

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16269 of 2011

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Gurubachan Singh S/O Late Aditya Narain Singh, resident of Village-
Amnaur, P.O. & P.S. Amnaur, Distt.-Saran.

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.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Government of Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. Additional Director General of Police, Special Branch, Bihar, Patna.
4. Superintendent of Police (A), Special Branch, Bihar, Patna.
5. Superintendent of Police (Headquarter), Bihar, Patna.
6. Superintendent of Police (G), Special Branch, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Adv.
Mr. Pranav Kumar, Adv.
For the Respondent/s : Mr. AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3 01-04-2016 Heard Sri Y.V. Giri, learned Senior Counsel, who was

assisted by Sri Pranav Kumar, learned counsel for the petitioner

and learned AC to AAG-6.

In the present writ petition, the petitioner has made a
limited prayer for quashing of an order contained in Memo No.
2760 dated 14.07.2011 issued by the Superintendent of Police
(Headquarters), Bihar, Patna, by which he had rejected the claim
of the petitioner for payment of salary for the period 26.06.2008 to
12.04.2010 on the principle of “no work no pay”. He has also
prayed for quashing of order of the Special Branch No.1442/2011
dated 26.07.2011, whereby the same order i.e. order 14.07.2011

has been reiterated. A prayer has been made by the petitioner that after setting aside the order, direction may be issued for payment of the salary for the said period along with statutory interest.

Short fact of the case is that the petitioner was initially proceeded departmentally and in departmental proceeding the Dy. Inspector General of Police by his order dated 16.09.2004 had passed order of dismissal of the petitioner. An appeal was preferred by the petitioner against the order of dismissal and the Inspector General of Police, Bhagalpur Zone by its order dated 14.08.2005 cancelled the order of dismissal and substituted the order of punishment by way of forfeiture of last five increments earned by him and the period i.e. with effect from the date of dismissal till date of joining was directed to be treated as period under suspension.

It is case of the petitioner that after the order of the Inspector General of Police, the petitioner was allowed to join and started functioning. However, the Director General of Police suo motu exercised his revisional power under Rule 853 A(a) of the Bihar Police Manual and finally he quashed the order of the Inspector General of Police and restored the order of dismissal of the petitioner. The petitioner, thereafter, filed a writ petition before this Court vide C.W.J.C. No.7835 of 2009, which was



disposed of with direction to the Principal Secretary, Department of Home to consider and dispose of the representation of the petitioner. However, the Principal Secretary, Home Department vide Annexure-5 to the writ petition declined to interfere with the order of the Director General of Police. Only thereafter, the petitioner approached this Court by filing another writ petition vide C.W.J.C.No.15174 of 2009. A Bench of this Court allowed the writ petition. It would be appropriate to quote the entire order dated 30.11.2009 passed in C.W.J.C.No.15174 of 2009 herein below:

30.11.2009: “Heard learned counsel for the petitioner and the State.

The petitioner was dismissed from service by an order dated 16.9.2004. In appeal on 14.8.2005 this was reduced to stoppage of five increments and that the period between the date of dismissal and reinstatement shall be treated as period of suspension. Thereafter in exercise of powers under Rule 853A of the Bihar Police Manual, the order dated 14.08.2005 has been set aside and the dismissal restored on 30.5.2008.

It is not necessary for this Court to discuss the detailed facts of the case in view of the very short legal submission made on behalf of the petitioner supported by a Bench decision of this Court in 2001(4) PLJR 177 (Anjan Kumar Singh Vs. State of Bihar & Ors.)

Learned counsel for the petitioner submits that

the suo motu powers provided for in Rule 853A of the Bihar Police Manual for enhancement of punishment shall have to be read as a power to be exercised within reasonable time quantified by this Court as three years. In this present case, this power has been exercised well beyond three years.

A Bench of this Court in Anjan Kumar Singh (Supra) in the relevant extract of paragraph-9 of the Judgment held as follows:

“-----Even assuming that the order passed by the appellate authority was reviewed in exercise of the power under Rule 853A (a) of the Manual, it could have been exercised in any manner beyond a period of more than three years. The provision as envisaged under Rule 853A of the Manual, in that view of the matter, is not applicable in the facts and circumstances of the case.”

