

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.783 of 2022

In
Civil Writ Jurisdiction Case No.16313 of 2022

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Bibi Quamrun Nisha D/o Md. Samin Uddin Ansari, W/o Shamim Aktar R/o Rabbidih, P.O.- Batsar, Via- Ghogha, P.S.- Dhoraiya, Dist- Banka.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Education Department Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department Govt. of Bihar, Patna.
3. The Director, Education Department, Bihar, Patna.
4. The Regional Deputy Director of Education, Munger Division, Munger.
5. The District Education Officer, Munger, District- Munger.
6. The District Programme Officer (Estb.), Munger, District- Munger.
7. The Block Education Officer, Tarapur, District- Munger.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sharda Nand Mishra, Advocate Mr. Atul Kumar, Advocate Mr. Dhirender Kumar, Advocate Mr. Sumit Kumar, Advocate
For the Respondent/s	:	Smt. Shilpa Singh. GA 12 Mr. Ram Vinay Pd. Singh, AC to GA XII

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

3 24-04-2025 Appellant has assailed the order of the learned Single Judge dated 01.12.2022 passed in CWJC No. 16313 of 2022. Core issue involved in the present *lis* is whether appellant is entitled to count his service from 19.04.2017 till 16.07.2019. She was terminated from service on 19.04.2017 and the same was set aside on 16.07.2019 in CWJC No. 8390 of 2017.



2. The Hon'ble Supreme Court decision 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**, Paragraph No. 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

Underline supplied



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.”

3. In the light of the aforementioned decision what is the effect of quashing of an order results in the restoration of the position as it stood on the date of passing order which has been quashed. In the present case termination order has been quashed, resultantly, original position of the appellant restores and consequently, she is entitled to whatever the service and monetary benefits during the intervening period from 19.04.2017 till reinstatement. The same has not been apprised by the learned Single Judge while passing order on 01.12.2022 in CWJC No. 16313 of 2022.

4. Accordingly, order of the learned Single Judge dated 01.12.2022 stands set aside. The concerned authority is hereby directed to extend service and monetary benefits within a period of three months from the date of receipt of this order. Hence, LPA No. 783 of 2022 stands allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

GAURAV S./-

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