

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10686-2016 (O&M)

Date of Decision:-14.12.2017.

Parkash Singh

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat (Haryana)
and another

.....Respondents

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

Present: Mr. Sandeep Parkash Chahar, Advocate for the petitioner.

Mr. Siddharth Sanwaria, DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

Award dated 25.01.2012 (Annexure P-2) was the subject matter of CWP-20159-2012 filed by the respondent-General Manager, Haryana Roadways, Depot Sonapat and it was decided on 19.12.2014 against the Haryana Roadways insofar as extending the benefit of 50% back wages. Concerned Court was please to observe as follows:-

“8. In such circumstances it would not be proper to place a cut on the back pay as ordered by the court a quo to the extent of 50% which deduction is legally impermissible in cases where punishment is inflicted after enquiry and is faulted by the Court. The award of the Labour Court amounts to setting aside of the dismissal orders and with that declaration will follow automatically their right to full back wages as if

*the order was never passed. A cut in back wages or a percentage of it by the Court is only possible and permissible in cases involving violation of the provisions of the Act such as sections 25-F, 25 G and 25 H but not in the case of disciplinary proceedings which are declared void and towards this end the principle of 'no work, no pay' is wholly inapplicable and a misreading of the law and cannot be used against the workmen to deprive them of their legal rights declared by courts. Full salary/back wages have to follow, speaking as a matter of principle of law, which neither the labour court nor this Court while judicially reviewing an award can take away when the dismissal from service is set aside or effectively so, based on a defunct enquiry. The Full Bench of this court has answered three decades ago the issue of back salary on setting aside of termination of employment in **Radha Ram v. Municipal Committee, Barnala** 1983 PLR 21 holding that once the relief of setting aside of quashing the order of termination has been granted it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from declaration of that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. The emoluments of the post are a logical consequence of setting aside the order of termination”*

In view of setting aside of the order of penalty, petitioner is entitled to full back wages. In fact the petitioner's case is supported by the Supreme Court decision in the case of **M/s. Shree Chamundi Mopeds Ltd.**

wherein 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 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.

Supreme Court in the aforesaid decision, laid down the principle what is the effect of quashing of an order. In other words restoring the original position as on that date. Consequently, petitioner is entitled for all service benefits including monetary benefits during the intervening period. Since in the present petition 50% back wages has been awarded by the Labour Court from the date of demand notice i.e. 27.05.2002, consequently, petitioner is entitled to full back wages from the date of demand notice i.e. 27.05.2002. To that extent, award of the Labour Court dated 25.01.2012 (Annexure P-2) is modified.

Writ petition stands allowed in part.

(P.B. BAJANTHRI)
JUDGE

December 14, 2017.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.