

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15747 of 2016

Vinod Kumar Vimal, s/o Sri Rameshwar Pd. Chauhan, v/o village-Sahwajpur Sarai, PS-Sitamarhi, Dist-Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director (Administration)-cum-Additional Secretary, Department of Education, Government of Bihar, Patna
4. The Joint Secretary-cum-Conducting/ Inquiry Officer, Department of Education, Government of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Vipin Kumar Singh
For the Respondent/s	:	Mr.Madhaw Pd. Yadav- Gp23
	:	Mr. Arvind Kumar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 28-05-2019

1. Heard Sri Ranjit Kumar, the learned Advocate for the petitioner assisted by Sri Pankaj Kr. Singh, the learned A.O.R. for the petitioner and Sri Rajesh Kr. Sinha, the learned counsel for the respondent-State.

2. The present writ petition has been filed for quashing the order dated 30.07.2016 issued by the Director (Administration)-cum-Additional Secretary, Department of Education, Government of Bihar, Patna, whereby and whereunder the petitioner has been dismissed from his services. The petitioner has further prayed for quashing of the inquiry



report dated 10.04.2012 and for directing the respondents to reinstate him in the services with all consequential benefits.

3. The brief facts of the case are that the petitioner herein was appointed in the Bihar Education Service by the Bihar Public Service Commission, Patna vide order dated 29.06.2005 and was posted as Principal, Teachers Training College, Purbsarai, Munger. Subsequently, the petitioner was transferred and posted as Sub-Divisional Education Officer, Dalsingsarai, Samastipur. The District Education Officer Samastipur is said to have then authorized the petitioner to inspect various schools for implementation of various programmes including construction work, whereupon the petitioner had inspected Nationalized Upgraded Middle School Sarari, Mohanpur, Samastipur, wherein the Complainant was posted as In-charge Headmaster. The said inspection is said to have been conducted on 05.02.2010. It appears that the In-charge Headmaster posted at the aforesaid school, had filed a complaint before the Vigilance department regarding demand of Rs. 50,000/- as bribe by the petitioner, whereupon, the Vigilance had laid a trap and arrested the petitioner on 10.02.2010 while receiving Rs. 25,000/- from the said In-charge Headmaster (hereinafter referred to as the complainant).



After the arrest of the petitioner, a Vigilance PS case 13 of 2010 was registered against the petitioner herein for the offences punishable under Sections 7/12(2) r/w 13(1)(D) of the Prevention of Corruption Act.

4. It appears that based on the aforesaid Vigilance case lodged against the petitioner herein, the disciplinary authority had issued a memo of charge dated 07.04.2010, wherein primarily, the charge levelled against the petitioner herein, was with regard to the petitioner demanding bribe of Rs. 50,000/- from the complainant, whereupon the petitioner was arrested red-handed by the Vigilance department while taking bribe of Rs. 25,000/-.

5. The Inquiry Officer had conducted the inquiry and submitted an inquiry report dated 25.08.2011, wherein he had concluded that he was unable to come to any conclusion regarding the charges having or having not been proved as against the petitioner herein.

6. The disciplinary authority, being in receipt of the aforesaid inconclusive inquiry report, decided to initiate a *de novo* inquiry vide order dated 10.10.2011 and a new Inquiry Officer was appointed, who is said to have submitted an inquiry report (i.e. the second inquiry report) on 10.04.2012,



wherein though, no witnesses had been examined for proving the allegations/ charges levelled against the petitioner herein but still he had come to a conclusion that the charges may be regarded to have been proved, inasmuch as the petitioner had failed to submit his defense. It appears that the disciplinary authority was again dis-satisfied with the second inquiry report dated 10.04.2012 in view of non-examination of any witnesses and non-production of any evidence, hence had directed the said inquiry officer to proceed afresh in the matter and submit a fresh inquiry report. It appears that while the third inquiry was in progress, the complainant had submitted his written statement dated 12.02.2013 stating therein that the petitioner had never demanded any bribe from him and at the time of the arrest of the petitioner, there was no exchange of bribe money in between the complainant and the petitioner herein. However, the Inquiry Officer, while submitting the third inquiry report dated 25.02.2014, found the charges levelled against the petitioner to have been proved on the basis of a stray document, not handed over to the petitioner herein at any point of time and the petitioner having never been confronted with the said document so as to enable him to respond to the same i.e. in utter violation of the principles of natural justice. The said



document is said to be the purported statement of the complainant dated 29.10.2013, wherein the complainant is said to have taken a summer sult and changed his earlier statement dated 12.02.2013 and is said to have stated about the petitioner having demanded bribe from him and having been arrested while taking bribe. The said statement of the complainant dated 29.10.2013 appears to be an illusive document, inasmuch as the same is neither in the possession of the petitioner nor has been produced by the respondents in the present proceedings.

