

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20553 of 2012

Date of Decision: 26.07.2016

Prashant Kapoor

... Petitioners

Versus

High Court of Punjab and Haryana
at Chandigarh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Puneet Bali, Sr. Advocate,
with Mr. Vibhav Jain, Advocate,
for the petitioner.
Mr. Vikas Suri, Advocate,
for respondent No.1.
Mr. J.S. Mehndiratta, Advocate,
for respondents No.3 to 5, 10, 15, 20, 21, 24 and 27.
Mr. Gurcharan Dass, Advocate,
and Mr. H.S. Kalar, Advocate,
for respondents No.8, 9, 12, 14, 17, 22 and 28.

RAJIV NARAIN RAINA, J.

1. The petitioner is an employee on the establishment of this Court where he has been serving since 1991. He has worked in different capacities. He was appointed as a Clerk to serve in the ministerial cadre and earned promotions as Senior Clerk and Junior Assistant in due course. He competed for the post of Steno-typist to change his line by appearing in a competitive test held by this Court for selection and appointment in the Steno line. He cleared the test and was appointed/promoted as Steno-typist w.e.f. May 26, 2000.

2. Two months later, he was charge-sheeted on July 21, 2000 for negligence and dereliction of duty in a case involving wrong listing of certain Letter Patent Appeals, while he was posted in the DRR Section of the establishment of this Court during the year 1999-2000.

3. The High Court initiated steps to conduct a “special test” in March 2001 in terms of Rule 11 (1) (a) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 (for short “the Rules”) for filling up the vacancies/posts of Judgment Writer on the establishment of this Court. He was one of 87 candidates who appeared in the special test, of whom only 3 were successful, of which the petitioner was one. The other two were Sarvshri Som Parkash and Gopal Krishan. Gopal Krishan has been impleaded as the 2nd respondent next below to the official respondent, that is, the High Court through its Registrar General.

4. Having passed the test there still was an impediment in the way to the petitioner's appointment, which was the presence of a charge-sheet and the pending departmental proceedings against him. An inquiry was conducted into the charge to which I would come later.

5. The petitioner cites office noting supplied under RTI that when the result of the Judgment Writers test was placed before the Hon'ble Judge for approval and orders, the Hon'ble Judge on the administrative side seized of the matter was pleased to observe that the selected persons can be appointed. However, the question was raised by His Lordship whether the High Court could promote a person who was already under charge-sheet. The Hon'ble Judge recommended that in the case of the petitioner, a vacancy may have to be reserved pending outcome of the enquiry proceeding. Accordingly, the papers were placed before Hon'ble the Chief Justice for orders which led to the appointment of Som Parkash and Gopal Krishan as Judgment Writers but not the petitioner. As a result, no specific orders were passed regarding keeping a vacancy reserved for the petitioner.

Accordingly, both of them were appointed/promoted as Judgment Writers vide office order dated June 01, 2001 (Annex P-1 at p. 52 of the paper-book) where the two words have been used in combination separated by a slash to read “appointments/promotions on the establishment of this Court”. In this petition, the claim is made for appointment/promotion w.e.f. June 01, 2001 the date the petitioner was selected in limited competition.

6. The domestic enquiry resulted in infliction of minor penalty of withholding of one increment without cumulative effect for a period of one year vide order dated October 23, 2001. This event put paid to clearance for appointment as Judgment Writer. The petitioner's case was staggered to await final outcome of disciplinary proceedings.

7. Feeling aggrieved by award of punishment, the petitioner filed a service appeal against the order of punishment on December 05, 2001 which was his statutory right. The appeal remained pending for long which led the petitioner to submit a detailed representation on September 21, 2002 praying that he may be promoted to the post of Judgment Writer as per merit of the result of the test held in March 2001. If the said request was accepted, the petitioner undertook that he would withdraw the appeal against the punishment order. In the alternative, the petitioner prayed that one post of Judgment Writer may be kept reserved for him till the final disposal of his service appeal as was suggested by the Hon'ble Judge on the administrative side as the course of action to be adopted in the office noting mentioned above. He brought to the notice of the appellate authority that nine months had already elapsed since the filing of the appeal without orders passed. The representation was processed. The learned Registrar General sought opinion

of the Additional Registrar in the matter on November 15, 2002. The petitioner says that his case was not put up properly with the right direction. The advice of the Additional Registrar tendered on January 13, 2003 reads as follows:-

“The over-view of the averments as contained in para Nos.1 to 14 of the application leads to the conclusion that the request of the applicant is three dimensional:-

- a) Promotion as judgment writer as per his merit/performance in the test held in March, 2001;*
- b) If the part of request at (a) is allowed, the applicant will withdraw his Service Appeal;*
- c) If the request at (a) is not allowed/accepted one post be reserved for him till the disposal of Service Appeal.*

The answer to all the three issues can be gathered from the orders dated 1.6.2001 as reproduced on pre-page, for S/Shri Som Parkash and Gopal Krishan were ordered to be appointed as JWs whereas no order for reserving a vacancy for the applicant was passed by Hon'ble the Chief Justice and the reason therefore was that the applicant at the relevant time was facing departmental enquiry and ultimately imposed penalty of stoppage of one increment.

