations and the proviso below those regulations by giving erroneous interpretation to words "continuous service" and, thus, has caused injustice to the petitioners.

Placing reliance on the decision of Hon'ble Supreme Court in the case of **Union of India and others Vs. K.B. Rajoria, (2000) 3 SCC 562**, it is submitted that under similar facts and circumstances Hon'ble Supreme Court has dealt with the issue. Reading from para-12, it is submitted that Hon'ble Supreme Court in case of **K.B. Rajoria (supra)** referring to earlier decision in the case of **K. Madhavan Vs. Union of India, (1987) 4 SCC 566** has held as under :

"In our view, therefore, expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis."

Thereafter it is held that notional promotion unless termed to be irregular then a person getting notional promotion is entitled to be considered for promotion to the next higher post by computing that period of notional promotion.

Reading from para-18 onwards, it is pointed out that calculation of two years regular service in the grade as was the stipulation in regard to appointment to the post of Director General of Works in the Central Public Works Department and referring to the Central Public Works Department (Director General of Works) Recruitment (Amendment) Rules, 1992 which was amended w.e.f. 04/04/1992, wherein it is mentioned that the post of Director General (Works) is a selection post to be filled up by promotion from amongst, inter-alia, "Additional Director General (Works)" with two years 'regular service in the grade' held that even officiating service unless termed to be irregular, ad hoc or temporary or officiating will be computed for the purpose of experience and giving interpretation to the Rules of 1986, it is held that respondent, therein, was entitled to be considered for promotion even on the basis of notional promotion to the feeder cadre post.

Shri K.C. Ghildiyal, learned senior counsel, reading para -21 of the judgment of **K.B. Rajoria (supra)** further submits that notional promotion was given to correct the wrong that was done to one Krishnamoorti whereby he was superseded on 22/02/1995. If Krishnamoorti is denied the right to be considered for promotion to the post of Director General on the basis of such notional promotion, particularly when the relevant provisions so provide, it would result in perpetuating the wrong done to him. That is exactly what the High Court has done. Reading this, it is submitted that the petitioners' case will squarely be covered with para-21 because firstly they were not allowed to

participate in the interview on the ground that they were treated to be overage and when with the intervention of the Court, they participated in the interview, selected and were given notional seniority then denying them benefit for consideration to be promoted to the cadre of Indian Forest Service will amount to denial of equitable relief.

Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Union of India Vs. Smt. Sadhana Khanna, in Appeal (Civil) No.8208/2001** decided on 14th December, 2007 where the fact of the matter was that said Smt. Sadhana Khanna was denied consideration for promotion to the post of Section Officer on the ground that she was 12 days' short of actual experience as on the cutoff date. Under those facts and circumstances, Hon'ble Supreme Court noted in para-11 that for the wrong of the department in issuing appointment order in favour of said Smt. Sadhana Khanna on a later date when her juniors were issued letter of appointment prior to her, then she cannot be blamed for late joining and, thus, that period of delay cannot come in way of her being considered for promotion saying that she was short of 12 days of necessary length of service to be considered on the date of promotion.

Shri K.C. Ghildiyal, learned senior counsel and Shri D.K. Dixit, learned counsel further submits that in fact in terms of the provisions contained in Regulation 5(2) since requirement is to consider names of the member of State Forest Services in the order of seniority and petitioners are senior, therefore, by giving an incorrect interpretation to continuous service, petitioners cannot be debarred from zone of consideration.

Shri Nikhl Bhatt, learned counsel submits that the Madhya Pradesh Public Service Commission is wrongly and inappropriately made a party.

Shri Anoop Nair, learned counsel for Union Public Service Commission submits that firstly as per Section 14 of the Administrative Tribunals Act, which deals with the jurisdiction and in the light of the decision of the Hon'ble Supreme Court in **L.Chandra Kumar versus Union of India & Others (1997) 3 SCC 261**, this High Court has no jurisdiction to hear and entertain these petitions which in fact deals with appointment to the All India Service for which jurisdiction will exclusively lie with the Central Administrative Tribunal.

Reliance is also placed on the judgment of a Division Bench of this High Court in **Samviliyanit Karmchhari Kalyan Samiti Bhopal versus State of Madhya Pradesh & Others 2003 (1) M.P.L.J 162** where the Division Bench too has relied on Paragraph No.99 of the decision of Hon'ble Supreme Court in **L.Chandra Kumar (supra)**. Reading from Paragraph No.99, it is submitted that the Hon'ble Supreme Court has held that "the Tribunals created under Article 323-A and Article 232-B of the Constitution of India are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will nevertheless continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open to litigants to directly approach the High Courts even in cases where they question the vires of statutory legislation (except where legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated".

In addition, Shri Anoop Nair, learned counsel submits that the Indian

Forrest Service (Appointment By Promotion) Regulations, 1966 specifically provides under IIIrd Proviso below Regulation 5(2) an exception that the Committee shall not consider the case of a member of the State Forest Service unless on the first day of January of the year for which the select list is prepared, he is substantive in the State Forest Service and has completed not less than 8 years of continuous service (whether officiating or substantive) in post(s) included in the State Forest Service. Thus, it is submitted that inclusion is to be in the order of seniority but subject to the conditions provided in the proviso.