7. The disciplinary authority, considering the third inquiry report dated 25.02.2014 had then issued a second show cause notice dated 20.03.2014, to which the petitioner had replied by filing a written reply dated 24.07.2014. It appears that the disciplinary authority had not proceeded pursuant to the issuance of the second show cause notice dated 20.03.2014 but had decided to issue a second show cause notice afresh, which was issued vide memo dated 01.10.2015, wherein the disciplinary authority had relied upon the inquiry report dated 10.04.2012, i.e. the second inquiry report, but had disowned the third inquiry report dated 25.02.2014 and had stated the points of disagreement with the inquiry report dated 10.04.2012 to the following effect :-



I) The complainant had submitted a written statement dated 12.02.2013, wherein he had stated that the occurrence of demanding and taking bribe by the petitioner was wrong, however the complainant had submitted a fresh written stated dated 29.10.2013, wherein the complainant had confirmed the allegations levelled against the petitioner herein.

II) The Charges levelled against the petitioner has been proved from the action taken by the trap team of the Vigilance department, hence since the Vigilance department is an independent body, it's action cannot be ignored.

8. The petitioner had filed reply to the aforesaid second show cause notice dated 01.10.2015 on 09.01.2016. Thereafter, the disciplinary authority has passed the impugned order dated 30.07.2016, whereby and whereunder the petitioner has been inflicted with the punishment of dismissal.

9. The learned counsel for the petitioner has submitted that as far as the reliance of the disciplinary authority on the written statement of the complainant dated 29.10.2013 is concerned, the same has got no evidentiary value in the eyes of law, inasmuch the same has neither been supplied to the



petitioner herein so as to seek his response nor the petitioner has been confronted with the same whereas on the contrary, the same has been used by the disciplinary authority in a clandestine manner, behind the back of the petitioner herein.

10. In this regard, the learned counsel for the petitioner has relied upon paragraph no. 52 of the writ petition, wherein it has been stated that pursuant to the notice issued by the Inquiry Officer to the petitioner to appear on 29.10.2013, the petitioner had appeared and submitted his written response to the conducting officer, however on the said date, none of the witnesses had either appeared or had been examined by the Inquiry Officer. It is further submitted that the said statement made in para 52 of the writ petition has not been denied or refuted by the respondents in their counter affidavit, hence apparently no witness whatsoever had ever appeared in the third inquiry proceedings. The learned counsel for the petitioner has further submitted that though the disciplinary authority had taken a conscious decision to initiate third inquiry, apparently the earlier inquiries i.e. the first and second one, had become redundant for all purposes and the disciplinary authority could have relied only upon the third inquiry report while issuing the second show cause notice dated



01.10.2015, however erroneously, the disciplinary authority has relied upon the second inquiry report dated 10.12.2014 in the second show cause notice 01.10.2015, hence second show cause notice dated 01.10.2015 itself, is perverse and fit to be quashed.

11. At this juncture, the learned counsel for the petitioner has relied upon a letter dated 05.02.2014 of the Inquiry Officer, wherein various witnesses including the complainant were requested to appear before him on the next date of hearing fixed in the ongoing departmental proceeding against the petitioner herein i.e. on 18.02.2014 at 3 pm for the purposes of participating in the ongoing departmental proceeding, failing which it would be understood that they have nothing to say in the matter. It is thus the contention of the learned counsel for the petitioner that in view of the letter of the Inquiry Officer dated 05.02.2014, neither any statement of the complainant dated 29.10.2013 could have found place in the records of the Inquiry Officer nor any statement of the complainant was recorded on 29.10.2013, hence the entire action of the disciplinary authority in considering the written statement of the complainant dated 29.10.2013, is malafide, a fabrication and has been undertaken with ulterior motives, i.e.



only with a view to non-suit the petitioner and pass the punishment order.

