

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1495-1991 (O&M)

Date of Decision:-16.03.2018.

Shyam Kumar deceased through his LR's.

.....Appellants

Versus

The Narnaul Central Cooperative Society through Chairman and another

.....Respondents

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

Present: Mr. Ashok Kumar Jindal, Advocate for
Mr. Sanjay Mittal, Advocate for the appellants.

None for the respondents.

P.B. BAJANTHRI, J. (Oral)

Despite giving sufficient time, there is no representation on behalf of the respondents.

(2.) Heard learned counsel for the appellants.

(3.) Appellants Shyam Kumar and Durga Prasad were stated to have been appointed with the respondents in the year 1977 and Yad Ram plaintiff No.2 before Trial Court stated to have been appointed on 19.02.1976 and subsequently promoted as Salesman on 01.12.1979. Their services were proposed to be terminated. To that extent show cause notice (termination order) was issued on 31.05.1984. Thus, the appellants Shyam Kumar, Yad Ram and Durga Prasad filed civil suit. Suit was rejected in respect of

Shyam Kumar and Durga Prasad. In respect of Yad Ram, suit was decreed. Shyam Kumar and Durga Prasad filed appeal against the Trial Court order and their appeal was allowed on 15.02.1991 while holding as under:-

“10. Since in the instant case no retrenchment compensation has been paid as provided under the I.D.Act., nor any opportunity of hearing given by the defendants-respondents, the orders passed by the defendants-respondents on 31.5.1984 whereby the services of the plaintiffs-appellants were terminated, are illegal, wrong, null and void and not binding upon the plaintiffs-appellants. In this view of the matter, the conclusions arrived at by the Ld.trial Court are found to be not correct.

11. The Ld. Counsel for the plaintiff-appellant further contended that all the benefits should be given to the plaintiff-appellants as their services were terminated without their any fault. The Hon'ble Supreme Court of India in a writ petition No.539, 1040, 475, 483, 1187 of 1988 in case titled All Haryana Irrigation Department Karamchari Union Vs. State of Haryana and ors. Decided on 13.3.1989, has allowed the benefit of services of the appellants, but with a condition that for the period they were out of employment they should not be entitled to any benefit of salary etc. While relying upon this ruling, I feel that the plaintiffs-appellants cannot be given the benefit of pay etc. of the period for which they had not actually worked.

12. No other point has been urged before me.

13. As a result, the appeal succeeds and as such the same is hereby accepted while setting aside the judgment and decree dated 10.12.1988 passed by the ld. Trial Court. The suit of the plaintiffs-appellants, if therefore, decreed in favour of them and against the

defendants-respondents for declaration to the effect that the impugned orders dated 31-5-1984 are illegal, null and void and not binding upon the plaintiffs (including the appellant).

14. *The plaintiffs-appellants are thus entitled to continue in service with all service benefits permissible to them under the service rules of the department, But they would not be entitled to any benefit of pay etc. so far the period they remained out of employment. However, the defendants-respondents are at liberty to pass fresh orders for terminating the services of the plaintiffs-appellants if they so desire as per the law. With these observations, the appeal stands disposed of, the parties are left to bear their own costs. Decree sheet be prepared and the file be consigned to record room after due compliance.”*

(4.) Appellant Shyam Kumar and Durga Prasad feeling aggrieved by the Appellate Court order dated 15.02.1991 to the extent that they have not been extended the benefit of service benefits from the date of termination till passing of the order by the Appellate Court.

(5.) Learned counsel for the appellant submitted that once the order of termination is set aside, consequently, employee is entitled to all service benefits as if the order of termination is not existing in the eye of law. Learned counsel for the appellants relied on a decision of the Supreme Court reported in **M/s. Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras AIR 1992 3 SCC 1** 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.

(6.) In view of the principle laid down by the Supreme Court relating to the effect of quashing of an order which restores the original position. Similarly, in the present case if the order of termination is set aside, the effect would be restoring his original position. In view of these facts and circumstances, appellants are entitled to all consequential service

passing of the Appellate Court order dated 15.02.1991. Benefits shall be calculated and disbursed to the appellants within a period of 4 months from today.

(7.) Appeal stands allowed.

(P.B. BAJANTHRI)
JUDGE

March 16, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.