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

LPA No.90 of 2016 (O&M)
Date of decision: July 25, 2018

Jai Kishan

.....Appellant

Versus

State of Haryana and another

....Respondents

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

Present: Mr. Sandeep Kotla, Advocate for the appellant.

Ms. Tanisha Peshawaria, DAG Haryana.

Mr. Prateek Gupta, Advocate and

Mr. Balvinder Sangwan, Advocate for respondent No.2.

A.B. CHAUDHARI, J

CM No.203-LPA of 2016

Heard.

Application is allowed for the reasons stated therein. Delay of
447 days in filing the present appeal, is condoned.

LPA No.90 of 2016

Being aggrieved by the judgment dated 30.09.2014 passed in
RA No.237 of 2012 in CWP No.9049 of 1998 and judgment dated
30.07.2015 passed in CM No.5121-CWP of 2015 in RA No.237 of 2012
in CWP No.9049 of 1998, the present Letters Patent Appeal has been filed
by the appellant-Jai Kishan.

Appellant-Jai Kishan entered the service as Assistant Engineer

under reserved class category (backward class), on 16.11.1982 with respondent No.2-Haryana Agro Industries Corporation Limited. Vide order dated 30.08.1988, his services were terminated perhaps by way of retrenchment. He challenged the same by filing CWP No.9049 of 1988, which was decided on 11.08.2008 and the learned Single Judge of this Court held that respondent No.2 had retained 15 Assistant Engineers, but decided not to retain the only Assistant Engineer belonging to backward class; and therefore, found that termination order dated 30.08.1988 was illegal and ordered quashment of the said order along with direction that the appellant was deemed to be in service with all consequential benefits. The said order was challenged by respondent No.2 in LPA No.268 of 2008, which was dismissed on 17.02.2012. The appellate Court however, granted liberty to respondent No.2, if so advised, to file review application before the learned Single Judge, but confirmed the judgment of learned Single Judge. Thereafter, respondent No.2 filed review application No.237 of 2012 before the learned Single Judge, which was decided on 30.09.2014 and the learned Single Judge made a clarification that service benefits of the appellant shall be restricted only upto the date he remained in service of respondent No.2-Corporation, perhaps on the alleged consent given by the learned counsel for the appellant, which according to the appellant, has not been correctly conveyed or recorded. Taking advantage of the said order, respondent No.2 passed a speaking order dated 06.04.2015 stating that nothing remained to be paid to the appellant in view of the said order under review. The appellant then filed CM

No.5121-CWP of 2015 before the learned Single Judge, but the learned Single Judge did not modify the earlier order, stating that he was entitled to all service benefits till 01.03.1991. Hence, this appeal.

In support of the appeal, learned counsel for the appellant submitted that respondent No.2-Corporation by passing the speaking order dated 06.04.2015, has in fact, nullified the first judgment dated 11.08.2008 passed in CWP No.9049 of 1988 of this Court by which the order of termination of services of the appellant was set aside by the learned Single Judge of this Court granting continuity of service to him, as he was ordered to be deemed to be in service. That was wholly impermissible and respondent No.2 took full advantage of the order made in review. Learned counsel for the appellant submitted that in similar type of situation in the case of Rameshwar Dass versus Haryana Agro Industries Corporation Limited and others, respondent-Corporation, however, granted him full relief without making any changes. When the case of the appellant was squarely covered by the judgment in Rameshwar Dass's case (supra) to the effect that Rameshwar Dass was entitled to all the benefits from respondent No.2 excluding the remuneration so drawn from the second employment. The appellant wants the same relief, but due to the impugned review orders, there is miscarriage of justice to the appellant.

Per contra, learned counsel for the respondents opposed the present appeal and submitted that the appellant could not be given advantage of double employment and that is why the restriction was

incorporated in the relief granted to the appellant by the learned Single Judge in review application that was decided. The order made by respondent No.2 is a speaking order dated 06.04.2015 and is legal, correct and proper. There is no need to interfere with the said impugned order in appeal and therefore, prayed for dismissal of the appeal.

