

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19567 of 2016

Md. Ahtesham Khan S/o Md. Bashir Khan, Resident of Village P.O. P.S.-
Bikramganj, Mohalla- Gulzarbagh, Near- Kashmiri Masjid, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General of Police-cum-I.G. of Police, Bihar, Patna.
3. The D.I.G. of Police, Munger, Division, Munger.
4. The S.P. of Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjit Jha, Advocate
For the Respondent/s : Mr.P.K. Verma- Aag3

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 02-12-2021

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

I. For issuance of an appropriate writ, order/direction to quash the impugned office order of dismissal/termination of petitioner, vide Memo. No. 7280/ dated 06.09.2016 (Annexure.10) passed by the S.P. of Begusarai.

II. For issuance of an appropriate writ, order/orders, direction/directions in nature of Mandamus directing and commanding the concern respondents to set aside the punishment awarded to the petitioner in Annexure-10 and reinstate the petitioner on his own post



with consequential benefits.

III. For issuance of an appropriate stay order against the impugned dismissal order dated 06.09.2016, passed by the S.P. Begusarai in D.P. No. 15/2016, till the disposal the appeal, filed by the petitioner in the office of the D.I.G., Munger dated 20.09.2016.

IV. For further issuance of an appropriate writ order or direction in nature of Mandamus directing and commanding the concerned respondent not to humiliate or harass the petitioner on account of the illegal and baseless, concocted and fabricated F.I.R. No. 554 of 2015 dated 05.10.2015 of Lahianagar O.P. (Begusarai Town) Police Station.

V. For issuance of any other relief or reliefs to which the petitioner found entitled to in the larger interest of justice.

In a disciplinary proceedings petitioner was punished with penalty of dismissal of service from 06.09.2016. Feeling aggrieved and dissatisfied with the order of dismissal, he had preferred an appeal before the Appellate Authority and it was rejected on 24.01.2017 and it was communicated to the petitioner during the pendency of the present petition. On 18.11.2021 and 25.11.2021, the disciplinary authority was asked to apprise this Court as to whether if there is compliance to sub Rule 3 of Rule 18 of the Bihar CCA Rules, 2005 or not? Pursuant to the aforesaid orders of this Court Superintendent of



Police, Begusarai has filed an affidavit. In Para 4, it is stated as under:

“That from the perusal of the record of departmental proceedings relating to this petitioner, it seems that the Enquiring Officer’s report along with the show-cause notice was not furnished to the petitioner.”

In the light of the aforesaid admission, there is non-compliance to sub Rule 3 of Rule 18 of the Bihar CCA Rules, 2005. Accordingly, the impugned orders are liable to be set aside and matter is required to be remanded to the disciplinary authority to continue the proceedings from the defective stage and conclude the same.

Learned counsel for the State submitted that quashing of the impugned orders, petitioner is not entitled to any monetary benefits and he be reinstated and place him under suspension in the light of Apex Court decision reported in ***Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and Others*** (Para 31). Para 31 reads as under:

“Hence, in all cases where the enquiry officer’s report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the



copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts. Since it is the Courts/Tribunal which will apply their judicial mind to the question and given their reasons for setting aside or not setting aside the order of punishment, (and for any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and



continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefit, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

In yet another case, Apex Court in the case of ***Coal India Ltd. Vs. Ananta Saha reported in (2011) 5 SCC 142***, in para 46 to 50, it is held 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* [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC 633] , *Punjab Dairy Development Corpn. Ltd. v. Kala Singh* [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661] and *Graphite India Ltd. v. Durgapur Projects Ltd.* [(1999) 7 SCC 645].

48. In *ECIL v. B. Karunakar*



[(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] 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. Shivaji* [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and *Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale* [(2009) 2 SCC 288 : (2009) 1 SCC (L&S) 372].

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.

Before the taking note of the aforesaid observations of the Apex Court, it is necessary to reproduce sub Rule 3 of Rule 18 of the Bihar CCA Rules, 2005 which reads as under:

“The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together



with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.”

The aforesaid provision is mandatory and it has not been complied, therefore, the impugned orders are set aside. The petitioner shall be taken back to duty and he be placed under suspension.

In view of these facts and circumstances, impugned orders dated 06.09.2016 are set aside, matter is remanded to the disciplinary authority to continue the enquiry proceedings from the defective stage and complete the enquiry proceedings within a period of two months from the date of receipt of this order. The concerned respondent is hereby directed to calculate subsistence allowance from 06.09.2016 till an order is passed by the disciplinary authority as to whether the petitioner is continued, is taken back to duty or he is placed under suspension till the passing of final order. The aforesaid monetary benefits shall be calculated and disbursed to the petitioner within a period of two months from the date of receipt of this order.



With the above observation, writ petition stands disposed
of.

(P. B. Bajanthri, J)

Ankit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2021
Transmission Date	NA