12. The learned counsel for the petitioner has further submitted that no witnesses whatsoever have been examined during the course of inquiry, hence the entire inquiry is vitiated as well as the consequential action of inflicting punishment of dismissal upon the petitioner, by the impugned order dated 30.07.2016, on the basis of a perfunctory inquiry report is also vitiated and fit to be set aside.

13. In this connection, the learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi v. Punjab National Bank** reported in **(2009) 2 SCC 570** and the one rendered in the case of **State of U.P. v. Saroj Kumar Sinha** reported in **(2010) 2 SCC 772**, paragraphs no. 26, 27, 28, 37 and 39 wherein are reproduced hereinbelow :-

26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

"(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge



of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge- sheet in absence of the charged Government servant."

27. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.

28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural



justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of Shaughnessy v. United States, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

39. The proposition of law that a government employee facing a departmental inquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry



against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State of Punjab v. Bhagat Ram (SCC The learned counsel for the petitioner. 156 paras 6 to 8)

'6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination, the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the



government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. it is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.

14. The learned counsel for the petitioner has further submitted that the entire inquiry/ disciplinary proceedings suffer from procedural infirmities, inasmuch as no show cause notice has been given to the petitioner before the disciplinary authority has recorded its final conclusions, differing with the findings of the Inquiry Officer nor any opportunity has been given to the petitioner to make representation in respect of the proposed penalty. In this connection, the learned counsel for the petitioner has relied upon a judgment reported in **(2006) 9 SCC 440 (Lav Nigam v. Chairman and M.D. ITI LTD. and**



another), paragraphs no. 10, 13 and 14, whereof are reproduced hereinbelow :-

“10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case, the disciplinary authority differs with the view taken by the Inquiry Officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrived at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

13. We have already quoted the extracts from the show cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the Inquiry Officer. The notice to show cause was merely a show cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.

14. The proceedings may be recommenced from the stage of issuance of a fresh show cause notice by the disciplinary authority to the appellant indicating his tentative disagreement with the findings of the Inquiry Officer.”

15. Lastly, it is submitted by the learned counsel for the petitioner that the impugned order of punishment dated



30.07.2016 suffers from the vice of being an unreasoned order, assigning no reasons whatsoever to come to a conclusion that a grave punishment i.e. punishment of dismissal from service was required to be inflicted upon the petitioner herein.

16. At this juncture, the learned counsel for the petitioner has relied upon a judgment rendered by this Court ***dated 02.08.2018*** passed in ***CWJC no. 16091 of 2014***, paragraphs 11 and 12 whereof are reproduced hereinbelow :-

“11. For the reasons mentioned hereinabove, I find that the order of punishment dated 12.03.2014 is based on an enquiry report dated 18.12.2014 wherein the respondent authorities have failed to prove the charges on account of non-leading of evidence as also on account of non-proving of the documents, hence the enquiry report is of no value or significance resulting in the order of punishment dated 12.03.2014 being perverse and unsustainable in the eyes of law. In such view of the matter, the order of punishment dated 12.03.2014 is quashed.

12. On account of quashing of the order of punishment dated 12.03.2014, it goes without saying that the petitioner would be entitled to all the consequential benefits.

17. *Per contra*, the learned counsel appearing for the respondent-State has submitted that the disciplinary authority



has been more than fair in conduct of the disciplinary proceedings, inasmuch as when it had found the first two inquiry report to have been submitted by the Inquiry Officer in contravention of the prevailing law, it had directed for *de novo* inquiry, wherein the statement of the complainant was recorded on 29.10.2013 and thereafter, the third inquiry report dated 25.02.2014 was submitted by the Inquiry Officer, finding the charges to have been proved, as against the petitioner herein. It is further submitted that there is no procedural infirmity in conduct of the disciplinary proceedings, hence this Court is not required to sit in appeal or re-appreciate the findings of the Inquiry Officer as well that of the disciplinary authority. It is further submitted by the learned counsel appearing for the respondents that the charges levelled against the petitioner are grave in nature and the trap team of the Vigilance department has itself caught the petitioner, red-handed while accepting bribe of Rs. 25,000/- from the complainant, hence no further proof is required for indicting the petitioner and dismissing him from the government services. Lastly, it is submitted that the second show cause notice dated 01.10.2015 clearly specifies the points of disagreement of the disciplinary authority from the inquiry report submitted by the Inquiry Officer, to which no



plausible explanation has been furnished by the petitioner herein, hence the petitioner has been rightly inflicted with the punishment of dismissal vide impugned order dated 30.07.2016.

18. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that as far as the first inquiry report dated 25.08.2011 is concerned, the Inquiry Officer had concluded that he was not able to reach to any conclusion. Thereafter, the second inquiry report dated 10.04.2012 was submitted, however the same was based on no evidence, inasmuch as neither any oral nor any documentary evidence was produced by the prosecution, hence the said inquiry report is also of no value and *non-est* in the eyes of law. This is why the disciplinary authority thought it proper to direct the Inquiry Officer, who had submitted the second inquiry report dated 10.04.2012, to submit a fresh inquiry report, vide letter dated 11.07.2012 issued by the Director (Administration)-cum-Additional Secretary, Education Department, Bihar, Patna. It is only thereafter, that the third inquiry report dated 25.02.2014 was submitted from which it is clear that none of the witnesses had turned up, hence the charges levelled against the petitioner could not be proved, nonetheless the Inquiry



Officer came to a conclusion that since the matter pertains to trap case initiated by the Vigilance department, the occurrence cannot be denied. At this stage itself, this Court is of the view that the said inquiry report dated 25.02.2014 and the findings arrived therein are based on no evidence, hence the said inquiry report is of no value to the disciplinary authority and could not have been used for the purposes of inflicting punishment of dismissal upon the petitioner herein. Reliance in this connection has rightly been placed by the learned counsel for the petitioner on the judgment rendered by the Hon'ble Apex Court in the case of ***Roop Singh Negi (supra)*** and ***Saroj Kumar Sinha (supra)***. It appears that this is the reason why the disciplinary authority, after issuing the second show cause notice dated 20.03.2014 resiled from the same and thereafter, issued another second show cause notice dated 01.10.2015, wherein it appears that the disciplinary authority had relied upon the second inquiry report dated 10.04.2012, which had already been discarded by the disciplinary authority by the aforesaid letter dated 11.07.2012, instead of relying upon the third inquiry report dated 25.02.2014, which, infact, ought to have been relied upon for the purposes of issuance of second show cause notice dated 01.10.2015. Thus, this Court is of the



view that the second show cause notice dated 01.10.2015 itself is illegal and malicious, inasmuch as the disciplinary authority, after discarding the second inquiry report dated 10.04.2012, could not have again relied upon the same while issuing the said second show cause notice dated 01.10.2015. Moreover, the disciplinary authority while issuing the said second show cause notice dated 01.10.2015 has relied upon the written statement of the complainant dated 29.10.2013 which was infact, nowhere in existence at the time of the submission of the second inquiry report dated 10.04.2012, hence it appears that the disciplinary authority has muffled the entire events, as far as the disciplinary proceedings are concerned, in the frenzy/zest of manipulating the entire proceedings and ensuring that the punishment of dismissal is inflicted upon the petitioner herein.

19. At this juncture, it would be relevant to lay bare the sinister designs of the disciplinary authority who has not only indulged in malicious behaviour but has also fabricated documents with a view to inflict punishment on the petitioner which is clear from the fact that the date of hearing, during the course of the third inquiry proceedings, was fixed as 29.10.2013 and the petitioner had also appeared before the



Inquiry Officer but no witness whatsoever had been produced by the prosecution side on the said date. Nonetheless, the disciplinary authority in the second show notice dated 01.10.2015 has referred to the statement of the complainant dated 29.10.2013, which infact has not even been taken into account by the Inquiry Officer while submitting his third inquiry report dated 25.02.2014 and on the contrary, he has merely stated in his inquiry report that no witnesses were produced by the parties. It would also be relevant to note here that the inquiry officer while conducting the third inquiry proceedings had, vide letter dated 05.02.2014, asked the various witnesses including the complainant to appear before him on the next date of hearing i.e. on 18.02.2014 but on the said date, none of the witnesses on behalf of the prosecution had appeared and infact, the Inquiry Officer had not whispered anything to the petitioner about the written statement of the complainant having been submitted on 29.10.2013 and infact, the letter issued by the Inquiry Officer dated 05.02.2014 also presupposes that as on 05.02.2014, no witnesses had been either produced by the prosecution or any deposition/ statement had been submitted *qua* the complainant. Therefore, it is apparent that the written statement of the complainant dated