However, there are instances when the promotions in respect of those officials who were facing disciplinary proceedings were held up till the finalisation thereof without reserving a vacancy for them and when exonerated completely of the charges, they were allowed promotions retrospectively i.e. from the date when the officials immediately junior to them were promoted but in this case penalty has been imposed. Reference in this regard may be made to the orders dated 29.8.2001 passed by Hon'ble the Chief Justice in the case of Sh. D.S. Rawat (Flag 'M') and also orders dated 9.9.2002 passed by Hon'ble the Chief Justice in the case of Ms. Sushma Ranii(Flag 'N').

*Sd/- Tara Chand
Additional Registrar*

13.1.03.”

8. It appears that what weighed in the mind of the Additional Registrar was that no order was passed reserving a vacancy for the petitioner by the Hon'ble the Chief Justice and so he thought that the reason for withholding appointment could be that at the relevant time the petitioner was facing departmental enquiry and was ultimately imposed penalty. But it was also reminded, at the same time, that there were instances where retrospective promotions were granted to those officials who were facing disciplinary proceedings and were exonerated completely of the charges. These persons were allowed promotions retroactively from the date when the officials immediately junior to them were promoted and, therefore, the same method could be adopted in his case. The learned Registrar General agreed with the proposal of the Additional Registrar vide note dated January 27, 2003. Meanwhile, the representation in the hands of the Assistant Registrar (Establishment) while being processed suffered opinion that the representation dated September 21, 2002 had no force and the same may be filed. The decision was conveyed vide letter dated February 04, 2003 informing the petitioner that the representation had been considered and declined. In response to this order, the petitioner applied to administration requesting that his statutory departmental appeal may be listed before the appropriate authority without any further loss of time because by that time more than one year and two months had elapsed from the date of filing of the service appeal. There was no response on the request. The petitioner made another representation on October 27, 2003 as by then the period of punishment imposed for a year vide order dated October 23, 2001 had expired in the month of March 2003. He prayed that he may be

appointed/promoted with all consequential benefits as JW from the date when Som Parkash and Gopal Krishan were appointed. In the alternative, the petitioner once again requested that the service appeal may be heard and disposed of at an early date.

9. While the service appeal was pending the High Court made fresh recruitments to the post of Judgment Writer in terms of Rule 11 (1) (a) of the Rules through special tests conducted during the years 2003, 2004 and 2005. Faced with a Hobson's choice, the petitioner left with no other alternative appeared in one of the tests but was unable to clear it. The pending request was, however, dealt with in September 2004 eliciting speedy hearing on the appeal but since the disciplinary proceedings remained pending it was recommended that the representations be filed being devoid of any merit. The Registrar (Administration) approved the suggestion of the AR (E) by his note dated October 01, 2004 even though the petitioner says that he was not competent to review the orders passed by his superior i.e. the Registrar General of the High Court. Meanwhile, the petitioner was appointed/promoted as Stenographer on November 18, 2005 as a result of passing the test held for the post. In this special test held in terms of Rule 11 (i) (a) on May 29, 2006 the petitioner was successful along with respondents No.29 to 35 and some other persons and all of them were accordingly appointed/promoted as Judgment Writers.

10. The tide was turned when the service appeal of the petitioner was accepted on December 09, 2008 by a Bench of two Hon'ble Judges. He was exonerated and found altogether innocent of the charge. Pursuant thereto an office order was issued as a consequence on January 16, 2009.

As a result, the charge-sheet dated July 21, 2000 stood concluded after passage of about eight and half years in his favour. On the basis of this the petitioner's claims were revived. The delay in disposal of the appeal was most certainly not attributable to the petitioner of which there cannot be any doubt.

11. Having been exonerated of the charges and found innocent, the petitioner represented to the High Court on February 28, 2009 that he may be promoted as Judgment Writer w.e.f. June 01, 2001; Private Secretary w.e.f. May 31, 2006; and Secretary w.e.f. August 08, 2008 with all consequential benefits. In his representation the petitioner quoted numerous precedents where similarly situated officials of the High Court were given the benefit of due promotion after their exoneration in the departmental proceedings. The petitioner specifically referred to and cited the example of one Sh. Kamal Deep Sehra – respondent No.13 in whose case even though he was not exonerated of the charges levelled against him even then in the statutory appeal, he was given appointment/promotion to the post of Judgment Writer after expiry of the currency of the minor punishment inflicted upon him of withholding increment for specified time.

12. During the interregnum of the charge-sheet and conclusion of enquiry proceedings, when the petitioner was under clouds, respondents No.11, 12 & 27; 3 to 6; 8 to 10; 14 to 26 and 28 were promoted meanwhile as Judgment Writers under Rule 11 (1) (b) of the Rules on different dates ranging from September 16, 2002 to May 10, 2006. In the second lot, the respondents, i.e. 29 to 35 and some other persons passed the special test and they came to be Judgment Writers on May 29, 2006.

13. The representation of the petitioner made in February 2009 invited objections filed by some of the private respondents etc. Their objections were three-fold. (i) no list of successful candidates was prepared by the office as a result of the test held in the month of March 2001 when Som Parkash and Gopal Krishan became Judgment Writers. (ii) No post was kept reserved for the petitioner; and (iii) the instances of similar cases cited by the petitioner in his representation were cases relating to promotions whereas the post of Judgment Writer was not a promotional post, rather it is by way of direct recruitment on the basis of a competitive test. The petitioner and the private respondents were afforded opportunity of hearing by the Grievance Committee comprising three Hon'ble Judges. During the course of the personal hearing the prime issue which fell for consideration was whether the selection to the post of Judgment Writer is to be treated as 'promotion' or 'appointment' on the basis of the result of the competitive examination from amongst the eligible members of the establishment of the High Court and that of the Courts below. The petitioner specifically referred to the earlier decision of the Committee of two Hon'ble Judges of the High Court taken way back on December 05, 1996 holding that an appointment to the post of Judgment Writer by competitive examination is an "appointment by promotion". He also referred to instances where similar relief was granted with retrospective effect with consequential benefits in cases where persons had been ignored for promotion due to punishments inflicted or due to pendency of departmental proceedings but were later on exonerated and granted the relief from the retrospective due dates.

