

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1229 of 2014 (O&M)

Date of decision: May 30, 2016.

The High Court of Punjab and Haryana

... Appellant

v.

Surinder Kumar Khurana

... Respondent

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri G.S. Attariwala, Advocate, for the appellant.

Shri Puneet Gupta, Advocate for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral):

This letters patent appeal is directed against the order dated 24.3.2014 whereby the learned Single Judge allowed the writ petition and has directed the appellant-High Court to calculate and release the arrears of pay on the promotional posts in favour of the respondent within a period of three months.

[2]. The arrears, as directed to be paid to the respondent, pertain to firstly the post of Senior Assistant with effect from 23.9.1997 and then as Superintendent Grade-II with effect from 7.5.2008.

[3]. The facts may be noticed briefly.

[4]. The respondent joined the High Court as a Clerk on 20.3.1989.

Some posts of Steno-typist were advertised in the year 1991; he applied and was selected through a competitive test; he joined as Steno-typist with effect

from 16.7.1991. On 3.12.1994, the respondent was asked to give option whether he would like to revert to the original cadre of Clerks or would forego his placement in the senior scale? The respondent was unable to make up his mind, possibly for the reason that it was just the beginning of his career and it was difficult to foresee the future prospects. Eventually, the respondent exercised his option and opted to forego his placement in the senior scale of Clerks but asked to retain his 'lien' in the cadre of Clerks. In 1997, it appears that one of the person junior to him in the clerical cadre was promoted as Senior Assistant. The respondent, who was still working as Steno-typist, represented that he be also promoted. His representation was rejected.

[5]. The respondent then filed CWP No.10326 of 1999 which was disposed of by a learned Single Judge with the following directions/observations:-

“6. Thus, the petitioner should have been considered for such promotion which consideration has been denied to him, may be due to official apathy or some other reason. It is also relevant to note that the petitioner has specifically mentioned the case of one Parveen Kumar who was also appointed as Clerk and later as Steno-typist and while working as Steno-typist, he was promoted and appointed as Sr. Assistant in January, 1996. Specific averment is made in paragraph 14 of the petition. A distinction is sought to be made by the High Court on the plea that said Parveen Kumar was placed in the cadre of Senior Clerks whereas the petitioner was not. It is further mentioned that no option was exercised by Parveen Kumar. I may place on record my concern that the High Court has

contested this case like any other governmental department and even the order of rejection of the representation of the petitioner is totally non-speaking. Without disputing the fact that Parveen Kumar was also Steno-typist when promoted as Sr. Assistant, an illusory distinction is sought to be created. As a matter of fact, there does not seem to be any distinction between Parveen Kumar and the petitioner. Reference is made to the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 whereunder, all matters relating to appointment, promotion and seniority of the members of the High Court Establishment are to be decided by Hon'ble Chief Justice. Hence instead of issuing a mandamus, I direct the Registrar General of the High Court to place this order before Hon'ble the Chief Justice for His Lordship's consideration and appropriate orders, in the light of the observations made by me, here-in-above. Since this petition is pending for the last more than a decade, I humbly request Hon'ble the Chief Justice to take the decision at the earliest."

[6]. The respondent's claim was thus reconsidered by the High Court and vide order dated 13.9.2010, he was brought back to the clerical cadre retrospectively. The grade of Senior Clerk was also granted with effect from 20.3.1994, followed by promotions as Senior Assistant with effect from 23.9.1997 and then as Superintendent Grade II with effect from 7.5.2008, namely, the dates when his junior(s) in the cadre of Clerk were promoted to these posts. The order further recites that "monetary benefits be given to him from the date of judgment i.e., 11.12.2008".

[7]. Dissatisfied with the above stated rider, the respondent again

approached this Court and the learned Single Judge vide order under appeal, has accepted his claim thereby directing the High Court to calculate the arrears of pay and release the same in his favour.

[8]. We have heard learned Counsel for the parties at a considerable length and gone through the record. In our considered view, it is not a case where the entire blame can be put on the High Court alone for denying or delaying the promotional claim of the respondent. We say so for the reason that the respondent himself was indecisive and could not act promptly in the year 1994 and what he decided was like sailing in two boats. He decided to continue in the cadre of Steno-typist but also wanted that his lien in clerical cadre be retained.

[9]. The expression 'lien' is a well defined connotation. Lien is akin to property and can be acquired by an employee on confirmation against a permanent post subject to suitability, seniority and availability of permanent posts in the cadre. Equally, it is well settled that if an employee has acquired lien, he is entitled to retain the same as a matter of right till he acquires fresh lien against some other post.

[10]. There was no finding given by the Court in its first judgment dated 11.12.2008 that the respondent ever became entitled to or had actually acquired 'lien' in the clerical cadre. If that is so, his belated request to revert him back to the clerical cadre, which the High Court considered and accepted in the year 2010, was purely a concession, for, the respondent could not have claimed his repatriation to the clerical cadre as a matter of right.

[11]. Having held that, it must follow that the findings returned by

the learned Single Judge in the order under appeal that the respondent was deprived of promotion for no fault on his part, cannot sustain and must be reversed.

[12]. Faced with this situation, the question that arises for consideration is whether the respondent is still entitled to any arrears of pay?

[13]. It may be seen from the Court's order dated 11.12.2008 that as soon as his junior in the clerical cadre was promoted as Senior Assistant on 23.9.1997, the respondent represented on 17.11.1997 to seek promotion to the post of Senior Assistant. His request was turned down, but on an erroneous premise. The authorities ought to have determined at that stage:- (i) whether the respondent had acquired any lien in the clerical cadre, if so, was it still intact?; (ii) whether he had acquired any fresh lien in the Stenotypist cadre resulting into automatic termination of his lien in the clerical cadre?; (iii) if no lien acquired by the respondent in the Stenography cadre, was he entitled to seek repatriation to the clerical cadre?

[14]. As the relevant issues were not considered or answered in the right perspective, the respondent was compelled to approach this Court on judicial side in the year 1999. The writ petition was finally decided on 11.12.2008 pursuant to which the claim of the respondent was accepted by the High Court. The High Court on administrative side though has granted arrears of pay from 11.12.2008, we are of the considered view that since the claim was raised by the respondent in the year 1997, such arrears ought to have been paid for the period of three years preceding the date of decision i.e., 11.12.2008, namely, with effect from 12.12.2005.

[15]. For the reasons aforesaid, the appeal is allowed in part. The order passed by the learned Single Judge is modified and the respondent is held entitled to arrears of pay on the post of Senior Assistant with effect from 12.12.2005 (instead of with effect from 23.9.1997).

[Surya Kant]
Judge

[A.B. Chaudhari]
Judge

May 30, 2016.
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