

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 5554 of 2013 (O&M)

Date of decision : July 22, 2015

Sandeep Singh,

..... Petitioner

v.

State of Punjab and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Rahul Verma, AAG Punjab

Mr. Suresh Monga, Advocate
for respondent No.2.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

On the last date of hearing, counsel for respondent No.2 was orally directed to inform if any post is lying vacant. Today, counsel for respondent No.2, on instructions, has informed the Court that one post is lying vacant.

By this writ petition, the petitioner has claimed that he has to be reinstated to the post of Stenographer-II in the office of respondent No.2.

The petitioner was appointed as Steno Typist (English) in the office of respondent No.2 on 28.10.1997 and thereafter he was promoted as

Stenographer-II on 1.2.2001. On 2.2.2010, a requisition came from the District Consumer Forum, Ludhiana for filling up of one post of Junior Scale Stenographer. The petitioner admittedly applied through proper channel and his application was forwarded by Annexure R-1. He was selected and was allowed to join. During the period of his probation in the District Consumer Forum, his services were terminated. He filed CWP No.20429 of 2010 which was disposed of on 18.9.2012, with the following directions :-

“ Having heard learned counsel for the parties and having perused the pleadings on record, while declining to interfere in the impugned order dated 10.6.2010 (Annexure P-11), I deem it appropriate to dispose of the present writ petition in terms of granting liberty to the petitioner to raise the issue as regards the retention of lien in his parent department (respondent No.2) as also to raise the prayer for his repatriation to his parent department. In the eventuality of any such claim being raised by the petitioner, respondent No.2 would be obliged to consider the same strictly in accordance with law and in the light of the statutory provisions governing such claim within a period of four months from the date of submission of the such claim/representation.

Petition disposed of.”

Thereafter, the petitioner's claim having been rejected by the impugned order (Annexure P-14), he is before this Court.

Counsel for the petitioner has argued that in the impugned order, the under lying protection given by sub-rule (2) of Rule 3.12 of the Punjab Civil Services Rules, Vol.1, Part-1 has been mis-interpreted. The said sub-rule (2) is quoted herein below :-

“ In the case of temporary Government employee, who is appointed by direct recruitment or by transfer in another department or in a different cadre in the same department, he shall not be allowed to retain any lien on the post held prior to this his new appointment after the expiry of a period of two years from the date of his

joining against the new post.”

In the impugned order, the applicability of the said rule has been denied on the ground that as per that rule, the petitioner could have come back within two years and since two years have expired, the petitioner would not be entitled to the benefit thereof. It is the contention of counsel for the petitioner that once this Court had specifically kept alive his right to ask for reinstatement despite the fact that a period of more than two years had elapsed, it was not open to respondent No.2 to have taken the plea of time in rejecting the claim of the petitioner.

Counsel for respondent No.2 has sought to argue that firstly, in the letter forwarding the application of the petitioner (Annexure R1), it was clearly stipulated that he would not be entitled to retain his lien, and secondly, in the previous writ petition, the petitioner had laid no foundation for the alternative claim of reinstatement with respondent No.2 and, therefore, the present writ petition would be barred by the provisions of constructive res-judicata.

In my opinion, the arguments raised by counsel for respondent No.2, would not hold in the facts of the present case. As regards the stipulation in Annexure R1, I have no hesitation in holding that any stipulation made contrary to the rules cannot be held to be effective. With regard to the second argument also, I have to hold that once this Court specifically kept alive the right of the petitioner for seeking the relief of reinstatement with respondent No.2 despite the fact that a period of more than two years had elapsed, and thereafter the petitioner moved the application with utmost dispatch, it was not open to respondent No.2 to

have taken a ground of delay in rejecting the claim. In the circumstances, the impugned order is liable to be set aside.

Counsel for the petitioner has fairly stated that in case the petitioner is re-instated, he would not seek any back wages. Consequently, this writ petition is allowed and the impugned order is set aside. Respondent No.2 is directed to reinstate the petitioner and to grant him all consequential benefits from the date of his representation till the date of his reinstatement. As has been undertaken by counsel for the petitioner, he would not be entitled to any back wages. Let necessary exercise be now conducted within two months from the receipt of a certified copy of this order.

(AJAY TEWARI)
JUDGE

July 22, 2015
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