14. The deliberations of the Hon'ble Committee resulted in the

recommendations dated May 30, 2012 made to Hon'ble the Acting Chief Justice for His Lordships approval. Hon'ble the Acting Chief Justice vide order dated July 13, 2012 rejected the representation and the decision was conveyed to the petitioner. With the rejection order was annexed the text of the recommendations of the Hon'ble Committee adverse to the petitioner.

15. The arguments canvassed before the Hon'ble Committee hinged on whether the claim of the petitioner fell in the moot expressions 'promotion' or 'appointment'. Appointment is governed by Rule 11 (1) (a) while promotion is envisaged under section 11 (1) (b). It was pointed out to the Hon'ble Committee of three Hon'ble Judges that the petitioner had appeared in the special test in the years 2003, 2004 and 2005 and had failed to make the grade. In 2006 the petitioner was appointed as Judgment Writer when he qualified the examination. It was argued by the some of the respondents herein etc. that when the petitioner passed the test in 2001 no post was kept reserved for him and he could well have agitated the matter further if he felt aggrieved particularly when he subsequently filed an appeal challenging imposition of minor penalty imposed upon him. Even in the said appeal, he did not agitate this claim and, therefore, his claim for promotion based on passing the test in 2001 that he should be “promoted” with effect from that due date is not tenable because he would be seen as having waived his rights.

16. Before we proceed further, it would be profitable to read the recommendations verbatim. They are as follows:-

“The representationist claims that he had cleared the Judgment Writer test in the year 2001. However, since an inquiry was pending against him at that time, he could

not be 'promoted'. Eventually, departmental proceedings culminated in imposition of a minor penalty of withholding of one increment without cumulative effect for a period of one year but in appeal filed by him, a Division Bench of this Court exonerated him of the charge leveled against him. Now he claims that he should be granted the benefit of the fact that he had cleared the test in 2001 and should be promoted with effect from that date.

S/Shri B.S. Walia, Advocate appearing on behalf of the High Court, and J.S. Mehndiratta, Advocate appearing on behalf of 35 affected persons, have argued that the appointment as claimed by the representationist cannot be termed as a promotion, as promotion is envisaged under rule 11 (1) (b). They have further argued that during this interregnum, 35 persons have been appointed. It has also been pointed out that the representationist appeared subsequently for the same tests in the years 2003, 2004 and 2005 and could not clear the same. He was thereafter appointed as Judgment Writer after having cleared the test in 2006. Learned counsel have asserted that at the time when the representationist passed the test, no post was kept reserved for him and he could well have agitated the matter further if he felt aggrieved particularly since he subsequently filed appeal challenging imposition of minor penalty imposed upon him. Even in the said appeal, he did not agitate this claim.

After hearing, the Committee recommends the acceptance of the arguments of learned counsel for the High Court as well as counsel for the affected persons, and rejection of the representation of Shri Prashant Kapoor.”

17. Mr. Bali, learned Senior Counsel appearing for the petitioner may not be incorrect in his guarded criticism of the recommendations that they do not satisfy satisfactorily measure the test of recording reasons, independent of the arguments of either side noticed without original findings thereon and, therefore, they fall short of the standards of quality of

hearing ruled by the Constitution Bench of the SCI in S.N. Mukherjee v.

Union of India, AIR 1990 SC 1984 and the universal tests laid down therein. This is how the application dated July 30, 2012 with reference to the representation dated February 28, 2009 was rejected and the proceedings have culminated in the order of rejection, which order is impugned in this petition, copy of which is annexed at P-28 at pages 118 to 120 of the paper-book.

18. On notice, the High Court has contested the case by filing a written statement. Objection has been raised that writ petition has been filed after 11 years of the cause of action and, therefore, it suffers from delay and laches and deserves to be dismissed on this ground. Furthermore, as per Rule 11 (1) (a) of the Rules appointment to the post of Judgment Writer is by way of selection and not by way of promotion. During the interregnum of the charge-sheet and exoneration as many as 35 officials have been promoted as Judgment Writers and third party rights have settled which cannot be disturbed as relief to the petitioner will affect their seniority and chances of further promotion. Besides, a post of JW was not kept reserved for the petitioner by special order and the petitioner failed to agitate the matter any further and thus he has acquiesced in the position. Had he wanted he could have agitated the matter when he filed appeal challenging imposition of minor penalty. Concept of reserving a post pending determination of rights is normally applicable to appointments made by way of promotion and not direct recruitment through an in-service test. The petitioner never challenged his non-selection and non-reservation of a post in a court of law.

19. On the High Court side in its written statement, the case of

Kamal Deep Sehra – respondent No.13 has been explained in para.12 of the written statement at page 155-156 of the paper-book and the stand taken is that he was appointed expeditiously after process of selection, which was not so in the case of the petitioner. The hiatus in duration between the two cases is significant in distinguishing the two cases on facts.

