

211 (5 cases)

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

Date of decision: May 23, 2022

1. CWP-25657-2015 (O&M)

Jagdish Singh and others

....Petitioners

versus

State of Haryana and others

....Respondents

2. CWP-25656-2015 (O&M)

Balram Singh and others

....Petitioners

versus

State of Haryana and others

....Respondents

3. CWP-8554-2018 (O&M)

Manoj Kumar

....Petitioner

versus

State of Haryana and others

....Respondents

4. CWP-7445-2019 (O&M)

Mahesh Kumar

....Petitioner

versus

State of Haryana and others

....Respondents

5. CWP-3223-2020 (O&M)

Isa Khan

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kamal Sharma, Advocate,
Mr. Raja Sharma, Advocate,
Mr. Sunil Kumar Dhanda, Advocate for the petitioner(s).

Mr. R.K.S. Brar, Additional AG Haryana.

Mr. Arun Sharma, Advocate and
Mr. Rajesh Lamba, Advocate for respondents No.2 and 3.

ARUN MONGA, J. (ORAL)

CM-16994-2019 IN CWP-25657-2015 AND
CM-17012-2019 IN CWP-25656-2015

For the reasons stated in the applications, the same are allowed. Affidavits dated 31.10.2019 of Naresh Goyal, Managing Director, Haryana State Cooperative Agriculture and Rural Development Ltd., Panchkula are taken on record, subject to all just exceptions.

Main cases (O&M)

Vide this common order, above-mentioned 5 writ petitions are being disposed of, since the facts/issues involved therein are similar. For brevity, record/recitals are from CWP-25657-2015.

2. Petitioners are before this Court seeking, *inter alia*, issuance of a writ in the nature of Mandamus directing the respondents to grant them deemed date of appointment as has been given to *qua* other candidates in pursuance of the same selection process, and grant the benefit of seniority and notional pay fixation at par with the candidates/employees, who have joined their services prior to the petitioners, being junior to the petitioners as per the merit list prepared at the time of selection pursuant to the advertisement dated 21.01.1996 by the Haryana State Cooperative Agricultural and Rural Development Bank Limited-respondent No.3.

3. It transpires that prior to the instant writ petition, the petitioners were compelled to undergo multiple rounds of litigation inasmuch as in **CWP-8763-2002** titled ***Satyapal versus State of Haryana and others***, a favourable decision vide an order/ judgment dated 08.08.2012 (Annexure P-1) was taken, which in turn was upheld vide judgment dated 14.11.2013 (Annexure P-2) in an intra court appeal in LPA-1839-2013 preferred by the respondent-

Bank. Against the same, an SLP(C) No. 12853-12874/2014 was preferred by the respondents, which too was futile as the same was dismissed vide order dated 22.08.2014 (Annexure P-3).

4. Notwithstanding, petitioners were not inducted in service despite the fact that they were directed to be taken back, as their selection had been upheld vide Single Bench judgment *ibid*. Resultantly, the instant round of writ proceedings.

5. Learned Brother P.B. Bajanthri, J. (as he then was in this Court) during pendency of the writ proceedings, vide an order dated 27.04.2017 spoke thus:-

*“Learned counsel for respondents No.2 and 3 submits that grievance of the petitioners is under consideration. Question for consideration in the present petitioner is whether the petitioner is entitled for deemed date of appointment having regard to the fact that petitioners termination order was set aside by the judicial order. Setting aside of order in effect it would restores the original position as held by the Supreme Court in the case of **Shree Chamundi Mopeds Ltd. v. Church Of South India Trust Assn.** reported in 1992 (3) SCC 1 in Para 10 which 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 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 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.”

In view of the legal position read with fact that order of termination has been set aside. The concerned respondents No.2 and 3 are directed to take a decision relating to deemed date of appointment of the petitioners before the next date of hearing.

List this matter on 14.07.2017.

If the order is not complied by the next date of hearing, adverse order would be passed.

Photocopy of this order be placed on the file of other connected case.”

6. *Apropos* above order, petitioners were inducted back in service, but their grievance *qua* non-payment of salary still remained unmitigated as is borne out from following order dated 15.01.2018 passed by this Court: -

“In response to the order dated 27.11.2017 learned counsel for respondents No.2 and 3 submits that vide order dated 17.10.2017 the final seniority list of Clerks and Typists have since been circulated and the pay of the petitioners has also been notionally fixed w.e.f. 07.05.1996. However, learned counsel for the petitioners submits that they have still not been paid arrears of pay.

Learned counsel for the respondents pray for a short accommodation to ascertain the true position in this regard and respond.

Adjourned to 9.5.2018.”

7. After fixation of their pay on notional basis, arrears of the salary were also released to the petitioners but the respondents confined the arrears of the petitioners with effect from the date when they preferred this writ petition before this Court and not with effect from the date when their pay was notionally fixed, though they have continuously been rendering services ever since, without any break.

8. In the premise, vide order dated 09.07.2019, respondents were directed to file an affidavit giving reasons as to why arrears have not been released to the petitioners. Naturally, this Court expected that the response ought to have been *qua* the arrears of salary with effect from the date when their pay was notionally fixed. However, on the contrary, affidavit dated 31.10.2019 filed by Naresh Goyal, Managing Director, Haryana State Cooperative Agriculture and Rural Development Ltd., Panchkula is conspicuously silent about non-payment of arrears of salary of the aforesaid period, but simplicitor states that petitioners are entitled to arrears of pay only w.e.f. the date writ petition was filed, without giving any reasons thereof as to why the respondents

continued to take work from the petitioners and still did not pay salary to them.
The explanation given in the said affidavit is completely unacceptable.

10. As an upshot of the above discussion, writ petitions are disposed of with a direction to the respondents to pay petitioners the arrears of salary after verification of their service records from the date their pay was notionally fixed and to also grant them the benefit of seniority. Calculations be made and they be paid arrears with interest at the rate of 5% per annum from the date same fell due till the date of realization.

11. Needful exercise be done within a period of three months.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 23, 2022
Mahavir/ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No