
(2016) 12 P&H CK 0097
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17370 of 2015

Nanti Devi

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 152 FLR 1006 : (2017) 1 LLJ 221

Hon'ble Judges : Mr. P.B. Bajanthri, J.

Bench : Single Bench

Advocate : Mr. Sandeep Singal, Advocate, for the Petitioner; Mr. D.K. Khanna, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

P.B. Bajanthri, J.(Oral) - The petitioner has sought for a direction to modify the award dated 19.8.2009 (Annexure P-1) in not granting relief of continuity of service. The petitioner was appointed as a Security Guard in the year 1988. On 21.8.1991, he was subjected to disciplinary proceedings by issuing charge memo. It was concluded in imposing the penalty of termination from service which was the subject matter before the Industrial Tribunal. On 19.8.2009, the Industrial Tribunal passed the award. Extract of award reads as under:-

"9. It is not disputed that the workman is normal course was to retire on 31.07.2004, therefore, he cannot be re-instated but compensation only up to that date can be awarded. Thus keeping in view the facts and circumstances of the case I award 25% back wages from the date of demand notice i.e. from 24.08.1996 to 31.07.2004. Hence, I decided these issues in favour of the workman and against the management."

2. As on the date of passing the award dated 19.8.2009 the petitioner had he been in service, he would have retired in the normal course on 31.7.2004. The Labour Court while recording that the petitioner would retire in the normal

course on 31.7.2004, therefore, he cannot be reinstated but compensation only up to that date can be awarded such a finding has been recorded and proceeded to pass award of 25% back wages from the date of demand notice i.e. from 24.8.1996 to 31.07.2004. The reasoning behind the award is incorrect for the reasons that petitioner had service beyond 19.8.2009. He would have been reinstated with certain back wages. Merely he retired prior to passing of the award, the award cannot be restricted to only 25% back wages from the date of demand notice till his retirement. When once the Industrial Tribunal has come to the conclusion that the order of termination is bad, consequently, irrespective of whether the petitioner or an employee would be in service as on the date of passing award or not he is entitled for the consequential service benefits from the date of termination till date of retirement or till the award is passed.

3. Since the order of termination is set aside by the Labour Court, effect of quashing of an order has been dealt by the Supreme Court in the case of M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras AIR 1992 SCC 1439 . Para 10 reads as under:-

"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 was 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 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 to 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.

4. Having regard to the principle laid down by the Supreme Court if an order of termination is set aside or quashed, original position of the employee would restore. Therefore, denial of continuity of service to the deceased employee is contrary to the decision of the Apex Court. The deceased employee is labour class employee. He had been ill advised after passing of the award that he would not be losing the service benefits during the intervening period from the date of termination till retirement having regard to the award passed in the present litigation. Since, the deceased employee died on 10.3.2012, thereafter, the legal heirs of the deceased employee are pursuing the matter, the Labour Court erred in not granting continuity of service. Deceased employee and legal heirs approached this Court on number of occasions seeking for retiral benefits. In fact the endorsement given by the respondent in not granting retiral benefits is that LPA was pending. Labour Court has only granted back wages of 25% for the period from 24.8.1996 to 31.7.2004. At the same time, for the purpose of continuity of service towards grant of retiral benefits, the same is required to be counted. Therefore, the award passed by the Labour Court dated 19.8.2009 is modified to the extent that the deceased employee is entitled to continuity of service only for the purpose of granting retiral benefits. Insofar as other portions of the award is concerned, the same is not interfered at this belated stage. In view of the modification of the award only to the extent that the deceased employee is entitled to continuity of service. Respondents are directed to count the service from the date of termination till date of retirement for retiral benefits and release retiral benefits along with interest @ 6% p.a. within four months from today.

5. Petition stands allowed in part.