Shri Anoop Nair, learned counsel places reliance on the order of the Union Public Service Commission dated 29.11.2022 Annexure P/20, which discussed the case of one Shri Sheikh Shavali (I.P.S-Andhra Pradesh and D.o.P and T) vide letter dated 8.8.2018, which clarified that 8 years of continuous service on the post of Deputy Superintendent of Police is mandatory for an SPS Officer to be eligible for consideration for promotion to an I.P.S.

Shri Amit Seth, learned counsel for the intervenor submits that the intervenor has a vested right to intervene. Reading from clause 7(2) of the petition filed by one Shri Vidya Bhushan Mishra, it is submitted that the relief claimed is as under

"to correct the date of appointment of the petitioner as 3.3.2011 or any date prior to the date of appointment of Shri Amit Kumar Singh, who is below in the seniority list at Serial No.79 for issuing appropriate writ and/or directions"

It is submitted that quashing of letter dated 29.11.2022 (Annexure P/20) is also sought through amendment. It is submitted that the relief 7(2) directly

claims placement for the petitioner above the intervenor. The order Annexure P/20 has direct bearing on the promotion prospect of the intervenor inasmuch as the Union Public Service Commission directed the Chief Secretary and the Secretary of the Department to exclude names of those persons, who have not put in of eight yeas of continuous service and to send the names of two eligible officers alongwith statements/certificates regarding disciplinary/criminal proceedings, adverse remarks, integrity and ACRs dossiers. It is also submitted that in terms of the order Annexure P/4, the intervenor's name is just below the petitioner Vidya Bhushan Mishra and, therefore, he is having a vested right to intervene. Similarly, it is also submitted that after Shri Amit Kumar Singh appears the name of Ms.Archana Dubey and Shri Rishi Mishra and, therefore, Shri Rishi Mishra is also entitled to intervene.

Similar argument is adopted by Shri Pratap Tarun Singh, learned counsel. Placing reliance on the judgment of the Supreme Court in **Girish Kumar versus State of Maharashtra & Others (2019) 6 SCC 647**, it is submitted that the issue of continuous service in reference to the relevant rules was before the Supreme Court in the aforesaid case.

While dealing with this aspect in relation to the provisions contained in Maharashtra Jila Parishad District Services (Recruitment) Rules, 1967 and Appendix-IX and in relation to the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, Hon'ble Supreme Court held that the language for the purpose of entitlement for promotion or direct recruitment will have to be adopted as provided under the Recruitment Rules inasmuch as the provisions of the Seniority Rules operate in a different domain.

Reading from Paragraph N.6 onwards, it is submitted that the Supreme Court framed question that was placed for its consideration, namely, "whether

an employee who has been assigned the deemed date of promotion as per Rule 5 of the Seniority Rules, 1982 and as such has not actually worked at all on the promotional post, can it be said that he has completed service for a continuous period of not less than 3 years in the feeder cadre, which is the requirement under the relevant Recruitment Rules?". Answering this, it is held that ordinary dictionary meaning of "continuous" means "uninterrupted or unbroken". It is held that where in Appendix-IX the eligibility criteria is that no person shall be eligible for promotion unless he has completed service for a continuous period of not less than three years means that he has to render/complete service for a continuous period of uninterrupted/unbroken three years service, therefore, when the respondent No.3 has not completed three years of service for a continuous period of not less than three years in the feeder cadre in District Service Class-III (Ministerial) Grade-II, he was not eligible for promotion to the post of Section Officer. The High Court has committed a grave error in holding otherwise and thus relying on this judgment, it is pointed out that the meaning and import of the word continuous in the IIIrd Proviso below Regulation 5.2 is to be understood as laid down by the Apex Court in **Girish Kumar (supra)**.

It is also submitted that the intervenor vide I.A.No.3454/2023 has enclosed documents to show that the petitioner Shri Vidya Bhushan Mishra was working as an Assistant Professor in Higher Education Department after being selected by the Chhattisgarh Public Service Commission, Raipur. His name appears in the result declared by the Chhattisgarh Public Service Commission on 27.8.2012 at Serial No.10. Thereafter, his name is shown in the seniority list of Assistant Professors of Colleges for the calendar year 2022 of Pandhit Ravi Shankar Shukla University, Raipur (C.G) at Serial No.436 and thus the

petitioner actually was working as Assistant Professor from 2012 and, therefore, he never actually performed the work of Assistant Conservator of Forest and thus he is not entitled to treat his notional seniority to be a period for continuous appointment.

Shri D.K.Dixit, learned counsel submits that in fact the petitioner is challenging his placement in the gradation list at an appropriate place above Shri Amit Kumar Singh and thereafter the consequential reliefs have been sought. Thus, this petition would have been maintainable before this High Court, which is also a Court of first instance.

Shri K.C.Ghildiyal, learned Senior Counsel submits that at this distance of time, there is no useful purpose going to be served by relegating the petitioner to agitate the matter afresh before the Central Administrative Tribunal when pleadings are complete and there is an interim order operating in favour of the petitioner and that has come so far.