20. The petitioner has filed a replication controverting the assertions made by the High Court in its written stand. Some of the private respondents have defended the petition by filing a written statement. They say that the petitioner wrongly interprets the rules. By his act of appearing in subsequent tests the petitioner has acquiesced in the order passed by Hon'ble the Chief Justice and has deprived himself of the relief claimed. The petitioner has not challenged the order dated February 04, 2003 (Annex P-4) whereby his representation was rejected and this is a material circumstance against him. Long standing seniority of the private respondents cannot be disturbed by the passing day. The decision of the Committee of two Hon'ble Judges (Annex P-26) was rendered in the context of pay fixation and not in relation to a claim for seniority or appointment from the back date. Between the two concepts there is an unbridgeable gap which is difficult to fill.

21. The petitioner has filed a replication controverting the assertions made by the private respondents. Upon filing of the replication and pointing out various short-comings by the petitioner, the High Court has filed an additional affidavit and the petitioner submits that it is trying to cover up its lacunas left in the written statement. However, nothing material or substantial has been pointed out in the affidavit on which the petition can

be defeated without debate. The petitioner, the High Court and the private respondents were permitted to file synopses of their respective cases by this Court after they were heard and those submissions have been presented after conclusion of hearing and are no more than a condensation of the oral submissions addressed on the pleadings on record and therefore taken on file so that they are noticed and dealt with.

22. To summarize once again for clarity, the respective stands coming forth from the synopses of arguments, the High Court on its part says that the process undertaken for holding a special test for selection of Judgment Writers in 2001 was done under Rule 11 (1) (a) and not Rule 11 (1) (b) and appointments were not by way of promotion. They urge that the basic difference between the two sub rules (a) and (b) of Rule 11 is that the first is by way of selection amongst different cadres/services. The feeder sources are Judgment Writers (Junior Grade)/Stenographers working in the Courts of District/Additional District & Session Judges in the State of Punjab & Haryana and the Union Territory of Chandigarh having worked for a minimum period of two years. The second source is from amongst Graduate employees working in the High Court with minimum two years of service to their credit. In the latter i.e. sub-Rule (b) of Rule 11, 50% posts were to be filled in by promotion from amongst the graduate Stenographers having worked as such for a minimum period of two years in the High Court on the basis of merit-cum-seniority. As per Rule 11(2) all regular vacancies of Judgment Writers were to be filled from the two sources by rotation i.e. those under sub-Rule (a) and (b) of Rule 11 of the rules. Therefore, the process of selection undertaken under Sub-Rule (a) is selection and not a

case of promotion. There cannot be promotion from one service to another under different employers i.e. the State Government service [Sessions Divisions] to the service of the High Court establishment governed by Article 229 of the COI. A Sub-Rule cannot be legitimately read in parts, even if the persons entitled to be considered for promotion under Sub-Rule (b) of Rule 11 were entitled to compete for selection under Sub-Rule (a). The administrative decision (Annex P-26 at Pg. 108-116) was only for the purpose of fixation of pay. The same cannot negate the effect of the statutory Rules. The said administrative decision was rendered in the light of Rule-34(1) (A). The relevant discussion is at page 115 of the HC Paper-book (last para.). The second important aspect of the matter according to the High Court is that the petition is highly belated and deserves to be rejected on that score alone. The “selection” process was undertaken in the year 2001. The other two persons were appointed as JWs on 1.6.2001. This is when the cause of action actually accrued to the petitioner, if any, and cannot be postponed to accommodate litigation filed belatedly. The representation of the petitioner was rejected in January 2003 and communicated to the petitioner in February 2003 itself. It was in the knowledge of the petitioner that no post had been kept reserved for him. The petitioner did not impugn the said decision of the selection/appointing authority. The present writ petition came to be filed in the year 2012 i.e. after much delay. Many appointments, by way of promotion under sub-rule (b) and selection under sub-rule (a) of Rule 11 have since taken place. The petitioner thus, by reason of delay has waived his right in the absence of any post having been kept reserved for him. The said decision has not been impugned

herein. In support of the proposition reference is made to the ruling of the Supreme Court in R.S.Makashi v. I.M.Menon and others: (1982) 1 SCC 379: 1982 (2) SCR 69. It is well settled law that representations or their pendency cannot extend the period of limitation to challenge an impugned action, the petitioner may feel aggrieved of. The averments made in the affidavit dated 16.12.2013 at Pg. 205-212 of the paper-book are vehemently reiterated by the High Court as the correct position in record. Still further, the petitioner had also competed in the selection process in terms of Rule 11 (1) (a), subsequent to the one conducted in the year 2001 i.e. in the years 2003, 2004 & 2005, but remained unsuccessful. The petitioner did not even reserve his right of consideration while taking his chances in the subsequent years of recruitment. Thus, there is waiver of rights also on the part of the petitioner with respect to his alleged claim as against the selection process of JWs held in mid 2001. The petitioner cannot claim negative parity with the instances cited by him. The said appointments are not cases of persons similarly situated as the petitioner since they belong to different sources. Moreover, only a legal right could be enforced in a court of law. Reliance on this contention is placed on a recent judicial pronouncement of the Supreme Court reported as Kulwinder Pal Singh and Anr. v. State of Punjab, (2016) 4 PLR Supreme Court – ejournal 126. *Makashi* case is of no help to Mr. Mehndiratta appearing for the High Court, since the case dealt with the preliminary objection before the High Court on the ground of delay and laches in challenging the rules of seniority after long lapse of time. And what fell for consideration was a complex issue of inter se seniority where the staff for manning a new department was drawn

