

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

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**RSA-4387-2015 (O&M)
Date of decision:30.01.2018**

Babu Ram

....Appellant

Versus

The Superintendent of Police, Kaithal and others

.... Respondents

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

Present: Mr. R.K.Malik, Advocate for the appellant.

Mr.Gagandeep Wasu, Addl. A.G. Haryana.

P.B. BAJANTHRI, J. (ORAL)

In the instant appeal, appellant has questioned portion of the decree as well as appellate court by which appellant has been denied monetary benefits from the date of dismissal till passing of decree dated 29.04.2014.

2. Appellant was placed under suspension on 27.08.2006 on the allegation of corruption and FIR No. 50 dated 27.08.2006 under the Prevention of Corruption Act, 1988 was registered. Suspension was revoked on 10.07.2007. Respondent initiated parallel proceedings like

disciplinary and criminal proceedings. Disciplinary proceedings were concluded while imposing penalty of dismissal from service on 29.12.2007 whereas appellant was acquitted in the criminal case on 01.06.2009. Appellant filed the suit in the year 2011 questioning order dated 29.12.2007 and thereafter appeal, revision and mercy petitions. Trial court decreed the suit in favour of the appellant. Relevant extract of the judgement reads as under:-

“18. In view of above discussion, since the plaintiff has been acquitted by the criminal court, the findings recording by the department are liable to be set-aside and plaintiff is held entitled to reinstatement in service alongwith seniority and notional benefits from the date of his dismissal. In this regard, my view is fortified by the judgment of Hon'ble Punjab and Haryana High Court in Punjab State through its Collector and another Vs. Ex.Constable Gulzar Singh 2012(4) RSJ 20.”

Feeling aggrieved by the denial of monetary benefits and extending the benefit of notional benefits by the trial court appellant preferred appeal before the appellate court. Appellate court confirmed the decree. Hence, the present appeal.

3. Appellant submitted that once the order of dismissal is set aside in that event employee is entitle to all monetary benefits under Rules 7.3 and 7.5 of Punjab Civil Service Rules (as applicable to Haryana State). Therefore, both the trial and appellate courts have erred in not extending the benefit and restricting the benefit on notional basis.

4. Per contra, learned counsel for the respondent resisting appellant's claim submitted that Rules 7.3 and 7.5 of Punjab Civil Service Rules are not attracted in the present case since Rule provides only where departmental authorities takes a decision to set aside the order of dismissal removal or compulsory retirement, in that event it is attracted. It was further submitted that in the case of ***GM Tank versus State of Gujarat and another 2006(3) RSJ 554*** Supreme court was pleased to hold that monetary benefits to acquitted persons cannot be given from the date of dismissal till acquittal. In other words, intervening period from 29.12.2007 to 01.06.2009 appellant is not entitled for the benefit.

5. Heard learned counsel for the parties.

6. Respondent-State had filed appeal before the appellate court and not filed regular second appeal insofar as challenging appellate court order. In other words, they have accepted appellate court order. Therefore, substantial question of law in the present appeal is whether appellant is entitled to monetary benefits from the date of dismissal till reinstatement or not? Having regard to the fact that order of dismissal has been set aside by the trial court. No doubt Rules 7.3 and 7.5 of Punjab Civil Service Rules (as applicable to Haryana State) is not attracted, since in the present case appellant's dismissal order has not been set aside by the departmental authorities like appellate authority, revisional authority or no other authority however, it is to be noted that once the order is set aside or quashed by court of law effect would be restoring the original position as on the date of the order. In the present case order of dismissal dated 29.12.2007 has been

set aside by the trial court on 29.04.2014. Therefore, status of the appellant restores back to 29.12.2007. 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 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”.

7. In view of the above principle laid down by the Supreme Court, appellant is entitled to monetary benefits from the date of filing suit till date of decree, since appellant slept over the matter from 29.12.2007 to 17.04.2012 the date on which suit was filed.

8. In view of the above facts and circumstances, portion of the decree of the trial and appellate court to the extent of denial of monetary benefits and extending notional benefits are set aside. Appeal stands allowed in part.

30.01.2018

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No