

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

(232)

CWP No.24745 of 2014

Date of Decision:- 03.09.2015

Varinder Singh

.....Petitioner

Versus

The Pepsu Road Transport Corp. Patiala and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

- 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?**

Present: Mr.S.S.Siao, Advocate for the petitioner.

Mr. Anupam Singla, Advocate for the respondents.

P.B. BAJANTHRI, J.

In this petition, the petitioner has sought for quashing Annexure P-8 by which petitioner has been denied retiral benefits except gratuity amount while assigning the reasons that the petitioner while in service his services were terminated on 18.09.1978. The same was subject matter before various courts and it was ended in directing the respondents to reinstate the petitioner without backwages. Pursuant to the judicial order, the petitioner was reinstated on 31.10.1995. In this background, the respondents are of the view that the petitioner was out of service from 18.09.1978 to 31.10.1995 due to his termination. Therefore, the said period cannot be counted for the purpose of pension. If the said period is excluded the

petitioner do not fulfill the eligibility criteria for grant of pension. Learned counsel for the petitioner submitted that termination order was set aside and directed the respondents to reinstate the petitioner with a condition that the petitioner is not entitled for backwages. Said decision dated 17.05.1995 of the Labour Court was subject matter before this Court in CWP 14438 of 1995. The same was disposed of on 13.07.2009 with the following directions:-

“The award of the Labour Court is in full conformity with law and facts that gave rise to the reference. Both the writ petitioners are dismissed confirming the award passed by the labour Court, Patiala. The workman shall be fully entitled to retiral benefits, consequent on the affirmation that the original order of the termination was illegal and that he was entitled to the reinstated.”

This court specifically directed that the petitioner shall be fully entitled to retiral benefits while confirming the award passed by the Labour Court, Patiala. Despite the order of this Court, the respondents passed the impugned order contending that the intervening period from termination to reinstatement cannot be counted for the purpose of continuity service and to extend retiral benefits.

Having regard to the facts and circumstances, the intervening period from the date of termination till reinstatement is to be counted as if the petitioner was in service for the reasons that order of termination has been set aside by the Labour Court, Patiala and this Court while examining the order of the Labour Court specifically directed that the petitioner shall be fully entitled to retiral benefits. The effect of quashing of termination order

results in restoration of the petitioner in service.

The Apex Court in the case of ***Shree Chamundi Mopeds Ltd vs Church Or South India Trust Assn*** (1992) 3 SCC 1 held as follows:-

“10. In the instant case the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration

of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said

that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant company against the order of the learned single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant company. The said appeal, therefore, fails and is liable to be dismissed.”

Ultimate order of the Labour Court is denial of backwages only. Consequently, the petitioner is entitled to count the intervening period from 18.09.1978 to 31.10.1995 for the purpose of counting service towards grant of retiral benefits. Accordingly, the respondents are directed to count the aforesaid service and calculate the retiral benefits and to settle the monetary benefits within a period of 8 weeks' along with interest @ 9% per annum.

Mr. Maninderjit Singh Hundal, General Manager, Pepsu Road Transport Corporation, Patiala-respondent No.2 is present in the Court

pursuant to the earlier order and filed an affidavit. Same is taken on record.

At this stage, it was pointed out that the respondents are prepared to pay sum of dues to the petitioner which has been stated in para 11 of the affidavit dated 02.09.2015 filed by respondent No.2 and it is averred that the petitioner is not coming forward to accept the payment of GPF of Rs.40,087/-. The petitioner is directed to approach the respondents and accept the GPF amount of Rs.40,087/-. It is made clear that the petitioner is also entitled to interest on GPF amount of Rs.40087/- and the same shall be calculated by the 2nd respondent and it is to be paid to the petitioner within 8 weeks' from today.

Accordingly, the petition is disposed of.

(P.B. BAJANTHRI)
JUDGE

September 03, 2015.
pooja saini