With the assistance of the learned counsel for the rival parties, we have perused the entire record and all earlier orders made by the learned Single Judge. At the outset, we find that the appellant succeeded in the writ petition that was filed by him against the order of termination of his services, dated 30.08.1988. Vide judgment dated 11.08.2008, passed in CWP No.9049 of 1988, learned Single Judge of this Court had made the following operative order:-

“In view of the submissions, the writ petition deserves to be allowed and the order dated 30.08.1988 discharging the petitioner from service is, accordingly, quashed and he is deemed to be held in service with all consequential benefits. No order as to costs.”

Perusal of the above order in clear terms shows that the learned Single Judge not only quashed the order of termination of his services, but also gave declaration that he was deemed to be in service with all consequential benefits. The LPA against the said order was also dismissed. In other words, as a result of the aforesaid operative order made by the learned Single Judge, the appellant would be deemed to be in service of respondent No.2 till the date of his superannuation with respondent No.2.

This position could not have been altered or rather the learned Single Judge could not have gone behind the above direction and declaration in review jurisdiction.

The dispute arose because of the second employment that was obtained by the appellant w.e.f. 01.03.1991 in the District Rural Development agency, where he retired from service upon attaining the age of superannuation on 30.11.2006. The appellant agrees that as like in the other case of Rameshwar Dass, he also would agree for exclusion of remuneration. In the following portion in Para 12 of the present LPA, appellant has stated thus:-

“12. That feeling aggrieved with the office order dated 06.04.2015 the appellant again approached before the Ld. Single Judge, for seeking clarification of the order dated 30.09.2014 passed by Ld. Single Judge of this Hon'ble Court and leaded that the case of respondent No.2 in the review application was that he case of the appellant was squarely covered with the order passed by this Hon'ble Court in CWP No.7959 of 1988 and in view of the said order the appellant is also entitled for all the consequential benefits excluding the remuneration so drawn by the appellant from his second employment meaning thereby the appellant was deemed to be in service as the Ld. Single Judge of this Hon'ble Court has allowed the writ petition of the appellant in to-to in view of the order dated 11.08.2008, the appellant was deemed to be in service only the remuneration granted to the present appellant form the second service is to be excluded from the consequential benefits.....”

Learned counsel for the appellant confirmed before us that the

appellant would also agree to the same relief. It is thus, clear to us that the appellant is also willing to have the relief that he would be entitled to all the consequential benefits excluding the remuneration so drawn by him from his second employment. Learned Single Judge in the review application, however, restricted it upto the period of his employment with respondent No.2 as stated in the order of review. In our opinion, this direction in review made by the learned Single Judge, in clear-cut term, runs counter to the direction given by the learned Single Judge in the operative part of the judgment dated 11.08.2008 which had become final. In other words, under review jurisdiction, the learned Single Judge has undone the fruits of the judgment and order dated 11.08.2008 in favour of the appellant. This could not have been done at all. The judgment of the Court has attained finality and the sanctity of the judgment of the Court cannot be ignored or kept aside in the manner that has been done. Respondent No.2-Corporation took undue advantage of the said orders in review and passed speaking order dated 06.04.2015 which was wholly uncalled for and unwarranted.

In the result, the present Letters Patent Appeal must succeed.

Hence, we make the following order:-

ORDER

- (i) Letters Patent Appeal No.90 of 2016 is allowed;
- (ii) Impugned judgment dated 30.09.2014 passed in RA No.237 of 2012 in CWP No.9049 of 1998 and judgment dated 30.07.2015 passed in CM No.5121-CWP of 2015 in RA No.237 of 2012 in CWP No.9049 of 1998, are set aside;

- (iii) The appellant shall be entitled to the relief of consequential benefits till the date of his superannuation with respondent No.2 excluding the remuneration so drawn by him from his second employment, he being deemed to be in service as per Judgment dated 11.08.2008 passed in CWP No. 9049 of 1988.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

July 25, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No