

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA-436-2020 (O&M)

Decided on: 8th September, 2020

High Court of Punjab and Haryana

.....Appellant

versus

Vinod Kumar Kadyan

.....Respondent

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Rajeev Anand, Advocate for the Appellant.

Mr. Satyavir Singh Yadav, Advocate for the Respondent.

Dr. S. Muralidhar. J

CM-1108-LPA-2020

1. For the reasons stated therein, the application is allowed and the delay in filing the appeal is condoned.

LPA-436-2020

2. This is an appeal by the High Court on its administrative side against an order passed dated 15th November, 2019 passed on the judicial side by the learned Single Judge partly allowing the Respondent's writ petition (CWP-13987-2015) by holding him to be entitled to restoration of five increments with effect from 13th August, 2013 with consequential re-fixation of pension and retirement dues.

3. The background to the present appeal is that pursuant to disciplinary proceedings initiated against the Respondent, he was issued a show cause

notice ('SCN') which proposed that he should be dismissed from service. The Respondent's objections to the SCN were placed before the Hon'ble Chief Justice, being the Appointing and Disciplinary Authority, for orders. In an order dated 8th June, 2008 in the file, the Hon'ble Chief Justice noted as under:

“Before I pass any order in view of the mercy pleaded by Shri Vinod Kumar Kadyan and in view of the fact that he has stated that he has a daughter who has completed her +2 class; other two sons are school going and wife being not employed, I would like to know from the Hon'ble Judge with whom he is now working, for his antecedents.”

4. The Hon'ble Judge of this Court with whom the Respondent was working informed the Hon'ble Chief Justice by a note dated 2nd July, 2009 that he had not received any complaint against the Respondent that would impinge upon his integrity or honesty. He further added that the Respondent “has been a willing, devoted and dedicated worker, whose work and conduct has always been highly satisfactory”.

5. Taking note of this input received from the Hon'ble Judge with whom the Respondent was working, the Hon'ble Chief Justice passed the following order on 14th July, 2008:

“Whereas a regular departmental enquiry was held against Shri Vinod Kumar Kadyan, Judgment Writer of this Court on account of his omission and commission.

Whereas the then Additional Registrar (C&E) was appointed as Enquiry Officer. During the course of enquiry, full opportunity was afforded to Shri Vinod Kumar Kadyan to defend himself. Charge levelled against Shri Vinod Kumar Kadyan was proved. Consequently, a show cause notice was issued to Shri Vinod Kumar Kadyan vide letter No.21175 E./V.B.(3E) dated 2.8.2007 as to why he may not be dismissed from service.

Shri Vinod Kumar Kadyan submitted reply to show cause notice and Hon'ble the Chief Justice after considering his reply to show cause notice has been pleased to impose upon him a penalty that he will not be considered for promotion for five years nor will get any increment during this period. His case for grant of increments and promotion will be considered after five years on the basis of his track record."

6. As it transpired, on the expiry of the five-year period, the Respondent was promoted as Private Secretary by an office order dated 14th January, 2014. The Respondent then filed a writ petition claiming that he was entitled to the relief of restitution of his pay and pension for the period of five years i.e. 14th July 2008 to 13th July, 2013 and to increments during the aforesaid period.

7. The High Court on its administrative side resisted the writ petition by contending that under Rule 5 of Part III of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 as applicable to the High Court, for major penalty proceedings, which was what the Respondent faced, one of the possible punishments was withholding of increments of pay 'with cumulative effect'. It was accordingly contended that even though in the order of the Hon'ble Chief Justice the expression 'with cumulative effect' had not been mentioned, the order should be read as if those words are inserted and, therefore, the Respondent would not be entitled to any further increments as claimed by him.

8. The learned Single Judge disagreed with this contention by pointing out that in terms of the order passed by the Hon'ble Chief Justice, it was incumbent upon the High Court on its administrative side to have considered the Respondent, in view of his track record, for grant of

increments and promotions five years after 14th July, 2008. The learned Single Judge noted that, in fact, no specific order was passed by the High Court in terms thereof. The learned Single Judge then noted that since nothing had been brought to the notice of the Court regarding the work and conduct of the Respondent not being satisfactory, either during the period of five years from 14th July, 2008 or thereafter, there would be no point in sending the matter back to the disciplinary authority to again consider the Respondent's 'track record'. In fact, with the Respondent having been promoted as Private Secretary by an order dated 14th January, 2014, there was nothing in his track record which would disentitle him to promotions and increments. This in fact formed the basis of the impugned order of the learned Single Judge.

9. Having considered the submissions of counsel for the parties, this Court is of the considered view that the learned Single Judge has rightly concluded that the Respondent could not in the above circumstances be denied the relief as prayed for by him. Indeed, the order passed by the Hon'ble Chief Justice on the administrative side on 14th July, 2008 admitted of no ambiguity. In the absence, in the said order, of the words 'with cumulative effect' qualifying the penalty of denial of increments for a period of five years, it was not possible to insert those words therein. In fact, the concluding sentence of the said order directing that the Respondent should be considered for grant of increments and promotions after five years on the basis of his track record, would appear to indicate the contrary.

10. What the learned Single Judge has done is to interpret the said order of Hon'ble the Chief Justice, as it reads, without any further embellishments. This Court is unable to discern any error in the said approach. It is also required to be noted that the learned Single Judge has clarified that the Respondent “would not be entitled to any interest on the amounts”.

11. For all the aforementioned reasons, there are no grounds made out to interfere with the impugned judgment of the learned Single Judge. The appeal is accordingly dismissed.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

8th September, 2020
sham

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