

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19432 of 2014

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Ashok Kumar S/o Late Ram Swaroop Singh Resident of Village Nawada
Bichla O.P. Mubarakpur, P.S. Phulwari Sharif, District Patna.

... .. Petitioner/s

Versus

1. Bihar State Road Transport Corporation and Ors
2. The Administrator, Bihar State Road Transport Corporation Paiwahan Bhawan, Birchand Patel Path, Pat
3. The Chief of Administration, Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Pat
4. Traffic Manager Head Office Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Pat
5. The Divisional Manager, Bihar State Road Transport Corporation, Patna Division, Patna.
6. Divisional Statical Officer-cum-Enquiry Officer Departmental Proceeding Bihar State Road Transport

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. V.R.P.Singh, Advocate
	:	Mr. Arvind Kumar, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma
	:	Mr. L.K. Tiwari.

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

Date : 24-11-2021

Heard learned counsel for the petitioner and learned counsel for the State.

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

- “i) For issuance of a writ in the nature of certiorari for quashing of the order of dismissal issued vide office order no. 362 Patna dated 11.07.2012, Memo no. 6144 dated 11.07.2012 and office order issued vide memo no. 9629 dated 08.11.2012 passed by respondent no. 2.
- ii) For issuance of a writ in the nature of certiorari for quashing of the order of rejection of appeal/representation



dated 01.08.2014 against the order of dismissal by letter no. 3057 issued vide memo No. 3057 dated 05.09.2014 passed by respondent no. 2 and communicate by respondent no. 3.

iii) For a direction on the respondents to reinstate the petitioner with full back wages and pay the consequential benefits immediately and also grant compensation for wrongful dismissal.”

Petitioner while working with respondent-transport corporation was subjected to disciplinary proceedings in framing article of charges on 28.06.2004. Petitioner submitted reply on 28th November, 2004. Disciplinary Authority dissatisfied with the reply of the petitioner proceeded to hold enquiry. The Enquiring Officer submitted his report on 24.12.2006 holding that charges levelled against the petitioner were proved. In the result second show cause notice was issued on 15.04.2008 and, thereafter, petitioner was dismissed from service on 11.07.2012 by the administrator. As on 11.07.2012, the State Government appointed administrator to the corporation.

The learned counsel for the petitioner submitted that enquiry proceedings were not held in accordance with law. It is submitted that petitioner's reply has not been taken into consideration while passing order of dismissal. Higher authority has passed the order of dismissal.

On the other hand, learned counsel for the corporation submitted that petitioner was subjected to article of four charges namely for remaining unauthorized absence for a period of four months, he had wrongly fixed pay of an employee which has affected the corporation. Further, petitioner has failed to hand over the charge as and when he was transferred in other words, he has disobeyed the orders of the



corporation while giving effect to a transfer. It is further submitted that petitioner has failed to file his reply to the show cause notice. Remaining unauthorized absence for a period of four months would be a serious charge and it affect the respondent corporation, therefore, there is no infirmity in the order of dismissal. It is further submitted that State Government has appointed administrator as a corporation which is the highest authority. Therefore, there is no infirmity in passing of dismissal order by the administrator on 11.07.2012.

Heard learned counsel for the respective parties.

Undisputed facts are that the petitioner was an employee of the respondent corporation. While he was in service, he was subjected to the disciplinary proceedings on 28.06.2004 and it was concluded in imposition of penalty of dismissal of service on 11.07.2012. The petitioner has rendered about 20 years of service with the respondent corporation.

Perusal of the article of charges read with the finding of the Enquiring Officer's, there is no misappropriation of respondent corporation fund or money. Therefore, what remains is remaining unauthorized absence for a period of four months which has affected the respondent corporation.

Having regard to the fact that the petitioner has rendered 20 years of service with the petitioner corporation, imposition of dismissal from service would be too harsh and such a punishment has shocked the conscious of this Court, therefore, this Court is of the view to



modify the order of penalty of dismissal to that of compulsory retirement. However, Apex Court time and again held that in respect of modification of any penalty order, the Courts are required to remind the matter to the competent authority to modify the penalty. In the present case, dismissal order dated as 11.07.2012 and we are in the year 2021, therefore, it is not appropriate to remind the matter for re-consideration of penalty.

Accordingly, order of dismissal dated 11.07.2012 is treated as petitioner was retired as compulsory as a measure of penalty. The concerned respondent corporation is hereby directed to settle the petitioner's retirement benefits as if he has been retired compulsorily with effect from 11.07.2012.

The aforesaid monetary benefits shall be disbursed to the petitioner within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2021
Transmission Date	NA