from four different sources, then none of them stood on a separate and superior footing. In such a situation, it was inevitable that some reasonable principles had to be formulated for the determination of the inter se seniority of the personnel appointed to work in the different categories of posts in the new organisation. Such a complex situation does not arise in this case where the petitioner and the other two, that is, Som Parkash and Gopal Krishan were selected in the same special test. Because Som Parkash and Gopal Krishan were appointed/promoted to the higher post then it would not lie in the mouth of the official respondents to contend that the petitioner does not have an indefeasible right to the same treatment based on principles of equality of opportunity call it appointment or promotion. The right thus becomes fundamental in nature and nearer home would be the principles in Major General H.M. Singh v. Union of India, 2014 3 SCC 670 even though it was a case of matured right to promotion being wrongly passed over.

23. To turn to the case of the case of the private respondents in the synopsis suffice it to say that it is on the lines of the stand of the High Court and needs no elaboration other than to mention their stand when contended that there is no channel of promotion under the Rules from the post of Clerk to Judgment Writer. Hence, by no stretch of imagination can the petitioner claim that he was to be “promoted” as Judgment Writer as claimed by him. Steno-typists have their own channel of promotion as Senior Scale Stenographer and thereafter Judgment Writer under Rule 11 (1) (b). It is pointed out that the present petition has been filed by concealing the material fact that the petitioner had earlier filed CWP No.2970 of 2005

seeking appointment as Judgment Writer on the basis of subsequent special test held on February 05, 2005. The said writ petition was admitted on February 29, 2005. The petitioner cannot retract therefrom and seek appointment on the basis of test held in the year 2001. This was a relevant fact which should have been stated in the petition for the Court to consider its impact. They cite the ruling of SCI in P.S. Sadasivaswamy v. State of Tamil Nadu, (1975) 15 SCC 152 that in matters of promotion and seniority the approach for legal redress must normally be within six months to one year after which the question of delay and laches arises so as not to disturb promotions or fixation of seniority adverse to unsuspecting persons by long passage of time who are armed by vested rights to seniority. The petitioner has approached this Court for the first time in October 2012 i.e. after 11 years. That even otherwise, the petitioner could not even have filed a civil suit as his claim would be absolutely time barred. They rely on the well settled rule that repeated representations do not condone delay or give rise to a fresh cause of action. More importantly, third party rights have accrued and become vested over the years with the promotions of the answering respondents and on this ground as well, the petition is liable to be dismissed *in limini*. Reference in this regard can be made to judgment of SCI in Karnataka Power Corporation Ltd. v. K.Thangappan, (2006) 4 SCC 322.

24. In order to appreciate the arguments advanced it would be necessary to reproduce Rule 11 of the Rules. This is necessary because the rules as they existed in the year 2001 have undergone amendment and, therefore, the unamended and the amended rules are reproduced below with respect to the post of Judgment Writer:-

Rule 11 of the Rules (as it stood in the year 2001)	Rule 11 of the Rules (as it exists on date)
Judgment Writers 11. (1) Appointment to the post of Judgment Writers shall be made from the following sources: a) Fifty percent posts shall be filled in by selection from amongst the Graduate Judgment Writers (Junior Grade)/ Stenographers working in the Courts of District/Additional District and Sessions Judges in the State of Punjab, Haryana and the Union Territory of Chandigarh, having worked as such for a minimum period of 2 years, and from Graduate employees working in the High Court with minimum 2 years service, after taking into account their experience record of service and their performance in the special test to be held for the purpose in the High Court. b) Fifty percent posts shall be filled in by promotion from amongst the graduate Stenographers, having worked as such for a minimum period of 2 years in the High Court, on the basis of merit-cum-seniority. (2) All regular vacancies of Judgment Writers shall be filled in from the two sources by rotation i.e. first vacancy shall be filled in from the source 9a) and next from source (b) referred to in Sub-Rule (i) and so on. Provided that a vacancy of one source may be filled in from the other by making appointment on ad-hoc basis, till the appointment of a candidate from the source to which it belongs, subject to the condition that the person appointed on adhoc basis, will not be entitled to claim seniority on the basis of such appointment. (3) Notwithstanding anything contained in Sub-Rule (1) qualifications of being a Graduate may be relaxed in deserving cases of exceptional merit. (4) The Seniority inter-se of the Judgment-Writers shall be determined by order in which they are appointed against regular vacancies.	Judgment Writers 11. (1) Appointment to the post of Judgment Writers shall be made from the following sources: a) Fifty percent posts of Judgment Writers shall be filled in by way of competitive examination from open market, subject to the following conditions:- (i) No person shall be eligible for direct recruitment to the service if he/she is less than 21 years or more than 30 years of age. However, upper age limit will be relaxed up to 5 years for the candidates who are already working in Government departments / Semi Government departments / Corporations / Boards. (ii) The candidate should be at least Graduate or equivalent thereto of a recognized university. (iii) The candidate should have proficiency in operation of Computers (Word Processing and Spread Sheets). (iv) The candidate shall have to pass the test in English Shorthand at a speed of 120 W.P.M. and its transcription at 24 W.P.M. The test shall be of at least 10 minutes duration. No candidate shall be considered to have qualified the test, if he/she commits more than 5% mistakes. The list of qualified candidates shall remain valid for a period of one year from the date of examination and shall lapse thereafter. b) Fifty percent posts shall be filled in by promotion from amongst the Stenographers, having worked as such for a minimum period of 2 years in the High Court, on the basis of merit-cum-seniority, and further subject to the following conditions:- (i) Selected candidate should be at least Graduate or equivalent thereto of a recognized university. (ii) The candidate should have proficiency in operation of Computers (Word Processing and Spread Sheets).

