

(14) In the light of the above facts and circumstances of this case and in the light of the judgments of the Hon'ble Supreme Court in the case of **Central Bank of India versus Karunamoy and others and Canara Bank versus B.K. Avasthy**, (*supra*) the award dated 29th October, 1987 of the Labour Court, Chandigarh, (Annexure P-I), cannot be sustained as in the facts and circumstances of the present case, no prejudice was caused to the workman due to non-supply of the list of witnesses or the list of documents nor for non-grant of time to prepare the cross-examination of the two witnesses, namely, S.P. Tewari and K.C. Bansal.

(15) Consequently, the writ petition is allowed and the impugned award dated 29th October, 1987 passed by the Labour Court, Chandigarh (Annexure P-I) is hereby quashed.

R.N.R.

Before Permod Kohli, J.

SURINDER KUMAR KHURANA,—Petitioner

versus

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH AND OTHERS,—Respondents**

C.W.P. No. 10326 of 1999

11th December, 2008

Constitution of India, 1950—Arts. 14, 16 and 226—Punjab Civil Services Rules, Vol. I, Part I, Chapter III-Rl. 3.15—Appointment as Clerk through competitive test—Promotion to temporary post of Steno-typist—Lien on post of Clerk ordered to be maintained—Option for senior scale in cadre of clerks invited—Conditional option—Request for retention of lien in cadre of Clerks specifically made—Department ordering to exclude from cadre of clerks for promotion—Neither request for retention of lien considered nor order excluding name for promotion from cadre of clerks communicated—Provisions of Rl. 3.15 provide that Government

employee's lien on a post may, in no circumstances, be terminated even with his consent if result will be to leave him without a lien or a suspended lieu upon a permanent post—Post of Steno-typist temporary till date—Petitioner continued to have lien on post of Clerk which is feeder channel for Senior Assistant and should have been considered for such promotion.

Held, that from the note sheet (Annexure P-9), it appears that Hon'ble the Chief Justice ordered the retention of the lien of the petitioner and two others in the cadre of Clerks, though the original order of the Hon'ble the Chief Justice is not available because of the theft of record, as per the affidavit of Joint Registrar. Since it is an official record and duly signed by officials of that time, its authenticity cannot be disputed. It is also now admitted position that the petitioner was a permanent employee of the High Court having been recruited on the post of Clerk. Though he was appointed as Steno-typist, the order of appointment itself says that it is promotion from in-service candidates. In view of the order dated 30th November, 1991 passed by the Hon,ble Chief Justice, which is evident from the noting of the official file, the petitioner continued to have lien on the post of Clerk which is feeding channel for Senior Assistant. 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.

(Para 7)

Constitution of India, 1950—Arts. 14, 16 and 226—Discrimination—Appointment as Clerk through competitive test—Promotion to temporary post of Steno/typist—Lien on post of Clerk ordered to be maintained—Option for senior scale in cadre of clerks invited—Conditional option—No communication rejecting request for retention of lien in cadre of clerks—Claim for promotion to post of Senior Assistant from cadre of clerks—Rejection of—Department promoting one similarly situated person to post of Senior Assistant—No distinction between petitioner and one promoted as Senior Assistant while working as Steno-typist—Registrar General directed

to place order before Hon'ble Chief Justice for fresh consideration and appropriate orders in light of observations made.

Held, 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 Senior 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 Senior 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. Hence instead of issuing a madamus, 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.

(Para 7)

R.N. Raina, Advocate *for the petitioner.*

Karminder Singh, Advocate, *for the respondent.*

PERMOD KOHLI, J.

(1) On being selected, through competitive test, the petitioner was appointed as Clerk in Establishment of the Punjab and Haryana High Court, Chandigarh on 20th March, 1989. In the year 1991, temporary posts of Steno-Typist were advertised. Selection was through a prescribed

test. The petitioner was selected and appointed as Steno-Typist with effect from 16th July, 1991 and continues to work since then in that capacity. *Vide* Memo No. 312/Spl./E.D.V.B., dated 3rd December, 1994 (Annexure P-1), option was invited from the petitioner whether he would like to revert to the original cadre of Clerks and would forego placement in the senior scale. Reply was solicited within three days. *Vide* his reply dated 12th December, 1994 (Annexure P-2), the petitioner opted to forego his placement in the senior scale of Clerks. Exercise of this option was, however, made conditional. The petitioner requested that his lien in the Cadre of Clerks be retained. It is the case of the petitioner that he was never communicated that his request for retention of lien was ever declined.