Shri D.K.Dixit, learned counsel submits that there is no intervention in case of Shri K.C.Ghildiyal i.e in case of Shri Rajbendra Mishra and, therefore, in absence of any intervention in case of Shri Rajbenda Mishra, no useful purpose is going to be achieved.

After hearing learned counsel for the parties and going through therecord, it reveals that firstly, this Court is in agreement that interventionist have a stake in the matter and, therefore, their intervention is not like a piggy back riding. Since they have inherent interest in the matter, intervention application is allowed. They be impleaded as respondents in the concerned petition.

Now the issue which emerges from the aforesaid discussion is as to the interpretation of third proviso below Regulation 5(2) of the Regulations of 1966.

It is true, as submitted by Shri Ghildiyal, learned senior counsel, that

committee is required to consider for inclusion to the list of suitable officers, the cases of members of the State Forest Service in the order of seniority in that service of a number, which is equal to three times the number referred in Sub-regulation (1), but it is also true that Regulation 5(2) provides for the principles of inclusion, then proviso below Regulation 5(2) deals with as to who shall be eligible for such inclusion. Third proviso which is paramateria in this case deals with inclusion of only those members of the State Forest Service, who on the 1st day of January of the year for which the select list is prepared, is substantive in the State Forest Service and has completed not less than eight years of continuous service.

Thus, besides requirement of seniority to be considered while preparing a list of suitable officers in terms of Regulation (5), third proviso below it, provides two more contingencies that on the date i.e. 1st January of the year for which select list is prepared, the concerned officer should be substantive in the State Forest Service and, secondly, should have completed not less than 8 years of continuous service.

In the present case, whole dispute is in regard to interpretation of words "Continuous Service".

As far as judgment on which reliance is placed by learned counsel for the petitioners i.e. **K.B. Rajoria** (supra) is concerned, requirement of the Central Public works Department (Director General of Works) Recruitment Rules, 1986, was two years regular service on feeder post for becoming eligible for promotion. There the Supreme Court was dealing with the interpretation of words "Regular Service" and not with the interpretation of words "Continuous Service". Therefore, when the said judgment is examined on the basis of

context in which it was delivered, then it is evident that words "Continuous Service" were not the subject matter of the said petition in **K.B. Rajoria** (supra) and, therefore, Supreme Court had no occasion to deal with interpretation of words "Continuous Service, which is the subject matter of present petition and which is the language used in the third proviso below Regulation 5(2).

Similarly, judgment rendered by Supreme Court in **Union of India Vs. Smt. Sadhna Khanna** (supra), is also quoted out of context, inasmuch as, in that case, qualifying service was short of certain days and under the facts and circumstances of the case, Supreme Court held that when there was discrepancy in issuance of appointment orders in favour of different selected candidates and when appointment orders were issued to the juniors prior to the reference date and petitioner was given appointment letter, later on, then delay in joining could not have been considered that issue of qualifying service being short of a few days from the relevant cut off date. However, in that case, interpretation was again not in regard to the group of words "Continuous Service". Therefore, in absence of any provision contained in the concerned rules like "Continuous Service", continuous service will have to be considered when not defined in any of the Rules and Regulations in terms of its literal meaning as has been dealt with by the Hon'ble Supreme Court in case of **Girish Kumar** (supra).

In **Girish Kumar** (supra), Hon'ble Supreme Court has held that ordinary dictionary meaning of 'continuous', means uninterrupted or unbroken service of 8 years in the cadre of Assistant Conservator of Forest. In fact, that is not the case and as held by Supreme Court and which is an established principle of interpretation of statute, which provides that language used in a regulation or a

statute, if unambiguous, simple and plain, then it is not required to cause any violence to give any other interpretation than which can be derived from reading of the statute, this Court is of the opinion that meaning assigned to words 'continuous service,' means uninterrupted or unbroken service and when order dated 19.11.2022 is examined in this light, then it cannot be said that there is violation of third proviso to Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulation, 1966, which provides that the committee shall not consider the case of a member of the State Forest Service unless on the 1st day of January of the year for which the select list is prepared, he is substantive in the State Forest Service and has completed not less than 8 years of continuous service. Therefore, when examined in totality neither the communication dated 29.11.2022, nor the Regulation can said to have been violated by the Union Public Service Commission while issuing the communication calling for names of next two eligible officer.

Accordingly, this petition being devoid of merit, deserves to fail and is hereby **dismissed**. Interim orders if any, shall stand vacated.

At this stage, it is necessary to address last ground raised by Shri Dixit, that there is no intervention application in case of Shri Rajendra Mishra. Since this Court has dealt with the merits and interpretation of third proviso below regulation 5(2) and has held that continuous service will have to be given same meaning as given by Supreme Court in **Girish Kumar** (supra) and petition is being dismissed on merits, that will not make any difference if there is no intervention to the said petition. As far as issue of jurisdiction is concerned, looking to the pendency of the case, this issue has not been dealt with. Not dealing with this issue, will not be treated as this Court has accepted the

proposition that petition can be filed in the High Court directly and it will not be treated as a precedent.

**(VIVEK AGARWAL)
JUDGE**

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