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M. M. THOMAS & ORS.

v.

UNION OF INDIA & ORS.

(Civil Appeal Nos. 5300-5301 of 2017)

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APRIL 17, 2017

[S. A. BOBDE AND L. NAGESWARA RAO, JJ.]

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Employees' Provident Fund Organisation (EO/AO) Recruitment Rules, 2002 – Promotion – Appellants working as Social Security Assistants in Karnataka/Tamil Nadu regions of EPFO – Transferred to Kerala region – Departmental examination – Post of EO/AO in Kerala region – Participation of appellants challenged by private party respondents on the ground that they were not eligible – Tribunal held that appellants were not qualified for promotion as they had not put in five years service in the Kerala region of EPFO as per the Rules which require five years regular service in the respective regions – Whether under the Recruitment Rules, 2002, the candidates who seek promotion through departmental competitive examination for the post of EO/AO, should have served, both in their earlier place of posting and their present place of posting for a period of five years, or whether the candidates should have served for five years in the region where they seek promotion, which in this case is Kerala region – Held: If a candidate has served in one region and then transferred to another, and seeks promotion in that region, the rule does not require that the candidate must have acquired requisite experience in the region where he seeks promotion, for being considered eligible – This must necessarily be so because the service to which the rival parties belong, is an All India Services, in which the country is demarcated into several regions – In All India Service, the officers are posted from one region to the other in a routine manner – The purpose of the rule is that such officers are not deprived of their experience in the feeder cadre merely because they have been transferred from one place to another – What is necessary is a total experience of five years – Appellants are entitled to be treated as qualified for promotion in the Kerala region for the post of EO/AO in the EPFO.

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Allowing the appeals, the Court

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HELD: 1.1 The words “in the respective regions” must be understood to mean that the candidates should have served in the respective regions, that is, the regions where they were posted earlier and the region where they seek promotion all together for five years. Thus if a candidate has served in one region and then transferred to another, and seeks promotion in that region, the rule does not require that the candidate must have acquired experience of five years in the region where he seeks promotion, for being considered eligible. What is necessary is a total experience of five years. This must necessarily be so because the service to which the rival parties belong, is an All India Services, in which the country is demarcated into several regions. In All India Service, the officers are posted from one region to the other in a routine manner. The purpose of the rule is that such officers are not deprived of their experience in the feeder cadre merely because they have been transferred from one place to another. [Paras 7, 8][890-E-G]

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1.2 In the transfer order of the appellants Dated 19.06.2008, issued by Regional PF Commissioner (HRM), EPFO, Ministry of Labour, Government of India, and addressed to the Regional PF Commissioners in-charge of the Region Tamil Nadu, the following is stated as a condition of transfer : “His/her past service rendered in cadre of SSA will be counted for the purpose of appearing in the departmental examination.....”. The above condition of transfer fortifies view regarding the intent and purpose of the promotion rule. The appellants are entitled to be treated as eligible and qualified for promotion in the Kerala region for the post of EO/AO in the Employees Provident Fund Organisation. [Paras 9, 11][890-G-H; 891-A-B; 892-A]

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Union of India & others v. C.N. Ponnappan [1995] 6 Suppl. SCR 220 : (1996) 1 SCC 524; *Scientific Advisor to Raksha Mantri and Anr. vs. V.M. Joseph* [1998] 1 SCR 177 : (1998) 5 SCC 305 – referred to.

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Case Law Reference

[1995] 6 Suppl. SCR 220 referred to Para 10

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A [1998] 1 SCR 177 referred to Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5300-5301 of 2017.

From the Judgment and Order dated 10.08.2011 of the High Court of Kerala at Ernakulam in O. P. (CAT) Nos. 2518 and 2525 of 2011.

B V. Giri, Sr. Adv., Siddhartha Dave, Ms. Usha Nandini V, Biju P. Raman, Advs. for the Appellants.

C C. S. Rajan, Sr. Adv., A. Raghunath, Prasanth P, Samdarshi Sanjay, Rajan K. Chourasia, Ms. Aparna Bhat, Ms. Joshita Pai, Mayank Sapra, Sachin Sharma, Ranjit Kr. Jha, A. Deb Kumar, Praneet Pranav, S. N. Terdal, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. A. BOBDE, J. 1. Leave granted.

D 2. The appellants have preferred these appeals against the impugned common judgment and order dated 10.8.2011 passed by the High Court of Kerala in O.P.(CAT) Nos.2518 and 2525 of 2011, whereby the High Court affirmed the order dated 19.7.2011 passed by the Central Administrative Tribunal Ernakulam (for short, the 'Tribunal'), dismissing O.A. Nos.723 and 970 of 2010, filed by the private party respondents.

E The Tribunal held that the appellants do not have the requisite experience in the Kerala region as on the date on which the vacancies were notified, and set aside the inclusion of their names in the rank list for promotion to the post of Enforcement Officer/ Accounts Officer (for short, the 'EO/AO'). The Tribunal further held that if the private party respondents are otherwise eligible, the official respondents are directed to take steps to consider their rank obtained in the examination and include their names in the appropriate place in the rank list for promotion to the post of EO/AO. The Tribunal also directed that the next available candidate in the rank list should be included in the rank list, according to the rank obtained by them.

