

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

RSA-40-1992 (O&M)

Date of Decision: 23.03.2018

Shamsher Singh (deceased) through LRs ... Petitioner

Vs.

The Haryana State through the Collector, Karnal ... Respondent

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

Present : Mr. Dilbag Singh, Advocate
for the appellant.

Mr. Rohit Arya, A.A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant appeal, appellant's grievance is that he has not been extended consequential benefits on account of setting aside the order of discharge dated 16.10.1987.

2. Respondent-State has not filed any appeal against the order of the appellate court dated 28.08.1991 and the same attained finality qua the relief of reinstatement. The appellant is stated to have been appointed on 1.9.1985. He was on probation for a period of three years. During the probation period, he remained absent from 9.10.1987 to 16.10.1987. Therefore, order of discharging the services of a constable/probationer merely on the ground of remaining unauthorized absent without holding any inquiry would be a stigmatic order. Therefore, there is no infirmity in the appellate court order dated 28.08.1991. Once the Court held that order of discharge is illegal and it is set aside. Consequently, appellant is entitled to all consequential benefits from the date of discharge till reinstatement including monetary benefits.

3. Supreme Court in the case of *Shree Chamundi Mopeds Ltd v. _*

Church of South India Trust Association CSI CINOD Secretariat,**Madras**; AIR 1992 SC 1439 held in para-10 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 were 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 order 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 be 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.”

4. In view of the principle laid down by the Supreme Court that once the order is set aside and its effect would be restoration of the original position as if no order is passed in the eye of law.

5. Accordingly, appellant is entitled to all the consequential benefits like service as well as monetary benefits during the intervening

period from the date of discharge till reinstatement. Such benefits i.e. monetary and service shall be calculated and disbursed within a period of 4 months from today.

6. Appeal stands allowed accordingly.

23.03.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**