

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

RSA No.4988 of 2013 (O&M)  
Date of Decision:- 22.10.2016.

Punjab State Department of Education and others

.....Appellants

Versus

Krishna Devi

.....Respondent

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

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Present: Mr. M.S. Naryal, Additional A.G. Punjab.

Mr. R.K. Chopra, Senior Advocate with  
Mr. Pawan Kumar, Advocate for the respondent.

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**P.B. BAJANTHRI, J. (Oral)**

1.) In the present Regular Second Appeal, the appellant State of Punjab and others have assailed the order passed by the Appellate Court dated 19.3.2013.

2.) The respondent is stated to have been appointed on permanent basis as a Physical Training Instructor in the Education Department on 15.4.1980. In the year 2005, the appellants noticed that the respondent had produced fake certificate. Based on such allegation, her services were dismissed on 20.2.2006. Feeling aggrieved by the order of dismissal, respondent has exhausted the remedy of departmental appeal. Thereafter, she filed a civil suit. Suit was decreed on 2.8.2011 without back wages. The appellants have implemented the decree by reinstating the respondent.

When things stood thus, the respondent preferred an appeal before the

Appellate Court insofar as denial of back wages by the Trial Court. On 19.3.2013, the Appellate Court allowed the appeal filed by the respondent insofar back wages are concerned. Thereafter, the respondent attained age of superannuation and retired from service on 31.5.2015. The appellants proceeded, hold an inquiry and dismissed the respondent from service on 28.4.2014 against which the respondent preferred an appeal before the Appellate Authority. The Appellate Authority allowed the appeal on 5.6.2015 while remanding the matter to the Inquiry Officer. In view of these facts and circumstances, the appellants have preferred this Regular Second Appeal questioning the validity of the Appellate Court order dated 19.3.2013 by which the Appellate Court allowed the claim of the respondent insofar as back wages are concerned.

3.) Learned counsel for the appellants submitted that there is a serious allegation against the respondent that she had produced fake certificate which is subject matter of inquiry and she was dismissed for the second time on 28.4.2014 and further matter is pending consideration before the inquiring authority. Therefore, the respondent is not entitled for back wages. The Appellate Court has erred in allowing the back wages to the respondent.

4.) Per contra, learned counsel for the respondent submitted that dismissal from service dated 20.2.2006 is without inquiry. Consequently, Civil Court rightly decreed the suit and so also Appellate Court allowed the appeal to the effect that the respondent is entitled for back wages. Disciplinary inquiry is subsequent event i.e after disposal of civil appeal. Further it was contended that the appellants are not aggrieved by the decree passed by the Civil Court. They are aggrieved only with reference to the

Appellate Court decision granting back wages to the respondent. Once an order of dismissal is set aside, the respondent/employee is entitled for back wages. Further it was contended that respondent was a permanent employee and she has been dismissed from service without holding inquiry which is a void order and contrary to the Punjab Civil Services (Punishment & Appeal) Rules, 1970.

5.) Heard learned counsel for the parties.

6.) Short question for consideration in the present appeal is whether the respondent is entitled for back wages or not. Admittedly, respondent is a permanent employee. She was appointed on 15.4.1980 and dismissal order dated 20.2.2006 was passed on the allegation that the respondent produced the fake certificate. The Supreme Court time and again held that even an *ad hoc* employee is entitled for minimum notice and preliminary inquiry whereas in the present case, the respondent is permanent employee. She is governed by Punjab Civil Services (Punishment & Appeal) Rules, 1970. Therefore, if there is any misconduct committed by the respondent, the appellants are required to initiate disciplinary proceedings under the Punjab Civil Services (Punishment & Appeal) Rules, 1970. Before passing the order of dismissal dated 20.2.2006 no inquiry has been held, consequently, the dismissal order is rightly set aside by the Civil Court. Effect of quashing of an order has been held by the Supreme Court in the case of **M/s. Shree Chmundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras AIR 1992 SCC 1439** wherein it has been held as under:-

“10. In the instant case, the proceedings  
before the Board under ss. 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 s. 25 of the Act against said 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 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.”*

7.) In view of these facts and circumstances, respondent is entitled

for back wages and there is no error committed by the Appellate Court in

granting back wages to the respondent. No interference is called for insofar as Appellate Court order dated 19.3.2013 is concerned.

8.) Appeal stands dismissed.

(P.B. BAJANTHRI)  
JUDGE

October 22, 2016.  
*sandeep sethi*

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.