

**Sr. No. 209
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.17573 of 2016 (O&M)

Date of Decision: 07.01.2019

Jarnail Singh

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. N.K.Nagar, Advocate,
for the petitioner.

Mr. Amit Arora, Advocate,
for respondents No.1 to 3.

ARUN MONGA, J.(ORAL)

The present writ petition is in continuation of the cantankerous history of litigation which the petitioner has been compelled to undergo owing to callous attitude of the respondents.

2. The petitioner was dismissed from service which controversy was the subject matter of litigation in CWP No.8374 of 2011 before this Court. This Court passed the following order:-

“This writ petition is consequently allowed and the impugned orders dated 30.09.2003 (P-4), 18.06.2004 (P-6) and 16.03.2009 (P-9) are set aside being in abuse of power to dismiss. The petitioner is directed to be reinstated in service forthwith. The petitioner would have costs of litigation. He had to approach this Court twice earlier as borne out from the record of this case and had to litigate for the third time in his quest for justice against unjust and unfair actions of the respondents and their unreasonable and arbitrary

exercise of power. The petitioner needs to be justly compensated for being put in wilderness. Therefore, the costs are assessed at Rs.50,000/- to be paid to the petitioner for a decade of tiring, seemingly endless litigation before the administrator and then this Court.”

3. Pursuant to above directions of this Court, the petitioner was reinstated back in service. However, the petitioner has filed the present writ petition, *inter alia*, seeking the following relief:-

“To issue a writ of mandamus to respondents to a) pay salary w.e.f. 20.11.2013 on which date the petitioner was directed to be reinstated back in service forthwith up to 10.02.2014 when he was actually allowed to rejoin b) to refix pay of the petitioner on his reinstatement by adding all the increments during the period of his forced idleness along with arrears thereto as if he remained in service throughout and as if his services were never terminated.

4. I am of the opinion that the effect of quashing of a termination order would result in restoration of position of an employee as on the date of the termination. In this regard, reliance can be placed upon principle enunciated vide a judgment rendered by Hon'ble Supreme Court titled as ***M/s Shree Chamundi Mopeds Limited Vs. Church of South India Trust Association, Madras reported in AIR 1992 SC 1439***. The relevant part thereof as observed in para 10 is as under:-

“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.”

5. Thus, once the dismissal order is quashed then the position is restored to status quo ante, as if no such order of dismissal was ever passed. That being the position, the petitioner is entitled to grant of all his salary w.e.f. 20.11.2013, on which date petitioner was directed to be reinstated in service, up to the date of 10.02.2014, when he was actually allowed to rejoin. Further more, the petitioner is entitled to re-fixation of his pay upon his reinstatement by grant of increments during the period of his forced unemployment along with arrears thereof with benefit of continuity of service throughout, as if his services were never terminated.

6. Keeping in view the facts and circumstances of the case, as also the unambiguous principle enunciated by the Hon'ble Supreme Court vide its judgment, *ibid*, the respondents are directed to grant arrears of salary to the petitioner during the period from 20.11.2013 to 10.02.2014. It is made clear that the same shall be calculated and disbursed to the petitioner within a period of 02 months from today failing which the petitioner shall be entitled to interest @ 9% per annum from today. It is further directed that the petitioner is entitled to re-fixation of his pay with effect from the date of his reinstatement by grant of all the increments during the period of his forced unemployment along

with arrears thereof and the same shall also be calculated and pay within a period of 04 months from today failing which the petitioner shall be entitled to interest @ 9% from today.

7. The present petition is, accordingly, allowed with no order as to costs.

07.01.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No