G 3. The facts of the case in nutshell are as follows :

The appellants were working as Social Security Assistants (SSAs) in the Karnataka/Tamil Nadu regions of the Employees Provident Fund Organisation (for short, the 'EPFO'). They were transferred to Kerala region and kept at the bottom in the seniority list. The notification was

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issued to fill up the post of EO/AO in the Kerala region. Both the appellants and the private party respondents participated in the aforesaid examination. Subsequently, the rank list was published. The appellants are at Serial No. 1, 2, 4 and 5 respectively in the rank list and the promotion list. It was contended by the private party respondents that the inclusion of the names of the appellants in these lists is arbitrary and illegal, because they were not eligible.

4. The rule that governs the eligibility of the appellants reads as follows :

In case of recruitment by promotion/deputation/absorption, grade from which promotion/deputation/absorption to be made.	(i) PROMOTION (OTHER THAN EXAMINATION QUOTA):
	(ii) BY PROMOTION ON THE BASIS OF DEPARTMENTAL COMPETITIVE EXAMINATION
	# [Section Supervisor AND Junior Hindi Translator with 3 years regular service in the scale of Rs.5000-8000/- and DEO (Grade-C) with three years' regular service in the scale of Rs.5000-8000/- including those DEO (Grade-C) who have already put in 5 years' regular service in DEO (Grade-A) and Social Security Assistants/Assistants/Stenographers/ and DEO (grade-A and B) with <u>5 years regular service in the scale of Rs.4000-6000/- in the respective regions</u>]

5. The appellants as also the private party respondents passed the departmental competitive examination for the post of EO/AO.

Apprehending that the appellants will be promoted earlier, the private party respondents approached the Tribunal by way of filing original

A applications. The Tribunal allowed the said applications and held that the appellants herein were not treated as qualified for promotion i.e. eligible on the ground that they had not put in five years' service in the Kerala region of EPFO, having relied on the words in the above quoted Rule which requires five years' regular service "in the respective regions".

B 6. Being aggrieved, the appellants filed original petitions before the High Court which were also dismissed. Hence these appeals by special leave.

C 7. Thus, the only issue before us is whether under the aforesaid Rule, the candidates who seek promotion through departmental competitive examination for the post of EO/AO, should have served, both in their earlier place of posting and their present place of posting for a period of five years, or whether the candidates should have served for five years in the region where they seek promotion, which in this case is Kerala region.

D 8. Having heard learned counsel appearing for the parties and upon perusal of the record, we are of the view that the words of the aforesaid Rule require five years' regular service "in the respective regions". Thus, these words must be understood to mean that the candidates should have served in the respective regions, that is, the regions where they were posted earlier and the region where they seek promotion all together for five years. Thus if a candidate has served in one region and then transferred to another, and seeks promotion in that region, the rule does not require that the candidate must have acquired experience of five years in the region where he seeks promotion, for being considered eligible. What is necessary is a total experience of five years. This must necessarily be so because the service to which the rival parties belong, is an All India Services, in which the country is demarcated into several regions. In All India Service, the officers are posted from one region to the other in a routine manner. The purpose of the rule is that such officers are not deprived of their experience in the feeder cadre merely because they have been transferred from one place to another.

H 9. It might be noticed that in the transfer order of the appellants bearing No.HRM-III/14/1/07/IRT/Genl. Dated 19.06.2008, issued by Regional PF Commissioner (HRM), EPFO, Ministry of Labour, Government of India, and addressed to the Regional PF Commissioners

in-charge of the Region Tamil Nadu, the following is stated as a condition of transfer : A

“His/her past service rendered in cadre of SSA will be counted for the purpose of appearing in the departmental examination.....”

The above condition of transfer fortifies our view regarding the intent and purpose of the promotion rule. B

10. In a similar context, this court in *Union of India & others vs. C.N. Ponnappan*¹ held that an employee who is transferred from one unit to another on compassionate ground, though placed at the bottom of seniority list is entitled to have the service rendered at an earlier unit, counted for the purpose of eligibility for promotion in the unit in which he is transferred. It was observed in Para 4 as follows: C

“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 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 services, 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” D E

When confronted once again with the similar question in *Scientific Advisor to Raksha Mantri and Anr. vs. V.M. Joseph*², this court relying on earlier decision in *Union of India (supra)* held that the length of service rendered on an equivalent post in another organization before the transfer counts, for determining the eligibility for promotion though such service may not count for seniority. F

11. Hence, we allow these appeals, set aside the impugned judgment and order passed by the High court as also the aforesaid order/s of the Tribunal insofar as these appellants are concerned, and hold that the G

¹ (1996) 1 SCC 524

² (1998) 5 SCC 305

A appellants are entitled to be treated as eligible and qualified for promotion in the Kerala region for the post of EO/AO in the Employees Provident Fund Organisation.

12. The interlocutory application for impleadment is rejected.

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Devika Gujral

Appeals allowed.