

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5836 of 2014
Date of Decision:- 17.5.2016.

Phoolpati

.....Appellant

Versus

State of Haryana and another

.....Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?/YES
2. To be referred to the Reporters or not?/YES
3. Whether the judgment should be reported in the Digest?/YES

Present: Mr. Sandeep Singal, Advocate for the appellant.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

P.B. BAJANTHRI, J.

1.) In this appeal, the appellant has questioned the validity of the decision dated 9.9.2014 of the Appellate Court by which decree issued by the Trial Court has been reversed.

2.) The appellant was appointed as Mali on 1.2.1980. Her services were terminated on 21.9.1995. She raised industrial dispute on 5.11.2008 before the Labour Court. The Labour Court issued award in favour of the appellant directing reinstatement with continuity of service however, without back wages. Respondent Department preferred writ petition before this Court against the award of the Labour Court dated 5.11.2008 in CWP No.17709 of 2009. The same was rejected on 27.4.2010. Thus, Labour Court

award has attained finality.

3.) In the meanwhile, services of the juniors of the appellant were regularized, namely, Satyawan, Malo Devi, Sundri, and Bhateri. etc. Since the appellant's case was not considered, she filed suit for declaration and mandatory injunction before the Trial Court. The same was decreed in her favour on 22.5.2012. The respondent Department aggrieved by the order of decree by the Trial Court preferred appeal before the Appellate Court. On 9.9.2014, Appellate Court reversed Trial Court decree. Thus, the appellant is before this Court.

4.) The appellant's services were not regularized on par with the juniors on 1.10.2003, the date on which the petitioner was out of service pursuant to the termination order dated 21.9.1995. On 5.11.2008, Labour Court set aside the termination order directing for reinstatement with continuity of service except back wages. The same has been confirmed in CWP No.17709 of 2009 on 27.4.2010. Effect of setting aside termination order would be restoration of the position prior to the date of termination. In other words, as if the appellant would be in service as on 1.10.2003. Therefore, the learned counsel for the appellant submitted that the appellant is entitled to regularization w.e.f. 1.10.2003, the date on which her juniors' services were regularized. In support of the claim of the petitioner, her counsel cited a decision of Apex Court reported in 2014(2) LLJ 54 **(Hari Nandan Prasad and another Vs. Employer**

I/R to Mangmt. of FCI and another) dated 17.2.2014 para 34

whereof reads as follows.

“On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would

be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.”

5.) On the other hand, learned State counsel resisted the claim of the appellant contending that on the date of regularization of the juniors to the appellant i.e. on 1.10.2003, the appellant was not in service, therefore, question of appellant's regularization at this hour is impermissible for the reasons that policy relating to regularization had been withdrawn subsequent to decision of Supreme Court in **Secretary, State of Karnataka Vs. Uma Devi and others (2006) 4 SCC 1.**

6.) Heard learned counsel for the parties.

7.) The crux of the matter is whether the appellant is entitled for regularization w.e.f. 1.10.2003, the date on which her juniors were regularized? It is undisputed that the appellant was dismissed on 21.9.1995. The same was set aside by the Labour Court on 5.11.2008. Award of the Labour Court dated 5.11.2008 has been upheld by this Court in **CWP No.17709 of 2009** on 27.4.2010. Thus, there is a finality in respect of reinstatement with continuity of service (without back wages). The same has been accepted by the respondent-Department. Reinstatement with benefit of service indicates that as if the appellant is in service from the date of her initial appointment in the year 1980. Supreme Court in the case of **M/s Shree Chumandi Mopeds Ltd. Vs. Church of South India Trust Association, Madras 1992 (3) SCC 1** has held 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 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.”

8.) Denial of benefit of regularization to the appellant with reference to her juniors' service and petitioner status would be arbitrary. In view of these facts and circumstances, Appellate Court decision dated 9.9.2014 is set aside. The respondent-Department is directed to consider name of the appellant for the purpose of regularization w.e.f. 1.10.2003, the date on which services of juniors to the appellant were regularized in the light of the Supreme Court decision in **Hari Nandan Prasad's** case (supra) along with all consequential benefits within three months. The appellant is entitled for monetary benefits from the date of award of the Labour Court dated 5.11.2008.

9.) Accordingly, the petition is allowed.

(P.B. BAJANTHRI)
JUDGE

May 17, 2016.

sandeep sethi