

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 18911 of 2013

Date of decision : February 27, 2016

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Gopal Krishan Tiwari

.....Petitioner

Versus

District and Sessions Judge and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Anurag Goyal, Advocate for the petitioner.

Mr. Vikas Suri, Advocate for respondent no.1.

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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?*

RITU BAHRI, J

The petitioner is seeking a writ of certiorari for quashing the impugned order dated 4.5.2010 (Annexure P-6) and in consequence order dated 23.3.2011 (Annexure P-7) to the extent of denying promotion to the petitioner by giving him promotion with immediate effect instead of promoting him from the date his juniors were promoted.

The petitioner was initially appointed as Clerk with the Civil Judge Court, Bhiwani and thereafter he was ordered to be

promoted as Assistant at Rewari in the year 1987 which is equivalent to Reader Grade-III or Translator. While working as Reader Grade-III, a fact finding enquiry was conducted against the petitioner whereby the petitioner was held responsible for some omissions and commissions and consequently notice under Section 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1987 and Rule 12 of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 was issued to the petitioner which ultimately culminated into order dated 17.1.2009 (Annexure P-1), whereby the petitioner was held guilty and was ordered to be punished with the punishment of stoppage of one year increment without cumulative effect. During the currency of this punishment from 17.1.2009 to 16.1.2010, an order was passed whereby persons who were junior to the petitioner namely, Kamal Kishore Joshi, Desh Raj, Sarjit Singh and Brahm Parkash were ordered to be promoted to the post of Superintendent Grade-II vide order dated 1.9.2009 (Annexure P-2) but the petitioner was not promoted because of the currency of punishment during that period. This fact is further evident from the seniority list (Annexure P-3). Vide order dated 4.5.2010 (Annexure P-5) some persons junior to the petitioner were again promoted to the post of Reader Grade-I. The petitioner was not considered for the promotion on the ground that he has been awarded the punishment of imposition of penalty of stoppage of one increment without cumulative effect and the period of punishment is to continue up to 1.7.2010 and, therefore, he cannot

be promoted at this stage as per the order passed by respondent no.1 (Annexure P-6). The petitioner filed a writ petition bearing CWP No. 15398 of 2010 for quashing the order dated 4.5.2010 (Annexure P-5). During the pendency of this writ petition, the petitioner was ordered to be promoted to the post of Superintendent Grade-II vide order dated 23.3.2011 (Annexure P-7). The writ petition was ordered to be dismissed as withdrawn with liberty to file a fresh one on the same cause of action as per the order dated 16.1.2013 (Annexure P-8). Hence the present writ petition.

The stand taken by the respondents in the written statement is that when the punishment order was passed on 17.1.2009, the petitioner had already earned his annual increment for the year 2008 w.e.f 1.7.2008 to 30.6.2009 and the punishment of stoppage of one annual grade increment had as such come into force w.e.f 1.7.2009 to be ended on 30.6.2010. In this background the case of the petitioner for promotion cannot be taken up during the aforesaid period and after the currency of the punishment came to an end, he was rightly promoted on a vacant post vide order dated 23.3.2011 (Annexure P-7). Thus the order dated 4.5.2010 (Annexure P-5) is in accordance with law and does not require any interference. In the written statement, reference had also been made to the instructions dated 31.5.2006 (Annexure R-1) issued by the Chief Secretary to Government of Haryana, wherein it has been decided that no promotion should be allowed to any employee during the currency of punishment of stoppage of his grade increment. In the

written statement a further explanation has been given with regard to the promotion of respondent no.2 to the cadre of Reader Grade-I. He was reverted back to the post of Superintendent/ Reader Grade-II after withdrawal of the Court. Thereafter the post of Reader Grade-I again became vacant. He was entitled for promotion to the next cadre i.e Reader Grade-I before the petitioner as per the length of service on the post of Superintendent/Reader Grade II to be considered for promotion on the post of Reader Grade-I. Respondent no.2 joined as Superintendent/Reader Grade-II on 2.9.2009 and the petitioner joined as Superintendent/Reader Grade-II on 23.3.2011. Moreover as per the Instructions dated 8/11.9.1961 (Annexure R-3), respondent no.2 had a preferential right to the post of Reader Grade-I.

Counsel for the respondent has informed the Court that vide order dated 23.12.2014 passed by the District and Sessions Judge, Rewari, the petitioner has now been promoted to the post of Reader Grade-I in the Court of Sh. Ajay Tewatia, AD& SJ, Rewari along with one Suneel Kumar.

A co-ordinate Bench of this Court in the case of **Subhash Gakhar vs. state of Haryana, 2013 (1) RSJ 39** was examining a case where punishment of stoppage of one increment without cumulative effect had been imposed on the petitioner vide order dated 23.12.2009. Petitioner had already earned his annual increment on 1.7.2009 and the next annual increment due to the petitioner was on 1.7.2010. It was held that the increment which has

already been granted to the petitioner could not be withdrawn and therefore the withholding of increment would start when the next increment would be due to the petitioner i.e 1.7.2010. Punishment would thus become effective from 1.7.2010 till the next increment would become due to the petitioner i.e 1.7.2011. Increment cannot be withheld from a retrospective date. The next increment which was due on 1.7.2010 was liable to be stopped to impose the punishment of stoppage of one annual increment with cumulative effect upon the petitioner and during the currency of the punishment i.e till 1.7.2011, he could not be considered for promotion. Hence, he was held disentitled to promotion w.e.f 31.7.2009. It was held that the promotion was rightly declined on account of the Instructions dated 31.5.2006.

In the present case, the instructions dated 31.5.2006 have been placed on record as Annexure R-1, whereby the State Government in the light of the judgment of Hon'ble Supreme Court in the case of **State of Tamil Nadu Versus Thiru K.S Muragesan and others, 1995 (3) RSJ 271** decided that no promotion should be allowed to any employee during the currency of punishment of stoppage of his grade increment. The Instructions dated 18.11.1971 and 19.7.1973 stood modified. Pursuant to the Instructions dated 31.5.2006 (Annexure R-1), the petitioner was given promotion after the currency of the punishment came to an end on a vacant post vide order dated 23.3.2011 (Annexure P-11).

In the case of **State of Tamil Nadu Versus Thiru K.S**

Muragesan and others, 1995 (3) RSJ 271, Hon'ble the Supreme

Court held as under:

“.....Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up, otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Doctrine of double jeopardy has no application and non-consideration is neither volatile of Article 21 nor Article 14 read with Article 16 of the Constitution.....”

As per the aforesaid judgment of the Supreme Court and instructions dated 31.5.2006 (Annexure R-1), the petitioner has rightly been promoted vide order dated 23.3.2011 (Annexure P-7). As per the written statement filed on behalf of the respondents, respondent no.2 joined as Superintendent/Reader Grade-II on 23.3.2011 and moreover as per the Instructions dated 8/11.9.1961 (Annexure R-3), respondent no.2 had a preferential right to the post of Reader Grade-I. Respondent no.2 was promoted prior to the petitioner as he was senior to the petitioner.

Having regard to the aforesaid, no ground is made out to interfere in the impugned orders dated 4.5.2010 (Annexure P-6) and order dated 23.3.2011 (Annexure P-7), whereby the petitioner has

been promoted on a vacant post available after the currency of punishment came to an end.

In view of all that has been discussed above, present writ petition is dismissed.

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**(RITU BAHRI)
JUDGE**