

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

CWP No.18469 of 2002 (O&M)  
Date of Decision:-08.02.2017.

Jai Singh Yadav

.....Petitioner

Versus

State of Haryana and another

.....Respondents

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

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Present: Mr. Vivek Sharma, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

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

1.) In the instant petition, the petitioner has assailed the validity of the orders dated 27.1.2011 and 3.1.2011 vide Annexures P-26 and P-27, respectively. The petitioner is stated to have been appointed as an Assistant Project Officer on 27.3.1992 in the District Urban Development Agency (for short 'DUDA'), Rewari. While working as such in the year 2001, he had submitted application for the post of District Statistical Officer in the Department of Economics and Statistics. He was selected and appointed to the post on 20.2.2001. Thus, his services were relieved from the post of Assistant Project Officer on 20.2.2001. During his probation period, his services were terminated on 9.11.2002 on the score that his work was not satisfactory and so also with reference to his service record. Feeling aggrieved by the order of termination, he preferred an appeal before His

Excellency, the Governor of Haryana. On 3.1.2011, His Excellency, Governor was pleased to set aside the order of termination of the petitioner and directed for his reinstatement. While ordering so it was held that petitioner be treated as fresh entrant in the cadre of District Statistical Officer so as to avoid any administrative complications. Thus, the petitioner has questioned the condition imposed in the orders dated 3.1.2011 and 27.1.2011 to the extent that he would be taken back to service as a District Statistical Officer as a fresh entrant.

2.) Learned counsel for the petitioner submitted that the petitioner was appointed as Assistant Project Officer on 27.3.1992 and he was freshly appointed to the post of District Statistical Officer on 20.2.2001. Consequently, upon his termination from the post of District Statistical Officer on 9.11.2002, he was taken back to duty as Assistant Project Officer in DUDA as he had lien over the post in DUDA. Thereafter, he was taken back to duty as District Statistical Officer pursuant to the order passed by His Excellency, the Governor of Haryana. The decision of the Government that petitioner's reinstatement after setting aside the order of termination as a fresh entrant is based on the fact that the petitioner after his termination, he had gone back to the earlier post and he was discharging the duties of the post. Therefore, it has been ordered that petitioner is a fresh entrant to the post of District Statistical Officer w.e.f. 27.1.2011 onwards. Such a decision is highly arbitrary and illegal for the reasons that when his Excellency, Governor has taken a decision that the petitioner's termination was not in accordance with law and in order to hamper the service of the petitioner, higher officers of the petitioner spoiled his career. Therefore, order of termination has been set aside on merits. Consequently, the

petitioner is entitled for all service benefits. Hence, the decision of the Government to treat the petitioner as a fresh entrant as District Statistical Officer w.e.f. 27.1.2011 is illegal and to that extent it is liable to set aside in the order dated 27.1.2011 and 3.1.2011.

3.) On the other hand, learned counsel for the respondents vehemently contended that His Excellency, Governor has taken a decision to treat the petitioner as fresh entrant to the post of District Statistical Officer after examining the records and the fact that the petitioner was working in the earlier post of Assistant Project Officer in DUDA between 2002 to 2011. Thus, there is no infirmity in the orders of His Excellency, Governor and the Government order dated 27.1.2011. Hence, no interference is called for.

4.) Heard learned counsel for the parties.

5.) Crux of the matter in the present case is whether the petitioner is entitled for service benefits from 9.11.2002 in the post of District Statistical Officer or not and further the competent authority while setting aside the order of termination can take a decision that the petitioner appointment as District Statistical Officer is fresh or not. Having regard to the facts and circumstances that the competent authority while setting aside the order of termination on merits and merely on the ground that the petitioner after his termination from service from 2002 to 2011 was working with the previous employer at DUDA that does not take away the right to service benefits from 2002 to 2011 for the reasons that order of termination dated 9.11.2002 has been set aside.

6.) Supreme Court in the case of M/s. Shree Chmundi Mopeds

1439, it is held that what is the effect of quashing of an order. Para 10 reads as under:-

*“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 the 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 6uso 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.”*

Having regard to the principal laid down by the Supreme Court in the above case, that once the order is set aside, it restores back the original position. In the present case, order of termination has been set aside by the competent authority on merits. Therefore, as if the order of termination is not existing in the eye of law and the petitioner's status restores back whatever it is as on 9.11.2002. Hence, the decision of the competent authority treating that the petitioner is a fresh entrant as District Statistical Officer w.e.f. 27.1.2011 is highly arbitrary and illegal that too on the score that the petitioner was working in the previous post under DUDA that may not be the reason for denying the service benefits in the post of District Statistical Officer for the period from 9.11.2002 to 27.1.2011. In view of the above facts and circumstances, portion of the order dated 27.1.2011 and 3.1.2011 to the extent that the petitioner is taken back in service as a fresh entrant as District Statistical Officer is hereby set aside. Consequently, the petitioner is entitled for all service benefits as if he was in service from 9.11.2002. The concerned authority is directed to extend all service benefits including any monetary benefits, if any, due to the petitioner.

7.) Accordingly, petition stands allowed.

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

**February 08, 2017.**  
*sandeep sethi*

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.