

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1604 of 2019

In
Civil Writ Jurisdiction Case No.14082 of 2014

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Radha Krishan Singh Son of Late Manhagu Singh R/o village Satsa, P.S.
Kochas District Rohtas.

... .. Appellant/s

Versus

1. Bihar State Scheduled Caste Cooperative Development Corporation Ltd.
through its Managing Director, Budha Colony, Patna
2. The Managing Director, Bihar Scheduled Cast Co-operative Development
Corporation, Budha Colony, Patna.
3. The State of Bihar through the Secretary, Department of Welfare, Govt of
Bihar, Patna.
4. The Secretary, Department of Welfare, Govt. of Bihar, Patna.
5. The Registrar, Cooperative Societies, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Basant Choudhary, Sr. Advocate Mr. Brij Bihari Tiwary, Advocate
For the Corporation	:	Mr. Ranjeet Kr. Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-11-2022

In the instant appeal, appellant has assailed the order
of learned single Judge dated 06.08.2019 passed CWJC No. 14082
of 2014 by which writ petition is allowed in part. In the writ
petition CWJC No. 14082 of 2014, the appellant has prayed for
following relief:-



“That the present appeal is preferred against the judgment and order dated 06.08.2019 passed in C.W.J.C No. 14082/2014 by Hon’ble Justice Madhuresh Prasad to the extent wherein the Hon’ble single Judge has not allowed for the payment of consequential benefit of the salary with effect one 04/02/2000 to 15/03/2011 after setting aside the termination order of the appellant as content in letter no. 328 dated 04.02.2000 and allowed the payment with the effect from 01.04.2009 to 29.03.2010 only”.

2. The learned single Judge has restricted arrears of salary from 07.02.2011 to till joining of service. Therefore, the question for consideration in the present appeal is whether appellant is entitled to arrears of salary from 04.02.2002 to 15.03.2011 or not? The appellant’s services were terminated by the respondent-corporation on 04.02.2000.

3. Feeling aggrieved and dissatisfied with the order of termination, appellant invoke remedy before this Court in filing CWJC No. 8575 of 2002 and it was decided on 23.03.2009. This court set aside the order of termination dated 04.02.2000.

4. The respondent-corporation feeling aggrieved by the order of the learned Single Judge dated 23.03.2009 passed in CWJC No. 8575 of 2002 preferred LPA No. 814 of 2009 and LPA bench stayed the order of learned Single Judge dated 23.03.2009



on 19.03.2010. In the meanwhile, appellant had reported for duty on 01.04.2009.

5. Pursuant to the order of the learned Single Judge dated 23.03.2009 and his duty report was not accepted, obviously for the reasons that order of the learned Single Judge dated 23.03.2009 was subject matter of LPA bench and interim stay was granted on 19.03.2010. LPA was rejected on 07.02.2011 while affirming the order of the learned Single Judge dated 23.03.2009. The appellant joined service on 15.03.2011 thereafter, he had submitted representation on 25.10.2011 in regulating the period from the date of termination 04.02.2000 till joining of service. The arrears of salary has not been extended.

6. In the result, the appellant was compelled to file CWJC No. 14082 of 2014 whereas the learned Single Judge allowed the writ petition in part on 06.08.2019. The appellant submitted representation to extend monetary benefits in terms of order of learned Single Judge dated 06.08.2019 passed in CWJC No. 14082 of 2014 and it was paid to him on 19.11.2019. The appellant has assailed the order of the learned Single Judge insofar as denial of monetary benefits from the date of termination i.e., 04.02.2000 till 15.03.2011 the date on which he was taken back to duty.



7. Learned senior counsel vehemently contended that once the order of termination is set aside by judicial pronouncements, in that event, monetary benefits is required to be extended to such employee whose services were terminated and it was set aside by the judicial forum. The same has not been appreciated by the learned Single Judge. It is further submitted that respondent-corporation obtained interim order on 19.03.2010 insofar as staying the operation of the learned Single Judge order dated 23.03.2009 and LPA was decided on 07.02.2011 in favour of the appellant. Therefore, he is entitled to arrears of salary.

8. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that in the original writ petition in CWJC No. 8575 of 2002 the appellant did not agitate insofar as payment of arrears of salary. It is further submitted that having accepted the payment on 19.11.2019, appellant cannot turn around and file LPA insofar as challenging the denial of arrears of salary for a certain period by the learned Single Judge.

9. Heard learned counsel for the respective parties.

10. Question for consideration in the present appeal is whether the appellant is entitled to arrears of salary from 04.02.2000 to 15.03.2011 or not? Undisputed, facts are that order



of termination dated 04.02.2000 was set aside by learned Single Judge order dated on 23.03.2009 in CWJC No. 8575 of 2002. The same was stayed by the LPA bench on 19.03.2010, and ultimately LPA was dismissed on 07.02.2011 while affirming the order of the learned single Judge dated 23.03.2009.

11. In the aforesaid proceedings the appellant has not sought for extending monetary benefits. Firstly, there is no prayer in CWJC No. 8575 of 2002 to extend monetary benefits. Even, assuming that there is a prayer and the learned Single Judge has disallowed. In that event, appellant had a cause of action to question the order of the learned Single Judge dated 23.03.2009 passed in CWJC No. 8575 of 2002. Insofar as denial of monetary benefits/backwages during the period from 04.02.2000 the date on which appellant was terminated from service till order of the learned Single Judge dated 23.03.2009.

12. Apex Court in the case of ***Shree Chamundi Mopeds Lts. vs. Church of South India Trust Association Csi Cinod Secretariat, Madras*** reported in (1992) 3 SCC 1 Para 10 it is held 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 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 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 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”



13. Apex Court in the aforesaid decision laid down the principle what is the effect of granting interim order and quashing of an order. In the present case, order of termination dated 04.02.2000 is set aside in effect. It is nothing but restoration of appellant's services. He is entitled to monetary benefits and service benefits. However, having not prayed in the original writ petition and so also, not challenging the order of the learned Single Judge dated 23.03.2009 in not extending the backwages/monetary benefits. The appellant has slept over his right during the period from 04.02.2000 to 23.03.2009. Therefore, the appellant is entitled to monetary benefits from 23.03.2009 the date on which order of termination dated 04.02.2000 was set aside in CWJC No. 8575 of 2002.

14. No doubt, LPA bench stayed the order of the learned Single Judge dated 19.03.2010, however, LPA filed by the respondent-corporation was dismissed on 07.02.2011. For no fault on the part of the appellant, he cannot be delayed monetary benefits from 23.03.2009 till 15.03.2011, for the reasons that LPA was preferred by the corporation against the order of the learned Single Judge dated 23.03.2009 passed in CWJC No. 8575 of 2002. Further, merely acceptance of certain monetary benefits by virtue



of order of the learned Single Judge right of the appellant is not diluted. In other words, right is still subsisting.

15. In the light of these facts and circumstances order of the learned single Judge dated 06.08.2019 passed in CWJC No. 14082 of 2014 is modified. To the extent that appellant is entitled to monetary benefits from 23.03.2009 till 15.03.2011. The difference of amount shall be calculated and disbursed within a period of three months from the date of receipt of this order. Failing, which appellant is entitled to interest @6% per annum.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

abhishekk/-

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