

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6206 of 2021

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Rakesh Kumar Son of Chhotelal Yadav, resident of Village - Khiridih, P.O. - Goney, P.S. - Haweli Kharagpur, District - Munger (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Director General of Police (Administration), Sardar Patel Bhawan, Bailey Road, Patna.
4. The Deputy Inspector General of Police, Bihar Military Police (Central Zone), Patna, District - Patna.
5. The Commandant, Bihar Military Police - 2, Dehri, District - Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Advocate
		Mr. Santosh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Anil Kumar, Ac to Sc-8

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

Date : 15-12-2021

Heard learned counsels for the respective parties.

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

“(i) To issue an appropriate writ/order/direction, in the nature of certiorari for quashing the Order dated 01.04.2020 passed by the Commandant, Bihar Military Police-2, Dehri as contained in Memo No. 1133 dated 01.04.2020 by which the Petitioner has been dismissed from service (as contained in Annexure-5).

(ii) To issue an appropriate writ/order/direction, in the nature of certiorari for quashing the Order dated 07.01.2021 passed by the Deputy Inspector General of Police, Bihar Military Police (Central Zone) Patna as contained in Memo No. 65 dated 07.01.2021 by which the Appeal of the Petitioner has been rejected (as contained in Annexure-7).



(iii) To issue an appropriate writ/order/direction, in the nature of mandamus commanding the Respondents to reinstate the Petitioner in service with all consequential benefits i.e. back salary, etc.

(iv) To any other relief or reliefs for which the Petitioner is entitled to.”

One of the contentions in support of challenge to the impugned orders are that without holding an enquiry petitioner has been punished and the same has not been disputed by the State Counsel, on instruction, therefore, the petitioner has made out a prima facie case. Thus, the impugned orders dated 01.04.2020 and 07.01.2021 are set aside, reserving liberty to the respondents to initiate enquiry in accordance with law and complete the same within a period of six months from the date of receipt of this order.

Insofar as, extending monetary benefit is concerned, the Disciplinary Authority/Appointing Authority is hereby directed to take note of Apex Court decision in the case of **M.D. ECIL Vs. B. Karunakar and ors.** read with **Coal India Ltd. Vs. Ananta Saha** reported in **(2011) 5 SCC 142, in para 46 to 50** which 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 Officer³⁹, Punjab Dairy Development Corpn. Ltd. v. Kala Singh⁴⁰ and Graphite India Ltd. v. Durgapur Projects Ltd. [(1999) 7 SCC 645].

48. In ECIL v. B. Karunakar¹ and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126: AIR 2009 SC 161], 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 [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC 3018], Akola Taluka Education Society v. Shivaji⁴⁴ and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) SCC (L&S) 1590 : : AIR 2006 SC 3018]

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.”

The aforesaid action shall be taken within the period of three months from the date of receipt of this order.

Accordingly, the petition stands disposed off.

(P. B. Bajanthri, J)

Gaurav Kumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

