

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

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RSA No. 1885 of 2014 (O&M)
Date of decision: 23.11.2016

Surinder Singh

.... Apellant

Versus

Union of India and others

.... Respondents

(2) 249A

RSA No. 4688 of 2014 (O&M)

Union of India and others

.... Appellants

Versus

Surinder Singh

.... Respondent

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

Present: Mr. R.K.Malik, Sr. Advocate within
Mr. Kuldeep Sheoran, Advocate for the appellant in
RSA No.1885 of 2014 and for respondent
in RSA No.4688 of 2014.

Mr. Vikrant Pamboo, Advocate for the respondents in
RSA No.1885 of 2014 and for appellant
in RSA No.4688 of 2014.

P.B. Bajanthri, J. (Oral)

RSA No. 1885 of 2014 and RSA No. 4688 of 2014 are taken up
for disposal together. RSA No. 1885 of 2014 has been filed by Surinder
Singh and RSA No. 4688 of 2014 has been filed by Union of India against
the order of the appellate court dated 30.10.2013.

2. Mr. Surinder Singh's services were terminated on 24.02.2004.

Feeling aggrieved by the order of termination he had filed suit before the trial court. Trial Court set aside the order of termination and directed that he should be reinstated w.e.f. 02.12.2010 with certain observations that he will not be entitled to any consequential benefits like arrears and back wages and the period of his absence would be treated as period of his leave without pay. Both Surinder Singh and Union of India aggrieved by the order of the trial Court preferred an appeal before the appellate court. The appellate court disposed of the Civil Appeal No. 47 of 2011 on 30.10.2013 while modifying the trial court order, which reads as under:-

“ 18. As per my findings on issues No.1 and 2, the appeal filed by the appellant is partly allowed with modification the order of deserter and termination of service of plaintiff-appellant passed by the respondents as wrong, null and void and not binding upon the rights of the appellant-plaintiff and plaintiff is entitled to reinstate on the post for which he was entitled to with the passage of time and period of absence of the appellant from duty would be treated on duty and he is entitled to consequential benefits including seniority, promotion etc. but, without actual wages for the period appellant remained absent. Decree-sheet be drawn accordingly. File be consigned to record room after due compliance. The file of learned lower court be sent back with a copy of this judgment.”

3. Mr. Surinder Singh and the Union of India aggrieved by the order of the appellate court relating to denial of certain benefits to Surinder Singh and granting or modifying the decree portion, presented these appeals.

4. Learned counsel for the Surinder Singh submitted that the trial Court held that order of termination is illegal and directed the respondent(s)-Union of India to reinstate him with certain observations and also denial of consequential

benefits contending that once the order of termination is set aside and the employee is entitled to all service benefits as if he is in service. He is entitled to monetary benefits also for the reasons that for no fault of the petitioner, his services have been terminated illegally.

5. On the other hand, learned counsel for the Union of India submitted that Surinder Singh has been reinstated but he is not entitled for service benefits during the intervening period from the date of termination till reinstatement i.e. up to 05.03.2015.

6. Heard learned counsel for the parties.

7. Termination of Mr. Surinder Singh was due to his absence for certain period for which he is not entitled as rightly held by the trial court that the absence period will be treated as period of his leave without pay. Insofar as consequential benefits during the intervening period from the date of termination i.e. 24.02.2004 to till reinstatement i.e. 05.03.2015, Surinder Singh is entitled to consequential benefits like service as well as monetary benefits for the reasons that trial court has set aside the order of termination dated 24.02.2004 and also deserter order dated 06.12.2003. Effect of quashing of order would be restoring the original position as if nothing has happened. Therefore, Mr. Surinder Singh is entitled for all service and consequential benefits except for remaining absent himself for certain period. In other words, absence period would be treated as period of his leave without pay. Supreme Court in the case of ***Shree Chamundi Mopeds Ltd vs Church Or South India Trust Assn.*** reported in 1992 AIR 1439 held as follows:

“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 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 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.”

8. In view of the principle laid down by the Supreme Court, the effect of quashing has been held that the employee's position would be restored as if nothing has happened. Hence, the appeal filed by Surinder Singh is allowed and the appeal filed by Union of India is rejected.

9. Since Mr. Surinder Singh has been reinstated on 05.03.2015, the Union of India or concerned respondent is directed to extend his service benefits as well as monetary benefits for the period from 24.02.2004 to 04.03.2015 while excluding absence period within a period of 6 months from today.

23.11.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No