

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

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**CWP-19079-2014 (O&M)
Date of decision:28.07.2017**

Balwant Singh

....Petitioner

Versus

Union of India and others

.... Respondents

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

Present: Mr.B.S.Sehgal, Advocate for the petitioner.

Mr. Deepak Malhotra, Advocate for UOI.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has questioned the validity of the order dated 25.05.2012 (Annexure P3) by which petitioner has been reinstated and further treating the intervening period from 10.05.2006 to 24.05.2012 as "Dies Non". The petitioner was subjected to disciplinary proceedings and imposed penalty of termination on 10.05.2006 which was the subject matter of litigation before this court in CWP No. 1227 of 2008 and it was disposed on 01.06.2011 to the following effect:

“Thus this contention of the petitioner is not sustainable in law. However, keeping in view the fact that the consideration of past conduct, other than the charge has weighed with the authorities for imposing the punishment and the punishment apparently seems to be harsher, particularly, in view of the illness of the daughter of the petitioner, the impugned orders are

hereby set aside. The matter is remitted back to the competent authority with a direction to re-consider the award of punishment and impose lesser punishment other than the removal from service, if so desired, after affording an opportunity of being heard to the petitioner.”

Feeling aggrieved by the order of learned Single Judge, respondents have preferred an appeal before the LPA Bench on 13.02.2012. Respondent's LPA No. 1397 of 2011 was dismissed. In this back drop respondents have proceeded to pass order on 25.05.2012. Extract of order dated 25.05.2012 is reproduced as under:

- “1.Order of the office of 164 Battalion bearing No.P.8- 13/05-164-Local-2 dated 10.05.2006 is hereby cancelled.
2. Force No. 903080932 Ex.Constable/GD Balwant Singh is hereby reinstated into service w.e.f. 25.05.2012 and he has been posted in the 164 Battalion from the same date i.e. 25.05.2012.
3. The termination period i.e. 10.05.2006 to 24.05.2012 (Total 2207 days) of Force No.903080932 Ex.Constable/GD Balwant Singh has been treated as “Dies Non” period. According to Rule 28 of Central Civil Service (Pension) Rules, 1972, the aforesaid period has been condoned for pension purpose according to the Government of India's decision No.1. No salary or allowances would be given to the officials for the aforesaid period.
4. Force No. 903080932 Ex. Constable/GD

Balwant Singh be released all the kit goods and all the necessary documents relating to his service be prepared.”

Petitioner aggrieved by treating intervening period dated 10.05.2006 to 24.05.2012 as "Dies Non" presented this petition. Learned counsel for the petitioner submitted that once order of termination is set aside question of treating intervening period as "Dies Non" do not arise. This court while setting aside order of termination liberty was given to the respondents to impose lesser penalty. The respondents are stated to have imposed lesser penalty of withholding of increment in the year 2013. Therefore, treating the intervening period as "Dies Non" is arbitrary and illegal.

Per contra, learned counsel for the respondents submitted that order dated 25.05.2012 is in order. Commandant has every power to pass the order in respect of intervening period as well as for cancellation of order of termination dated 10.05.2006. It was further contended that pursuant to the order passed in CWP No. 1227 of 2008 dated 01.06.2011 petitioner has been punished by imposing penalty of withholding of increment in the year 2013. Thus, petitioner has not made out a case so as to interfere with the order dated 25.05.2012.

Heard learned counsel for the parties.

Undisputedly, order of termination dated 10.05.2006 has been set aside by this court in CWP No. 1227 of 2008 decided on 01.06.2011. Thereafter, respondents have suffered an order before LPA Bench in LPA No. 1397 of 2011 decided on 13.02.2012. In view of the above facts and

circumstances, once the order of termination is set aside in effect order of termination is not existing in the eye of law. In other words, position of the petitioner restore back as if order of termination has not been passed as on 10.05.2006. Therefore, petitioner is entitled for all service benefits including monetary benefits during the intervening period from 10.05.2006 to 24.05.2012. Supreme Court in the case of ***M/s Shree Chamundi Mopeds Ltd. Versus Church of South India Trust Association, Madras*** reported in ***AIR 1992 SC 1439*** in para 10 it is 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 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”.

In view of the principle laid down by the Supreme Court in the above decision in respect of effect of quashing of an order. In the present case, order of termination dated 10.05.2006 is quashed by this court. Consequently, status of the petitioner restores as on 10.05.2006. Therefore, petitioner is entitled for consequential benefits during the intervening period from 10.05.2006 to 24.05.2012. Annexure P3 insofar as Item No.3 in para 4 is hereby set aside. Respondents are hereby directed to calculate arrears of pay and disburse the same within a period of 3 months from today.

28.07.2017

pooja saini

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No

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