25. The first and foremost issue which falls for determination is whether the petitioner has an accrued and vested right based on his selection on merit in the year 2001 after he stood exonerated of the charges levelled against him in the year 2009. On declaration of innocence would the petitioner take his rights antedated when he was one of the three candidates who were selected in the year 2001 and two of whom were appointed/promoted by the High Court as JWs.

26. The second question is, in case this Court holds that the petitioner has an accrued and vested right going back to 2001 would then any of his acts and omissions deprive him of that right by the defences of delay and laches, and settling of third party rights meanwhile etc. pressed by the respondents, official and non-official.

27. The amendment to the rules introduced competitive examination from open market to the extent of filling up 50% of the posts of Judgment Writers by direct recruitment and 50% by promotion from amongst Stenographers having worked as such for a minimum period of two years in the High Court on the basis of merit-cum-seniority provided the selected candidate should be at least Graduate or equivalent thereto from a recognized university and possesses proficiency in operation of Computers, Word Processing and Spread Sheets. However, in the earlier system prevailing for the benefit of the petitioner 50% of the post of Judgment Writers were to be filled by "selection" from amongst Graduates Judgment Writers (Junior Grade)/Stenographers working in Lower Courts with D&SJs/AD&SJs and from amongst Graduate employees working in the High Court with a minimum two years service, after taking into account

their experience, record of service and their performance in the special test to be held for the purpose by the High Court. The other half of the posts were filled by promotion. In the old system open market was not a source of recruitment.

28. I have heard Mr. Puneet Bali, learned Senior counsel assisted by Mr. Vibhav Jain, learned counsel appearing for the petitioner, Mr. Vikas Suri appearing for the High Court, Mr. J.S. Mehndiratta, learned counsel appearing for respondents No.3 to 5, 10, 15, 20, 21, 24 & 27 and Mr. Gurcharan Dass and Mr. H.S. Kalar, learned counsel appearing for respondents No.8, 9, 12, 14, 17, 22 & 28.

29. Arguments were heard at considerable length during the course of which the important milestones of the case and the documents relied on were perused with the able assistance of the respective counsel. A substantial time was spent at the hearing on the issue of “appointment” and “promotion” and it seemed to this Court momentarily that everything depended on the interpretation of the rules and whether the case fell in Rule 11 (1) (a) or Rule 11 (1) (b). The High Court held stoutly to the ground that it is not a case of “promotion” while holding a “special test”.

30. In the opinion of the Court if the case is not one of promotion then it is “selection” as the word is employed in the rules under consideration. I do not see why one should get muddled up in these two expressions and decide upon the fate of the petitioner on those premises and decide on his rights to become a JW retrospectively or his *inter se* rights with the private respondents in the context of promotions and seniority. All the office orders placed on file including those involving Som Parkash and

Gopal Krishan emphatically employ the terms “appointment/promotion” as one and the same thing. From a reading of the orders, no clarity is forthcoming of what was meant; promotion or appointment. I would take it that the High Court itself was really dealing with filling up the post of Judgment Writers through the special test call it “appointment” or “promotion” or an “appointment by promotion”. The term “Selection” to my mind in the setting of Rule 11 (1) (a) is partially in the nature of appointment and partially in the nature of promotion. This is amplified by the components which go into the selection method based not only on the result of the special test but also on two other vital components i.e. experience and “record of service” as highlighted by Mr. Bali. A priori, the component of “record of service” in Rule 11 (1) (a) is unusual in cases of appointment and lends flavour of promotion from competition restricted to in service candidates, notwithstanding the employers are different, the States of Punjab, Haryana and Union Territory Chandigarh and the High Court employees under the complete control of the Chief Justice of the Punjab & Haryana High Court under Article 229 of the Constitution. Broadly speaking, direct recruitment is also appointment and promotions are no less than appointments made by way of promotions. Even Article 229 of the Constitution speaks of appointments and not promotions within the establishment when it vests absolute power in the Chief Justice of the State to prescribe rules governing conditions of service of employees of the High Court establishment within his jurisdiction. Therefore, appointments encompass promotions. When confronted with the decision of the Committee of two Hon'ble Judges taken on December 05, 1996 (Annex P-

26) it confirms my belief that when the Committee held that appointment to the post of Judgment Writer by competitive examination is appointment by promotion it was a generic expression of the law which was more than meant just for pay fixation and not relatable to the context of selection, call it appointment by selection or by any other name, the substance being foundation and that is to allow a successful employee to occupy a seat in office called JW with the duties and responsibilities attached to the post. The three Judge Committee that made the recommendations on May 30, 2012 did not deal with the case from this perspective and still further the earlier decision dated December 05, 1996 on which the petitioner aptly places reliance was neither noticed nor dealt with while then same should have been put up by the office for consideration.

