

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8332 of 2019

Arbind Kumar Khan, Son of Fani Bhushan Khan, Village and P.S.- Bangaon,
District- Saharsa, State- Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar.
2. Principal Secretary, Department of Prohibition, Excise and Registration Bihar, Patna.
3. Special Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna.
4. Additional Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna.
5. Inspector General (Registration) Department of Prohibition, Excise, Bihar, Patna.
6. Deputy Secretary, Department of Prohibition, Excise and Registration Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha, Advocate
For the Respondent/s : Mr. Lalit Kishore (AG)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 21-06-2019

Heard the learned counsel for the parties.

2. The petitioner has challenged the order dated 03.10.2018 contained in Memo No. 3352 issued under the signature of Special Secretary, Department of Prohibition, Excise & Registration, Government of Bihar whereby, though a decision has been taken to reinstate the petitioner in service but for the period that he was not serving the department, such period having been deemed to be under suspension, 25% of the salary for such period has been withdrawn.



3. Learned counsel for the petitioner has submitted that this decision of the respondent is not in consonance with the provisions contained in Section 13(3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

4. The petitioner was earlier subjected to a departmental proceeding and was served with a punishment of compulsory retirement by order dated 05.02.2016. The aforesaid order was challenged by the petitioner vide C.W.J.C. No. 4509 of 2016 wherein a Bench of this Court vide order dated 09.05.2016 found that the allegation against the petitioner was only of committing mistake in the calculation of stamp duty, causing revenue loss to the State and holding such carelessness to be bonafide. This Court also took into account that the enquiry committee as well as the department was of the view that with this allegation, only a minor punishment should be imposed on the petitioner. On the basis of the aforesaid finding, the punishment of compulsory retirement was set aside and the matter was remitted to the disciplinary authority for writing out a fresh order on the quantum of punishment.

5. Pursuant to the aforesaid order, again an order of compulsory retirement was passed by order dated 19.07.2016 contained in Memo No. 3362 which was



issued under the signature of Principal Secretary, Government of Bihar. This again was challenged by the petitioner on several grounds including that since the petitioner was a gazetted government employee of the State Government, it was only the State Government which would be deemed to be the appointing authority and therefore the competent authority to subject the petitioner to any punishment under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. This ground alone was taken note of and accepted by this Court in C.W.J.C. No. 13737 of 2016 vide order dated 22.12.2016. By the aforesaid order, this Court set aside the order of punishment as being an order passed by an authority which was not competent to impose any punishment on the petitioner. However the Court allowed a passage to the Government to proceed in the matter, if so advised, but in accordance with law.

6. It has been submitted that thereafter a decision was taken by the Government to reinstate the petitioner in service and not put him to any further proceeding. However by the order impugned, it was held that the period during which the petitioner did not work because of the punishment imposed upon him be treated as period of suspension and only 75% of the salary for that period be allowed to him.



7. Learned counsel for the petitioner has submitted that the order impugned is incorrect as it is not in tune with the provisions contained in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 with respect to treatment of service on reinstatement as well as the admissibility of pay and allowances.

8. Section 13 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 state as follows:

13. Treatment of service on reinstatement and admissibility of pay and allowances where dismissal, removal or compulsory retirement is set aside by a court of law. - (1) *Where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a court of law and such Government Servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government Servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) of this Rule subject to the directions if any, of the court.*

(2)(i) *In cases other than those covered by sub-rule (3) of this Rule, the Government Servant shall be paid such proportion of the full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such*



dismissal, removal or compulsory retirement, as the case may be, and as the disciplinary authority may determine. The disciplinary authority shall determine the proportion of such payment after giving notice to the Government Servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection, within sixty days from the date on which the notice aforesaid is served on the Government Servant:

Provided that any payment under this sub-rule to a Government Servant shall neither be equal to the full pay and allowances nor less than the subsistence allowance and other allowances admissible under Rule 10, as the case may be.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 12.

(3) Where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a court on the merit of the case, or where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a court solely on the ground of non-compliance



with the requirements of these Rules and no further inquiry is proposed to be held, the period intervening between the date of dismissal, removal or compulsory retirement as the case may be, and the date of reinstatement shall be treated as on duty for all purposes. As a result the Government Servant shall be paid full pay and allowances for the period to which he would have been entitled, had he or she not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government Servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him or her through any employment during the period between the dismissal, removal or compulsory retirement and the date of reinstatement. Where the pay and allowances admissible under this rule are equal to or less than those earned during such employment elsewhere, nothing shall be paid to the Government Servant.

9. From the perusal of sub-clause (3) of Section 13 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, it remains without doubt



that in a case where dismissal, removal or compulsory retirement of a government servant is set aside by a Court either on merits or on grounds of non-compliance with the requirements of the rules and no further enquiry is proposed to be held, full pay and allowances for such period to which the government servant is entitled is to be paid to him, had he not been dismissed, removed, compulsory retired or suspended prior to such punishment.

10. In the present case, it has been urged, the petitioner was never suspended. It is only by the impugned order that the period during which the petitioner remained out of service because of the punishment meted out to him was treated as one under suspension. The reinstatement of the petitioner was only on the basis of the order passed by a Bench of this Court referred to above in C.W.J.C. No. 13737 of 2016.

11. Since no departmental proceeding was initiated nor the petitioner was subjected to any further proceeding with respect to quantum of punishment by a competent person to impose punishment, the only provision which could have been attracted as against the aforesaid decision of the Government was sub-clause (3) of Section 13 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.



12. On the aforesaid anvil, the order dated 03.10.2018 cannot be sustained in the eyes of law and is therefore consequently set aside.

13. The matter is remitted to the concerned authority for writing out a fresh order in accordance with law within a period of four weeks of the production of a copy of this order.

14. With the aforesaid direction/observation, the writ petition stands allowed and disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.06.2019
Transmission Date	