(2) *Vide* order dated 23rd September, 1997 (Annexure P-3), respondents No. 2 and 3 alongwith three others were promoted from the post of Senior Clerk to the post of Senior Assistant against available vacancies. It is at this stage that the petitioner made a representation dated 17th November, 1997 (Annexure P-4) seeking his promotion to the post of Senior Assistant on the ground that respondents No. 2 and 3 were junior to him in the cadre of Clerks and they have been promoted in the higher pay scale. The petitioner also pleaded that since he had retained his lien in the cadre of Clerks and thus, he was entitled to promotion as Senior Assistant on the basis of his seniority in the cadre of Clerks. The petitioner was communicated *vide* letter dated 28th October, 1998 (Annexure P-5) that his request for considering his name for the post of Senior Assistant has been considered and Hon'ble the Chief Justice has declined the same. The petitioner accordingly filed the present petition seeking the quashment of the orders dated 23rd September, 1997 (Annexure P-3) promoting respondents No. 2 and 3 to the post of Senior Assistant as also the communication dated 28th October, 1998 (Annexure P-5) rejecting his representation.

(3) The petitioner has raised following contentions in the writ petition and reiterated the same during the course of arguments :—

1. That the petitioner had opted to forego his placement in the senior scale of Clerks with the condition to retain his lien in the cadre of Clerks. His plea of retention of

lien in the cadre of Clerks was never rejected and thus he continues to be borne on the cadre of Clerks. He being senior to respondents No. 2 and 3 was entitled to be considered for promotion as Senior Assistant on the basis of seniority as against his juniors;

2. That the post of Steno-Typist was only temporary and continues to be temporary even till date. The petitioner has been deprived of the benefit of promotion and that too without any valid reason resulting in discriminatory and hostile treatment to him; and;
3. That his representation has been rejected by a non-speaking order, without disclosing any reason, much less a valid one.

(4) When this matter was heard on 6th February, 2008 to consider the question whether the petitioner was conveyed any communication regarding acceptance/rejection of the request of the retention of lien, the respondents were directed to produce the record. On the adjourned date, the Court was informed that relevant record is misplaced during the theft in the year 1997. However, it was conveyed that no communication was sent to the petitioner whether his option for retention of lien was accepted or rejected. Respondents were directed to file affidavit in this regard. Affidavit of Registrar (Rules) of the High Court was filed on 12th March, 2008. When the matter was again considered, Mr. Raina, learned counsel for the petitioner relied upon order dated 30th November, 1991 said to be passed by Hon'ble the Chief Justice in His administrative capacity. However, the record produced on the said date did not contain the order. Accordingly, it was directed to produce the record. Counsel for the petitioner who was earlier permitted to take notes from the official record of the Registry was also asked to assist the Registry to find out the relevant file. The petitioner filed a supplementary affidavit dated 29th May, 2008 wherein reference has been made to certain orders from the missing file No. V.D. 1 Part 76A and also placed on record excerpts of notes from the Official record as Annexure P-8 and P-9. Annexure P-8 is an office order dated 17th July, 1991 whereby appointments by promotion of

officiating Clerks to officiating Steno-Typists were made, the petitioner being one of them. Annexure P-9 contains the excerpts of officials note-sheets. From the perusal of these note-sheets, it appears that three persons, namely, S.K. Khurana, Rakesh Khurmi and Savita Kalsi who were said to have been promoted as Steno-typists vide order dated 17th July, 1991 (Annexure P-8) were not considered for promotion as Senior Assistants as they had not completed five years of service. However, it is mentioned in these note-sheets that their lien was retained in the cadre of Clerks till their absorption in the new assignment as Steno-typist under the orders dated 30th November, 1991 passed by Hon'ble Chief Justice. In one of the notes dated 13th December, 1994, it is mentioned as under :—

“The option submitted by three officials may kindly be seen in the folder placed below. Shri S.K. Khurana, Shri Rakesh Khurmi and Ms. Savita Kalsi, Steno-Typists have opted not to revert back to the original cadre of Clerks. Shri S.K. Khurana, Steno-typist has further requested that his lien in the cadre of Clerks may kindly be retained. It may be reiterated here that under orders of Hon'ble the Chief Justice dated 30th November, 1991, S.K. Khurana, Rakesh Khurmi and Savita Kalsi were promoted as Steno-typists against temporary posts and their lien was ordered to be maintained in the cadre of Clerks during their absorption in the new assignment of Steno-typist. As desired, options have been invited. The concerned three officials are not willing to revert to post of Clerk. They have been to be excluded from that cadre for promotion.”

