

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2695 of 2020

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Ranjan Prasad Samayar. Son of Sri Rajendra Prasad Samayar, resident of Flat No. 204, Badri Narayan Bhawan, Nehru Nagar, P.S. Patliputra, District-Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Additional Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer in Chief, Flood Control, Water Resources Department, Government of Bihar cum Conducting Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhat Ranjan
For the Respondent/s : Mr.Vinay Kirti Singh (Ga2)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 14-12-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

“(i). Quashing of the Enquiry report dated 18.01.2018 submitted by Respondent No. 3 (Annexure 2) by which the Conducting Officer has reported all the three charges to have been proved; and

(ii) Quashing of the Notification bearing Memo No. 1779 dated 22.08.2019 (Annexure 5) issued by the Respondent No. 2 by which the petitioner has been Dismissed from Service in terms of Rule 14 (XI) of the Bihar Government Servants (Classification



Control and Appeal) Rules 2005.”

3. Learned counsel for the State submitted that the enquiring officer has not maintained day to day order-sheet in respect of holding enquiry against the petitioner. Therefore, it is crystal clear that the presenting officer has not presented the case on behalf of the department against the petitioner.

4. In the light of these facts and circumstances, there is a procedural lapses. In other words, there is non-compliance of Rule 17 of Bihar Government Servants (Classification, Control and Appeal) Rules 2005. Accordingly, petitioner has made out a *prima facie* case so as to interfere with the impugned orders. Thus, the impugned orders dated 18.01.2018 and 22.08.2019 are set aside. The matter is remanded to the disciplinary authority/enquiry authority to commence the enquiry from the defective stage and complete the enquiry proceedings within a period of three months from the date of receipt of this order, in accordance with relevant rules.

5. The monetary benefits for the intervening period is required to be examined by the disciplinary authority in the light of Apex Court's decision rendered in case of ***Managing Director, ECIL V. B. Karunakar*** reported in ***(1993) 4 SCC 727***



read with *Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.* reported in (2011) 5 SCC 142 para 46 to 50 reads as under:

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment or arrears of salary till date. Shri Bandhopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work-no pay”. The delinquent had been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam V. Presiding Officer, Punjab Dairy Development Corpn. Ltd. V. Kala Singh and Graphite India Ltd. V. Durgapur



Projects Ltd.

48. In ECIL V. B. Karunakar and Union of India V. Y.S. Sadhu, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC V. Mitthu Singh, Akola Taluka Education Society V. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. V. Kashinath Ganapati Kambale.)



50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

6. Aforesaid decision shall be taken into consideration for the purpose of extending monetary benefit, if any to the petitioner.

7. With the above observations, the instant petitioner stands disposed of.

(P. B. Bajanthri, J)

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CAV DATE	
Uploading Date	22.12.2021
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