

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

2204

**CWP No. 12957 of 1997(O&M)
Date of decision: 22.09.2016**

Umed Singh Clerk

.... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum
-Labour Court, Rohtak and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Ramesh Hooda, Advocate for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner is aggrieved by non-granting of consequential benefits pursuant to setting aside the order of reversion dated 18.06.1975.

2. The petitioner was appointed as Peon-cum-Chowkidar. He was promoted to the post of Clerk on 30.03.1973 in the pay scale of Rs.110-225 by the District Education Officer with reference to seniority cum fitness. The petitioner is stated to have reported on 05.10.1973. When things stood thus, the District Education Officer passed an order reverting the petitioner from the post of Clerk to that of Peon-cum-Chowkidar. The petitioner aggrieved by the order of reversion raised a dispute before the Industrial Tribunal-cum-Labour Court, Rohtak. On 01.08.1994 the Labour Court set aside the order of reversion and cost has been imposed. The petitioner

aggrieved by the non-granting consequential monetary benefits presented this writ petition. However, it is to be noted that respondents-Department have not filed writ petition against the Award passed by the Labour Court dated 01.08.1994.

3. In view of these facts and circumstances whether the petitioner is entitled to monetary benefits for the period from 08.06.1975 to 01.08.1994 or not. Admittedly, the order of reversion has been set aside. The respondents-State have not challenged the award. Therefore, in effect quashing of reversion order, restores the original position of the petitioner as a Clerk. Even though he has not discharged duties of the post of Clerk since he has been prevented from discharging duties of the post of Clerk therefore, the petitioner is entitled to monetary benefits.

4. The Supreme Court in the case titled as ***Shree Chamundi Mopeds Ltd vs Church of South India Trust Association, Madras*** reported in 1992(3) SCC 1 it is held that what is the effect of quashing of an order in para 10 which reads as under:-

“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 order 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 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 to 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”

5. In view of the principle laid down by the Supreme Court that effect of quashing of an order restores the original position, the petitioner is to be treated as Clerk w.e.f. 18.06.1975 the date on which he has been reverted to the post of Peon-cum-Chowkidar. Learned counsel for the petitioner submitted that the respondents have promoted the petitioner once again as a Clerk in the year 1994 and he is retired from service on 30.06.2000.

6. In view of these facts and circumstances, the respondents are directed to treat that petitioner has been regularly promoted to the post of Clerk from 03.09.1973 and attained age of superannuation on 30.06.2000 for the intervening period from 18.06.1975 to 1994 the petitioner is entitled

to pay scale attached to the post of Clerk. The respondents are directed to pay arrears of pay for the period from 18.06.1975 to 1994 and further refix the pay of the petitioner in the post of Clerk so also refix the pension in the cadre of Clerk and settle the arrears of monetary benefits within a period of 6 months from today.

7. Disposed of.

22.09.2016
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No