(5) Based upon aforesaid averments in the supplementary affidavit, it has been argued on behalf of the petitioner that the petitioner was entitled to be considered for promotion to the post of Senior Assistants being Senior to respondents No. 2 and 3 and his non-consideration has resulted in unfair treatment to him. Reference is also made to Rule 3.15 of the Punjab Civil Services Rules Vol. I, Part-I, Chapter III which reads as under :—

“3.15(a)—Except as provided in Clause (b) and (c) of this rule and in note under rule 3.13, a Government employee's lien

on a post may, in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

- (b) Notwithstanding the provisions of rule 3.14(a), the lien of a Government employee holding substantively a permanent post shall be terminated while on refused leave granted after the date of compulsory retirement under rule 8.21; or on his appointment substantively to the post of Chief Engineer of the Public Works Department;
- (c) A Government employee's lien on a permanent post, shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne."

(6) Relying upon the aforesaid Rule, it is argued on behalf of the petitioner that the lien of a government employee on a permanent post cannot be terminated even with his consent, if he is rendered without a lien on a permanent post. It is only on acquiring lien on a permanent post, lien on an earlier permanent post is terminated. It is further argued that the post of Steno-typists was temporary post and continues to be temporary till date and thus, the petitioner continues to retain his lien in the cadre of clerks and was entitled to be considered for promotion to the next higher post in the hierarchy of service.

(7) In the light of the aforesaid arguments and factual background, the reply filed by the High Court through the then Joint Registrar, Punjab and Haryana High Court is to be considered. The High Court admitted the selection and appointment of the petitioner as Clerk on 28th March, 1989 through a competitive examination and his further appointment as Steno-typist w.e.f. 16th July, 1991. It is also admitted that option was invited from the petitioner whether he foregoes his placement in senior scale of clerks and he responded,—*vide* reply (Annexure P-2). It is, however, stated that the appointment of the petitioner as Clerk was

purely on temporary basis. It is also admitted that the petitioner had also made a request that his lien in the cadre of Clerks be retained. The High Court has also stated that the Cadre of Clerks was bifurcated into three categories, namely, Clerks, Senior Clerks and Junior Assistants w.e.f. 1st January, 1986. It is also mentioned that since the petitioner changed his cadre from Clerk to steno-typist he was not entitled to be considered for promotion to the post of Senior Assistant. The High Court also admitted that as many as 17 posts of steno-typists in the Establishment of the High Court are purely temporary and to convert these temporary posts into permanent one is under process and the confirmation of the petitioner as steno-typist will be considered in due course when the requisite approval from the Government is received. The High Court also produced File No. V.L.I. Part 84. Annexure P-9 with supplementary affidavit of the petitioner reproduced here-in-above is part of the official file produced before me at page 59 and is the correct version of the original record. From the note-sheet (Annexure P-9), it appears that Hon'ble the Chief Justice ordered the retention of the lien of the petitioner and two others in the cadre of Clerks, though the original order of the Hon'ble the Chief Justice is not available because of the theft of record, as per the affidavit of Joint Registrar. Since it is an official record and duly signed by officials of that time, its authenticity cannot be disputed. It is also now admitted position that the petitioner was a permanent employee of the High Court having been recruited on the post of Clerk. Though he was appointed as Steno-typist, the order of appointment itself says that it is by promotion from in-service candidates. It is under these circumstances, perhaps the option was sought from the petitioner,—*vide* letter dated 3rd December, 1994 (Annexure sP-1) whether he wants to be reverted back to the post of Clerk or he foregoes his placement as Senior Clerks. It is also admitted position that the post of Steno-typist held by the petitioner is purely temporary. It is matter of concern that 17 posts of steno-typists in the High Court are temporary posts from 1991 to till date i.e. almost two decades and the persons holding these posts have no future prospects, though they are working on these posts for about 19 years. Since the post of steno-typist is temporary in nature and the petitioner was

promoted from a permanent post, in terms of Rule 3.15, he continues to hold lien on the permanent post. In view of the order dated 30th November, 1991 passed by the Hon'ble Chief Justice, which is evident from the noting of the official file, the petitioner continued to have lien on the post of Clerk which is feeding channel for Senior Assistant. 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 Senior 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 Senior 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 where under, 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.

(8) In view of the above observations, this petition stands disposed of.

R.N.R.