

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

RSA No. 2047 of 2014(O&M)

Date of Decision:12.02.2018

State of Punjab and others

.....PETITIONERS

V/S

Sukhchain Singh

.....RESPONDENT

RSA No. 1648 of 2014(O&M)

Date of Decision:12.02.2018

Sukhchain Singh

.....PETITIONER

V/S

State of Punjab and others

.....RESPONDENTS

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

Present: Mr. Kanishk Ganeriwala, AAG, Punjab.
for the appellant (in RSA No.2047 of 2014) and
for the respondent (in RSA No.1648 of 2014).

Mr.R.K. Girdhar, Advocate for the respondent
(in RSA No.2047 of 2017) and
for the appellant (in RSA No.1648 of 2014).

P.B.BAJANTHRI J. (ORAL)

(1) These appeals have been presented one by the State and another by respondent-employee against the order passed by the Appellate Court dated 19.11.2013. Sukhchain Singh-employee was subjected to disciplinary proceedings. Disciplinary authority imposed penalty of dismissal from service. Appellate Authority modified penalty of dismissal from service to that of stoppage of four annual increments with cumulative effect.

(2) Employee feeling aggrieved by the order of the Appellate Authority filed a suit before the trial Court. The trial Court dismissed the suit. Consequently,

he preferred an appeal before the the Appellate Court, Appellate Court allowed

the appeal of the employee while setting aside the order of penalty, however, arrears of pay during intervening period has been denied on the ground of ,no work no pay'.

(3) Learned counsel for the respondent-employee submitted that once the Appellate Court has held that the order of penalty is illegal and it has been set aside, consequently, he is entitled for benefit of arrears of salary during intervening period. Learned counsel for the employee further submitted that Appellate Authority has taken note of that it is a case of no evidence. Further, employee has not been provided ample opportunity of furnishing records like preliminary investigation report etc.

(4) Learned counsel for the State submitted that employee had tampered the Khasara numbers in the revenue records, therefore, it is a serious misconduct committed by him. Hence, the Appellate Court could not have interfered insofar as imposition of penalty is concerned.

(5) In view of these facts and circumstances read with the finding recorded by the Appellate Court at para No. 14 and 15 to the extent that as to how there is lapses in not following the procedure. Consequently, modified penalty order has been set aside, however, denial of salary during the intervening period on the principle of 'no work no pay' is not attracted having regard the fact that penalty order is set aside. The effect of quashing of an order has been considered by the Supreme Court in the case of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, (1992) 3 Supreme Court Cases 1**. Para No.10 reads 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 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 exist in law and 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 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 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.”

(6) Thus, employee has made out a case insofar as entitlement of arrears of salary during the intervening period, to that extent Appellate Court's order dated 19.11.2013 is modified that employee is entitled to arrears of salary during intervening period from the date of imposition of penalty till reinstatement and consequential service benefits, as if no penalty order is vogue. Therefore, employee's appeal qua RSA No. 1648 of 2014 is allowed in part and State has not made out a case in RSA No.2047 of 2014. Accordingly, State appeal qua RSA No.2047 of 2014 stands dismissed.

**(P.B.BAJANTHRI)
JUDGE**

12.02.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No