

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.2402 of 2016 (O&M)

Date of Decision: January 11, 2017

High Court of Punjab and Haryana at ChandigarhAppellant

versus

Prashant Kapoor and others respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDIP AHLUWALIA.**

Present: Mr.Gurminder Singh, Senior Advocate with
Mr.Naveen Gupta, Advocate, for the appellant.

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1. Whether Reporters of Local papers 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?

Surya Kant, J. (Oral)

The High Court of Punjab and Haryana at Chandigarh has preferred this letters patent appeal against the order dated 26.07.2016 whereby learned Single Judge, by way of a self-speaking order, has held the 1st respondent entitled to notional promotion as Judgment Writer w.e.f. June 01, 2001, followed by consequential promotions as Private Secretary and Secretary w.e.f. May 31, 2006 and August 08, 2008, respectively, namely, the dates when S/Sh.Som Parkash and Gopal Krishan were promoted.

[2] In view of the detailed facts noticed by the learned Single Judge, suffice it would be to make a brief reference to the facts-situation which led to passing of the order under appeal.

[3] The High Court of Punjab and Haryana conducted a special test

in March, 2001 under Rule 11(1)(a) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973, for filling up the posts of Judgment Writer. Out of 87 candidates who appeared in the special test, only three were successful of which 1st respondent was one. The other two candidates were S/Sh.Som Parkash and Gopal Krishan.

[4] The original record produced by learned senior counsel for the High Court reveals that three successful candidates were placed in the following order;

(i) Sh.Som Parkash - (mistakes 15)

(ii) Sh.Prashant Kapoor - (mistakes 18) (writ-petitioner-1st respondent in appeal)

(iii) Sh.Gopal Krishan - (mistakes 23)

[5] The 1st respondent had been meanwhile charge-sheeted and departmental proceedings were pending against him. The Registrar of the High Court on 31.05.2001 put up the matter before the learned Incharge-Judge for appointment of three successful candidates, who opined that **“the selected persons can be appointed. But can we promote a person who has been already charge-sheeted? In his case, a vacancy may have to be reserved”**. The matter was then put up before the then Hon'ble Chief Justice who vide order dated 01.06.2001 directed appointment of S/Sh.Som Parkash and Gopal Krishan. The 1st respondent was thus not appointed as a result of pending departmental action.

[6] The domestic enquiry led to the imposition of a minor penalty of with-holding of one increment without cumulative effect for a period of one year, vide order dated 23.10.2001. The 1st respondent filed Service Appeal against that order. Unfortunately, the appeal remained pending for quite long till it was accepted on 09.12.2008 by a Committee of two Judges

who exonerated the 1st respondent and found him altogether innocent of the charge.

[7] Meanwhile, the 1st respondent again appeared in a fresh recruitment process for appointment to the posts of Judgment Writer and again having been selected, he was appointed on 29.05.2006 followed by his later promotions as Private Secretary and then Secretary. After his Service Appeal was allowed and he was exonerated of the charge, the 1st respondent represented for his appointment as Judgment Writer with effect from the date S/Sh.Som Parkash and Gopal Krishan were appointed. As his claim was not accepted by High Court, he approached the Court on judicial side and the learned Single Judge vide order under appeal has accepted his claim.

[8] We have heard Mr.Gurminder Singh, learned senior counsel for the High Court and gone through the original record produced by him. His foremost contention is that since selection to the post of Judgment Writer is made from amongst the employees of High Court as well as District Courts, it cannot be construed as 'promotion', rather it amount to 'appointment by selection'. We are, however, not impressed by the contention firstly for the reason that the original record clearly suggests that the High Court in so many words understood the instant case to be that of 'promotion' and not 'appointment by selection'. Learned Judge who supervised the selection on administrative side has unequivocally remarked that 'could the 1st respondent be promoted when he was already charge-sheeted'. Secondly, the High Court on administrative side specifically examined the question “whether the selection to the post of Reader and Judgment Writer is to be treated as 'promotion' or 'appointment' for the purpose of fixation of pay?”

A two Judges Committee concluded that appointment to the post of Judgment Writer by way of competitive examination “is appointment by promotion”. The High Court has thus consistently treated the appointment to the post of Judgment Writer or Reader as a case of 'promotion', therefore, no different yardstick can be applied in the case of the 1st respondent. Since the 1st respondent was denied promotion to the post of Judgment Writer due to pending disciplinary proceedings in which he was subsequently exonerated, the direction issued by the learned Single Judge to grant him notional promotions calls for no interference.

Dismissed.

**[SURYA KANT]
JUDGE**

January 11, 2017
mohinder

**[SUDIP AHLUWALIA]
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

CM No.5002 of 2016 in
LPA No.2402 of 2016

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High Court of Punjab and Haryana vs. Prashant Kapoor and others

Present : Mr.Gurminder Singh, Senior Advocate with
Mr.Naveen Gupta, Advocate,
for the applicant-appellant.

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For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and 106 days' delay in filing the
appeal is condoned.

CM stands disposed of.

(SURYA KANT)
JUDGE

January 11, 2017
mohinder

(SUDIP AHLUWALIA)
JUDGE