29.10.2013, sought to be relied upon by the disciplinary authority while issuing the second show cause notice dated 01.10.2015, is a manufactured document which was never produced before any of the Inquiry Officer, hence cannot be taken into account for the purposes of inflicting the punishment of dismissal on the petitioner herein, especially since the said statement dated 29.10.2013 had never been supplied to the petitioner nor his response to the same was ever sought, much less being annexed with the second show cause notice dated 01.10.2015. Thus, this Court finds that the second show cause notice dated 01.10.2015 itself is illegal and malafide, based on fabricated document, hence the same is quashed. In such view of the matter, the Chief Secretary, Government of Bihar is directed to take appropriate action against the disciplinary authority i.e. the then Director (Administration)-cum-Additional Secretary, Education Department, Bihar, Patna, in accordance with law.

20. As far as the inquiry reports in question are concerned, none of them depict that even a single witness was examined by the prosecution, hence the same being based on no evidence, cannot lead to a conclusion that the charges have been proved as against the petitioner herein, hence all the three



inquiry reports dated 25.08.2011, 10.04.2012 and 25.02.2014 are of no value, as such are held to be of no use for the purposes of inflicting punishment of dismissal on the petitioner herein. It would suffice to state here that infact, inconclusive opinions have been recorded by the three inquiry officers in the aforesaid three inquiry reports, hence the said three inquiry reports are held to be redundant/ worthless for the purposes of departmental proceedings in question.

21. Last but not the least, it would be relevant to take up the issue of non-disclosure of a document to the delinquent which has the power to cause prejudice to him in the inquiry proceedings, which according to the judgment rendered by the Hon'ble Apex Court in the case of *Saroj Kr. Sinha (supra)*, is a clear denial of a reasonable opportunity to the delinquent to submit a plausible and effective rebuttal to the charges being inquired into against the said Government Servants, hence such relevant documents like the statement of the complainant dated 29.10.2013, being relied upon in the second show cause notice dated 01.10.2015, having not been supplied to the petitioner herein, has not only resulted in miscarriage of justice to the petitioner herein but has also led to denial of a reasonable opportunity to the petitioner to defend himself in the



disciplinary proceedings, hence the entire disciplinary proceedings stands vitiated.

22. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court is of the opinion that since the inquiry reports have already been held to be of no value or use for the purposes of the present disciplinary proceedings as also the second show cause notice dated 01.10.2015 has been quashed, consequently the order of punishment dated 30.07.2016 has got no legs to stand and is bound to fall, hence is quashed. This Court would be failing in its duty if this Court does not address the issue of the order of punishment dated 30.07.2016 being an unreasoned order, assigning no reasons whatsoever to come to a conclusion that the petitioner is entitled to be punished and inflicted with the punishment of dismissal from services, thus on this ground as well, the order of punishment dated 30.07.2016 is fit to be set aside.

23. Now, coming to the issue of back wages, this Court finds that since the entire disciplinary proceedings have been attended with malafides and sinister designs of the disciplinary authority, with a view to somehow inflict punishment of dismissal upon the petitioner herein, this Court



deems it fit and appropriate to grant 100% back wages to the petitioner herein along with all other consequential benefits, as admissible to the petitioner herein. In this regard, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case reported in **(2013) 10 SCC 324 (Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.)**, paragraphs No. 38 to 38.7 whereof is reproduced herein below:-

“ 38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full



back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

Patna High Court CWJC No.10505 of 2003 dt. 29-06-2018 11/12 wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of



the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an



employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in [Hindustan Tin Works \(P\) Ltd. v. Employees](#)

38.7. The observation made in [J.K. Synthetics Ltd. v. K.P. Agrawal](#)⁵ that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three- Judge Benches^{7,8} referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

24. Thus, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. It is also a trite law that onus lies on the employer to specifically plead and prove that the employee was gainfully employed, which the respondents in the present case have



failed to do so. Another factor to be considered is that in case the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court concerned will be fully justified in directing payment of full back wages. I find that the present case is a case of gross injustice meted out to the petitioner herein by the respondents and the materials on record sufficiently demonstrates that the principles of natural justice has been given a go by and the petitioner has been victimized, as such I am of the view that as a consequences of the quashing of the enquiry report, second show cause notice and the order of punishment, the petitioner is entitled for full back wages along with all other admissible consequential benefits.

25. The writ petition stands allowed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.06.2019
Transmission Date	NA