This order dated 30.5.2008 and the consequential orders dated 15.10.2009 as contained in Annexure-24 stands set aside.

The writ application stand allowed to the extent indicated above.”

It was submitted by learned counsel for the petitioner that after the order of the writ court dated 30.11.2009 was complied with and the petitioner was allowed to join his duty in the year 2010 itself. However, after joining the petitioner claimed his salary for the period during which he was out of service in view of order of the Director General of Police, which was turned

down by the impugned orders.

Sri Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner submits that once the termination order was itself set aside by this Court, the status of the petitioner was restored, what was available before the order of termination and, as such, without any fault of the petitioner, the petitioner was restrained to discharge his duty and, as such, on the principle of “no work no pay”, the petitioner may not be denied his salary. He has placed heavily reliance on the recent Judgment of the Apex Court reported in 2015 (1) PLJR (SC) 145, Raghbir Singh Vs.General Manager, Haryana Roadways. He has specifically referred to paragraph-39 of the Judgment to substantiate that the petitioner is entitled to get his salary for the period, during which he was prevented to discharge his duty.

Accordingly, he has made a prayer for quashing of both the orders and directing the Respondents to pay his salary for the period claimed as indicated herein above.

Learned State Counsel has opposed the prayer of the petitioner. He initially argued that the petitioner proceeded departmentally on serious charges and, as such, he was rightly dismissed from the service. However, on appeal, the order of dismissal was substituted by order of the forfeiture of five

increments of the petitioner. Subsequently, the Director General of Police exercised power under Rule- 853 A(a) of the Bihar Police Manual examined the matter in detail and, thereafter, had passed order of dismissal.

Learned counsel for the State has not disputed the fact that the order of dismissal of the petitioner, which was passed by the Director General of Police was set aside by this Court vide Annexure-6 to the writ petition. Learned State Counsel by way of referring to the averments made in the counter affidavit submits that the petitioner is not entitled to get salary for the claimed period in view of provision contained in Rule 58(a) of the Bihar Service Code.

In reply, Sri Y.V. Giri , learned Senior Counsel appearing on behalf of the petitioner by way of referring to the provisions contained in Rule 58(a) of the Bihar Service Code submits that the same is not applicable in view of facts and circumstances of the present case. He submits that such provision can be invoked in entirely different situation not in a situation, where the order of termination has been set aside by this Court.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the order of dismissal of the petitioner was set aside by this Court.

Meaning thereby that the position of the petitioner was restored to the stage, what was available before the order of dismissal. Meaning thereby that the petitioner was in service and, as such, he may not be denied his salary for the said period. It would be appropriate to quote paragraph-39 of Raghubir Singh's case (supra), which is quoted herein below:

"39. Now, it is necessary for this Court to examine another aspect of the case on hand, whether the appellant is entitled for reinstatement, back wages and the other consequential benefits. In the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Others*, this Court opined as under:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same

emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three-Judge Bench in *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. (supra)*....The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.....

In the very nature of things there cannot be a strait jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back

wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority: that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular....

24. Another three-Judge Bench considered the same issue in *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, New Delhi* (supra) and observed: Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. ... In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

Besides this, the Court is of the opinion that once the order of termination is substituted by lesser punishment, obviously it will be deemed that there was no order of termination and, as such, one can claim for salary for the same period. So far question of application of Rule-58(a) of the Bihar Service Code is concerned, the Court is of the considered opinion that same provision may not be invoked for refusing the claim of the petitioner in the facts and circumstances of the case. Accordingly,

the Court is of the considered opinion that both the impugned orders are not sustainable in the eye of law. Accordingly, both the impugned orders; contained Memo No. 2760 dated 14.07.2011 issued by the Superintendent of Police (Hq), Bihar Patna (Annexure- 15 to the writ petition) and Order no.1442/2011 dated 26.7.2011 issued by the Superintendent of Police(A), Special Branch, Bihar, Patna(Annexure- 16 to the writ petition) are hereby set aside with a direction to the Respondents to pay salary for the period , which has been claimed in the writ petition i.e. from the date dismissal of the petitioner till the date he was reinstated.

With above observation and direction, the writ petition stands allowed.

It goes without saying that all the formalities must be completed with three months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J)

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