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

**LPA No.1682 of 2016 (O&M)
Date of decision: July 25, 2018**

Chander Mohan Bhatnagar

.....Appellant

Versus

Haryana State Council for Child Welfare and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Abhilaksh Grover, Advocate for the appellant.

Mr. Shalender Mohan, Advocate for the respondents.

A.B. CHAUDHARI, J

Being aggrieved by judgment dated 16.09.2015 passed by the learned Single Judge in CWP No.24544 of 2013, by which the learned Single Judge, though, quashed order dated 12.02.2013 (Annexure P-16 with the writ petition), subsequent orders (Annexure P-18 with the writ petition) and order dated 11.07.2013 (Annexure P-20 with the writ petition) no relief was granted to the petitioner in relation to the relevant period, filed the present appeal.

In support of the appeal, learned counsel for the appellant/delinquent employee submitted that impugned judgment dated 16.09.2015 of the learned Single Judge, by which the adverse orders to the appellant were quashed by the learned Single Judge, has been accepted by the respondent-Management. The same thus, become final. Learned Single Judge made a direction that the disciplinary authority was entitled to

proceed, namely from the stage of furnishing of enquiry report to the appellant. However, the learned Single Judge did not make any direction regarding either reinstatement of the appellant in service, which ought to as a sequel followed having quashed the impugned orders in the writ petition or for payment of salary for the relevant period. This resulted into serious prejudice to the appellant as the respondent-Management again issued another order of removal of appellant from the service taking advantage of the order made by the learned Single Judge when the appellant was not in their employment.

Per contra, learned counsel for the respondent-Management submitted that no fault can be found out with the impugned judgment of the learned Single Judge and as a matter of fact, the appellant has no reason to file the present appeal. He submitted that as per the Supreme Court in the case of **Managing Director, ECIL, Hyderabad and others** versus **B. Karunakar and others**, (1993) 4 SCC 727, the learned Single Judge was right in asking the Management to pass fresh order after supplying the enquiry report to the appellant. Not only that, the appellant was given opportunity by the learned Single Judge to file revision against the finding recorded against him by the enquiry officer in the enquiry report. The question of granting any relief much less monetary relief as claimed by the appellant in the present appeal, does not arise. He, therefore, prayed for dismissal of the appeal.

We have heard the learned counsel for the rival parties at length. We have also perused the relevant decision Managing Director,

ECIL's case (supra). It is not in dispute upon perusal of the impugned judgment passed by the learned Single Judge that the offending order regarding termination of service of the appellant stood quashed by the learned Single Judge with the following operative order, which we quote hereunder:-

“Accordingly, the writ petition is allowed. The order of the disciplinary authority dated 12.02.2013 (Annexure P-16), is quashed. Accordingly all the subsequent orders (Annexure P-18) and order dated 11.07.2013 (Annexure P-20) are also quashed. The disciplinary authority shall proceed in accordance with law from the stage of furnishing the inquiry report. The petitioner may file his representation to the findings recorded in the Inquiry report, which shall be considered by the Disciplinary Authority in accordance with law.”

It cannot be disputed that having quashed the termination order and consequent orders passed thereupon, the order granting reinstatement of the services of the appellant ought to have followed. As a matter of fact, instead of ordering reinstatement, the proper course recognized by the Court is to put the employee under suspension and start paying him suspension allowance till second order is passed by the disciplinary authority. But then, in the present case, even that was not done by the respondent-Management nor was so ordered by the learned Single Judge. We put specific query to the counsel for the respondent-Management as to why, after order made by the learned Single Judge, the appellant was not put under suspension and was not paid subsistence

allowance, the counsel for the respondent-Management did not have any answer. It cannot be disputed that the disciplinary authority or management was required to pass an order pursuant to the judgment of the learned Single Judge to reinstate the services of the appellant pay him full salary and then place him under suspension in order to restore the Master and Servant relationship between them. It is clear that until and unless the Master and Servant relationship is restored, further action to pass fresh order of removal from service could not have been possible as the appellant was not their employee while making second order of removal. However, admittedly, the appellant was not reinstated nor was placed under suspension nor his salary was paid and on the contrary, after supplying enquiry report in terms of the judgment of the learned Single Judge, he was again removed by another order dated 24.01.2017.

In the light of the above discussion, the appellant will have to be paid full salary from the date of his termination, i.e. 12.02.2013 because the said termination order was quashed by the learned Single Judge, till the second order of his removal from service was passed pursuant to the order made by the learned Single Judge to take fresh action against him by supplying him enquiry report as the appellant was neither reinstated nor paid any allowance. In view of the fact that the legal position was very well known to the respondent-Management and still it did not act according to law and the appellant was without any source of income for the entire period, it would be appropriate to compensate the appellant with costs in the sum of ₹50,000/- payable to him within a

period of 2 months along with salary as aforesaid. In the result, we make the following order:-

ORDER

- (i) Letters Patent Appeal No.1682 of 2016 is allowed;
- (ii) Respondent No.1-Management shall pay full salary to the appellant for the period from the date of termination on 12.02.2013 till the date his second order of removal from service on 24.01.2017, within 2 months from today;
- (iii) Upon failure to pay salary as aforesaid, the same shall carry interest @ 6% per annum. Liberty to take up remedy of appeal against the order of termination/removal dated 24.01.2017;
- (iv) Respondent No.1-Management shall also pay costs to the appellant in the sum of ₹50,000/-, within 2 months from today.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

July 25, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No