31. Mr. Bali would submit that a need for detailed examination of Rule 11 (1) (a) or (b) pales into insignificance and is practically of no moment when seen on the major premise that in March 2001 a special test was held in terms of Rule 11 (1) (a) of the Rules and the petitioner was successful. Nothing else matters and the rest of it is academic. But for the departmental proceedings, the petitioner would have been dealt with in similar fashion as Som Parkash and Gopal Krishan who passed the test with him and secured appointment/promotion as Judgment Writers on June 01, 2001. There is nothing on record, except ambiguity, from where one can say with any certainty from which source the two officials were appointed as JWs, since their appointment orders speak conjointly of both the principles i.e appointment/promotion. We will have to accept that this is how the High Court viewed the two expressions as one and the same thing and I

have no material shown indicating to the contrary.

32. Parity of treatment and non-discrimination within a class is the heart of the equality principle in Article 14 of the Constitution. The petitioner deserves the same treatment as the other two since the only reasonable classification existing at the relevant point of time stands declassified by act of exoneration of the charge. If the enquiry took eight and half years and led to exoneration in 2009 after enormous delay then it would mean that the minor punishment orders were baseless and the petitioner's rights would relate back to the special test held on June 01, 2001 when the other two became Judgment Writers. In this it matters little whether they were appointed or promoted and the petitioner has to be treated in similar fashion on principles of parity protected by equality principles in Article 14 of our Constitution otherwise we might end up destroying the very fabric of the law we are to uphold. Fundamental rights in Article 14 have primacy over rules of service to prevent injustice.

33. The learned Senior counsel Mr.Bali further submits in answer to the objection of delay that the petitioner brought his grievance to the notice of the High Court as early as on September 21, 2002 praying that he may be promoted as a Judgment Writer or in the alternative one post may be kept reserved for him till final disposal of the statutory appeal but that was left blank. More so, the minor punishment having been imposed on October 23, 2001 the cup had runneth over on expiry of the period of penalty and restoration of increments withheld for the time being. Even his departmental appeal took substantial time to be decided and merely because a post was not kept reserved by special order or that he did not litigate on the point

cannot be a circumstance against the petitioner. I would not accept such an argument built by the respondents on an hypothesis. I wonder what else could an employee of the High Court have done faced with the same predicament except to supplicate and bide his time. No employee would wish to earn the ire of the employer by rushing to court and be seen as litigious in nature.

34. Then, Mr. Bali is not wrong when he submits that a High Court employee should not normally be seen litigating during the pendency of enquiry proceedings where his conduct is being looked into by the Inquiry Officer and thereafter in the statutory appeal, as no real relief could come by till 2009 when he was fully exonerated of the charges levelled against him and the inquiry proceeding was ordered to be filed in the service appeal decided by none other than a Bench of two Hon'ble Judges of this Court sitting on the administrative side. It is only then on proof of innocence that past rights got reactivated. He submits that the High Court has placed too much emphasis on the facile assumption that vacancy was not reserved therefore his client was denuded of his rights. If a vacancy was not reserved it was not the fault of the petitioner. Anyway, the petitioner's rights do not flow alone on absence of interim orders passed in the administration.

35. While on the other hand, the petitioner has relied on information received under the Right to Information Act, 2005 that the record bears testimony that the late Hon'ble Mr. Justice J.L. Gupta specifically directed that "a vacancy may have to be reserved". When the file was placed before Hon'ble the Chief Justice for orders His Lordship had noted "appoint Sh. Som Parkash and Sh. Gopal Krishan". In this situation,

Mr. Bali submits that it cannot be said that the Chief Justice rejected the recommendation or suggestion of the Hon'ble Judge that a vacancy may have to be reserved. At any rate, no order rejecting the recommendation of the Hon'ble Judge has been shown to this Court. On the date of the noting the petitioner faced disciplinary proceedings. He was helpless in the matter with his fate depending on the outcome of the enquiry. Therefore, neither promotion nor appointment could be made till the conclusion of the inquiry. The petitioner could never have been advised by any sagacious counsel to approach the Court during the pendency of departmental proceedings and till when decision was conveyed. If he was intimated that his representation made in the then prevailing circumstances was considered and declined on February 04, 2003 it does not mean that the petitioner had license to approach a court of law and obtain effective relief. At that time his statutory appeal was pending. It is also not disputed that in his representation dated September 11, 2002 all that the petitioner asked for was for keeping a vacancy reserved for him till final disposal of his service appeal. This was a legitimate request in preservation of his rights by praying for express orders. Even if there were none passed on file it does not foreclose his case. He had also asked for promotion, if granted, then he was prepared to withdraw his appeal against the promotion order. He also requested that his appeal should be decided at an early date and there was nothing wrong in this request since every citizen has a right to speedy justice. Therefore, declining the representation dated September 21, 2002 did not seal the fate of the petitioner forever only because he did not litigate against that decision. The petitioner had no option but to stoically await conclusion of his

departmental proceedings which to his detriment took as long as eight and half years to conclude and, therefore, the stand of the High Court is not the correct one on delay and laches and I would shudder to non-suit the petitioner on the specious plea as it might result in injustice. At least the High Court should not expect its employees to rush to Courts at the drop of a hat when they are facing departmental proceedings as realistically hardly any effective orders could flow or be passed by the Bench except to accelerate the conclusion of the enquiry proceedings, and that too with some trepidation.

