

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9279 of 2020

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Anil Kumar Prasad Son of Late Jagnath Prasad, resident of Amodei, Ward No. 3, P.S.- Ramgarhwa, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Joint Secretary, Water Resources Department, Government of Bihar, Patna-cum-Enquiry Officer.
3. Additional Secretary, Water Resources Department, Bihar, Patna.
4. The Engineer-in-Chief, Water Resources Department (Headquarter), Government of Bihar, Patna.
5. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Muzaffarpur.
6. The Superintending Engineer, Flood Control Circle, Sitamarhi.
7. The Executive Engineer, Flood Control Planning and Monitoring Division, 18, Water Resources Department, Patna-cum-Presenting Officer.
8. The Executive Engineer, Bagmati Division, Sitamarhi.
9. The Assistant Engineer, Bagmati Sub Division, Bairstania, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Indu Bhushan, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh (GA-2)
	:	Mr. Binay Kr.Pandey (AC to GA-2)

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

5 14-12-2021 Heard learned counsels for respective parties.

In the instant petition petitioner has prayed for
following reliefs:

*That this writ application is directed
for issuance of an appropriate writ in
the nature of certiorari for quashing
the impugned order of penalty issued
vide Memo No.2087 dated 19.09.2018
(contained in Annexure-10) issued by*



the Respondent no.4, whereby and whereunder in a departmental proceeding penalty has been imposed for reduction of six time scale of pay permanently and in future increments of pay will be not payable and further for quashing of the impugned order of penalty issued vide Memo No. 2127 dated 04.10.2019 (contained in Annexure-12) issued by under the signature Additional Secretary, Water Resources Department, Bihar, Patna (Respondent no.3) under which after appeal which was filed against the impugned order of penalty dated 19.09.2018 issued vide Memo No. 2087 which has been rejected and order of penalty imposed earlier vide Memo No. 2087 dated 19.09.2018 has been kept in to-to i.e. for reduction to six lower stage in time scale of pay permanently and in future increments of pay will be not payable.

Petitioner has assailed the impugned order dated 19.09.2018 on the score that petitioner has not been provided certain documents and further he was not permitted to examine the witnesses and the Enquiry Officer has not asked the petitioner whether he intends to examine or cross-examine the witnesses are not?

Per contra, Learned counsel for the State on instruction submitted that requisite documents have been



supplied to the petitioner as is evident from the records. In so far as non-examination of witnesses, the Inquiry Officer has not asked the petitioner to whether the witness to be examined or cross-examine the witnesses or not ?

In the light of these facts and circumstances and the fact that the petitioner has not been provided opportunity of examination and cross-examination of witnesses and such an opportunity was not given by the Enquiry Officer as is evident from the record. In so far as supplying documents are concerned, it is evident that petitioner was provided documents, therefore, the petitioner has made out a case only on the score that he was not provided opportunity of examination and cross-examination of witnesses.

Thus impugned order 19.09.2018 (Annexure-10) is set aside. Matter is remanded to the enquiry officer to continue the enquiry proceedings from the defective stage relating to examination of witnesses and cross-examination of witnesses and conclude the enquiry within a period of three months from the date of receipt of this order. In respect of monitory benefits are concerned, the disciplinary authority is hereby directed to take note of decision of the **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. With these observations, the appeal stands disposed of. No costs."*

The aforesaid decision shall be taken in order to



extend any monitory benefits to the petitioner or not?

Accordingly, this petition stands allowed.

(P. B. Bajanthri, J)

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