

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1043 of 2022

In
Civil Writ Jurisdiction Case No.10220 of 2021

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Haseeb Ahmad Khan Son of Late Umar Syeed Khan Resident of Village -
Paithan Kabai, Ward No. 5, P.S. - Manigachhi, District - Darbhanga, Bihar,
serving as Havildar at the Crime Investigation Department (Patel Bhawan),
Bailey Road, Patna and presently posted on deputation at the CB Team at
Darbhanga, Bihar.

... .. Petitioner/s

Versus

1. The Additional Director General of Police, Crime Investigation Department (CID), Patel Bhawan, Bailey Road, Patna, namely Sri Jitendra Kumar.
2. The Deputy Inspector General Crime Investigation Department (CID), Patel Bhawan, Bailey Road, Patna, namely Sri Garima Malik.
3. The Superintendent of Police (C) Crime Investigation Department (CID), Patel Bhawan, Bailey Road, Patna, namely Sri Tauhid Parwez.
4. In-charge, Account Section Crime Investigation Department (CID), Patel Bhawan, Bailey Road, Patna, namely Izharul Haque.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Advocate
For the Opposite Party/s : Mr. Prabhat Kumar Verma(AAG- 3)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 10-10-2022

Learned counsel for the petitioner submitted that

order dated 22.02.2022 passed in C.W.J.C. No. 10220 of 2021

has been complied in respect of refund. Therefore, nothing

survives.

Learned counsel for the petitioner submitted that

once the order is set aside, is entitled for consequential benefits.

However, there is no order as such but one has to draw inference

that once the order is set aside it is nothing but restoration of



original position as prior to 12.11.2018 order which has been set aside.

The concerned authority shall take note of Apex Court's decision rendered in the case of ***Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*** reported in ***(1992) 3 SCC 1***, in particularly, para 10 reads as under:-

“10. In the instant case, the proceedings before the Board under Section 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 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 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 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 of 1992, directed against the order for winding up of the



appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”

In this regard, petitioner is at liberty to submit his representation.

Accordingly, the present contempt petition stands dropped.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.10.2022
Transmission Date	

