

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15388 of 2016

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Narendra Jha son of Late ganesh Jha Resident of Village P.O.-Sanepur, P.S.
Katra, District-Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Collector cum-District Magistrate, Muzaffarpur
4. The Additional Collector, Muzaffarpur
5. The Deputy Development Commissioner, Muzaffarpur
6. The District Panchayati Raj Officer, Muzaffarpur
7. The Conducting Officer-Cum-Dy. Collector, Land Reforms, Muzaffarpur West
8. The Conducting Officer-Cum-Dy. Collector, Land Reforms, Muzaffarpur East

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narayan Singh-1, Advocate
For the Respondent/s : Mr. Kameshwar Pd. Gupta- GP 10

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

Date : 22-12-2021

Heard learned counsels for respective parties.

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

“(i) For setting aside the impugned order dated 26.04.2016 passed in Service Appeal No. 40 of 2016 by the Respondent No. 2 upheld the order of dismissal dated 20.01.2016 passed by Collector-cum-District Magistrate, Muzaffarpur, Respondent No. 3 by that order the Respondent no. 3 passed the order for dismissal of petitioner from the post of Panchayat Secretary on the basis of second Enquiry Report submitted by



Respondent no. 7, the second conducting officer without considering by Respondent no. 8, the first conducting officer in which the petitioner was not found guilty in respect of allegation that for scheme “to provide the grains against the work under being Scheme no. 35/2005-06 which relates to repair of the road start from Chano Devi’s house to Primary School and Ring Bandh, which is wholly illegal, arbitrary and malafide.

(ii) For quashing the second enquiry report dated 11.12.2010 submitted by Respondent no. 7 after conducting second departmental enquiry contrary to the law as in first enquiry report submitted by the first conducting officer i.e. Respondent no. 8 in which petitioner was not found guilty.

(iii) The petitioner may be re-instated in the service with all consequential benefits with the effect from the date of the dismissal i.e. 20.01.2016.

(iv) To grant the relief or reliefs as the petitioner is found entitled.”

Petitioner while he was in service was subjected to disciplinary proceedings and it was concluded in imposition of penalty of dismissal from service. The Inquiry Officer in his report held that the charges levelled against the petitioner were not approved. On receipt of Inquiry Officer’s report disciplinary authority had an option of either accepting or disagreeing with the Inquiring Officer’s report.



In the present case, disciplinary authority even though disagreed with the inquiry officer's findings and he should have remanded to commence inquiry from the defective stage. On the other hand, he has ordered for de novo inquiry and it is contrary to Rule 18(1) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The same has not been disputed by learned counsel for the State with reference to instruction given by the concerned official respondents. Thus, the petitioner has made out a case so as to interfere with the impugned orders dated 26.04.2016 (Annexure-17) and 20.01.2016 (Annexure-13) and the orders are set aside.

Accordingly, the matter is remanded to the disciplinary authority to remand the matter to the Inquiry Officer to commence inquiry from the defective stage and complete the inquiry proceedings within a period of four months from the date of receipt of this order, while doing so necessary ample opportunity of hearing shall be given to the petitioner since he is stated to have attained the age of superannuation and retired from service. For the purpose of extending monetary benefits to the petitioner the disciplinary authority/appointing authority are hereby directed to take note of the decision of Hon'ble Apex Court decision in the case of **ECIL vs. B. Karunakaran** reported in **(1993) 4 SCC 727**



and Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors. reported in **(2011) 5 SCC 142**. Paragraphs 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 of arrears of salary till date. Shri Bandopadhyay, 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*, 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.”

In view of the aforesaid decisions whether the petitioner is entitled to monetary benefits or not is to be decided by the concerned respondent within a period of two months from the date of receipt of this order.

With the aforesaid observations, the present petition stands disposed off.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