36. On question of long pendency of service appeal, Mr. Bali would venture to submit that no employee should be seen approaching the Court for directions that a Committee of Hon'ble Judges should decide the statutory appeal within a time bound period. Therefore, the petitioner had no option except to keep quiet and bide his time by making written requests from time to time and in these impulses he did his best to make representations some of which have been sidetracked. Hence, the petitioner's case cannot be considered in cast iron as one of repeated representations failing to extend the cause of action. In any case, when fundamental rights are pressed on principles of parity of treatment, then the petition should not be declined on the jejune grounds of delay and laches. Mr. Bali argues that the stand of the respondents, if accepted, would compel litigation at the inception stage in the year 2003 only to secure an order to keep one post reserved pending disciplinary proceedings. Thus, taking into consideration the totality of circumstances not much would depend on the factum of the petitioner not having approached the Court at interlocutory

stages except for litigating in 2005 to secure his rights for himself or what was left of them by then in a state of flux. This conduct cannot be viewed as an act of omission on the part of the petitioner in not litigating and be seen as a *mukadmabaz*. At the end of the day, the case of the petitioner, when seen in the entirety of facts prior to and after exoneration of the charge levelled against him, stands on equal footing with those of Som Parkash and Gopal Krishan and his fate lies tied with them enabling him to the relief prayed whether based on promotion, appointment or appointment by promotion or by whatever name called. These are all recognised principles of recruitment to service or appointment to higher posts or appointments in other cadres permitted by rules. Recruitment does not necessarily mean direct selection by public advertisement through open competition participation. It is an in-house, in-service exception to Article 16 of the COI based on reasonable classification based on the demands of the establishment of this Court.

37. Mr. Bali lastly relies on the sheet anchor of the decision of the SCI in Union of India and others v. K.V. Jankiraman and others, (1991) 4 SCC 109 to contend by its universal sledgehammer principles that in cases of complete exoneration of the employee from all charges, legitimate entitlement arises, such as the petitioner, to even dispensation from the date two of his competitors were appointed/promoted as JWs. Accordingly, appointment/promotion/selection from the date his compatriots Som Parkash and Gopal Krishan were “made” JWs and consequentially arrears of salary of difference of pay would become his rightful due, with right to be granted from the date of notional appointment/promotion having regard to

the peculiar facts and circumstances of the case. The doctrine of 'no work no pay' stands ruled out where employee, though willing, is not allowed to work on the higher post without his fault. This case can eminently be decided on the cardinal principles evolved in *Jankiraman* case. The rule that notional promotion follows from the back date when adverse order prohibiting timely promotion is removed is well settled in law, See Supreme Court in G. Muthuraj v. State of Tamil Nadu and another, (2013) 11 SCC 648 [right to notional promotion flows “automatically” when punishment order is quashed by High Court] and Gurpal Singh v. High Court of Judicature of Rajasthan, (2012) 13 SCC 94 [continued suspension after acquittal not justified; departmental enquiry instituted on same charge unjustified; reinstatement with consequential benefits like full salary and other allowances from date of acquittal in criminal appeal becomes right. Entitlement to deemed/notional promotion after complete exoneration in departmental proceedings, petitioner must be considered for notional promotion, from the date his junior was promoted]. There is irrefutable logic in the submission of Mr. Bali which is worthy of acceptance and for grant of relief prayed.

38. This apart, the petitioner through his senior counsel also places reliance on a selection of Division Bench decisions of this Court in the same line after applying the law in *Jankiraman*. These rulings are reported in State of Haryana v. Bani Singh Yadav, (2005) ILR 1 Punjab and Haryana 493; Sudershan Kumar v. The State of Haryana and another, 1997 (2) RSJ 416; Avtar Singh v. State of Haryana and another, 1998 (1) RSJ 317 & Vidya Parkash Harnal v. State of Haryana, 1995 (3) SCT 785 and lastly a

Single Bench in Kailash Chander Sharma v. State of Haryana and another, 2015 (2) SCT 130, all of which may not require a detailed discussion here.

39. As a result of the above discussion and for the views expressed heretofore in this order, this petition has substance and deserves to be accepted and the same is accordingly allowed. With great respect to the Hon'ble Members of the Committee which made the impugned recommendations dated May 30, 2012 are held difficult to legally sustain and are accordingly declared not binding on the rights of the petitioner and are thus set aside. As a result, the impugned order dated August 24, 2012 declining the prayer of the petitioner, must suffer the same fate as the recommendation has. The further consequential order dated July 13, 2012 passed by Hon'ble the Acting Chief Justice declining the representation of the petitioner dated February 28, 2009 is non-speaking in nature and based on very weak foundations and it is accordingly set aside.

40. A request is made to Hon'ble the Acting Chief Justice to re-consider the case of the petitioner in the light of the above and pass necessary orders as his Lordship deems fit. If the re-consideration leads to declaration of existing right to appointment/promotion notionally from the date when Som Parkash and Gopal Krishan joined as JWs then the petitioner as a natural consequence would deserve consideration for further promotions as Judgment Writer, Private Secretary and Secretary with effect from the dates claimed i.e. June 01, 2001, May 31, 2006 and August 08, 2008 respectively and in case, there is nothing else adverse to the petitioner on the due dates, he may be allowed such benefits notionally. However, the actual financial benefits arising out of this order will remain restricted from

the date of exoneration in service appeal i.e. January 16, 2009 since the roadblocks in the way of the petitioner stood removed altogether.

(RAJIV NARAIN RAINA)
JUDGE

26.07.2016
manju

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No