

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6856 of 2021

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Suresh Ram son of Late Jaigovind Ram, Resident of Village-Marautpur, P.S.-
Desari, District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Vaishali at Hajipur.
3. The Conducting Officer-cum-Sub Divisional Officer, Mahnar, District-Vaishali.
4. The Presenting Officer-cum-Block Development Officer, Desari, District-Vaishali.
5. The Divisional Commissioner, Tirhut Division, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Advocate
For the Respondent/s : Mr. Manish Kumar, GP 4

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

Date : 09-12-2021

Heard learned counsels for respective parties.

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

*“(i) For quashing the order issued
by the District Magistrate -cum Collector,
Vaishali contained in Memo No. 32 dated
20.05.2014 whereby and whereunder the
petitioner has been dismissed from the
services in a departmental proceeding.*

*(ii) For quashing of the order
passed by the learned Divisional
Commissioner, Tirhut Division, Muzaffarpur
dated 14.02.2020 in Service Appeal Case No.
206 of 2019, whereby the appeal of the*



petitioner has been rejected and the order of dismissal has been affirmed.

(iii) For direction to the respondents to reinstate the petitioner in services with all consequential monetary benefits.

(iv) For any other relief/reliefs to which the petitioner is found entitled to.”

Petitioner was subjected to disciplinary proceeding and it was concluded in imposition of punishment. Feeling aggrieved and dissatisfied with the order of disciplinary authority petitioner preferred an appeal and appeal was rejected, hence, the present petition.

Learned counsel for the petitioner submitted that there is a violation Rule 17 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

In this regard, State counsel was directed to file counter affidavit on 24.09.2021. The order was not complied. In the result, on 17.11.2021, the following order was passed:-

“To comply the order dated 24.09.2021, relist the matter on 09.12.2021, failing which adverse order shall be passed.”

Today, learned counsel for the State on instruction submitted that in the inquiry proceedings, the inquiring authority has not followed the procedure laid down under Rule 17 of Bihar



Government Servants (Classification, Control and Appeal) Rules, 2005.

In the light of these facts and circumstances and the decision of Hon'ble Apex Court 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."*

Accordingly, impugned orders dated 20.05.2014 (Annexure-1) passed by the District Magistrate-cum-Collector, Vaishali and 14.02.2020 (Annexure-2) passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur are set aside.

The matter is remanded to the disciplinary authority to continue inquiry proceedings from the defective stage and complete the proceedings within a period of three months from the date of receipt of this order. Petitioner shall be extended all service benefits and monetary benefits in the light of the aforesaid decision and it is subject to outcome of afresh orders to be passed.



With the aforesaid observations, writ petition stand disposed off.

(P. B. Bajanthri, J)

Vikash/-

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

