

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11038 of 2021

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Anil Kumar Singh Son of Late Fakira Singh Resident of Village Agwanpur,
Police Station Barh, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Bihar State Food and Civil Supplies Corporation through its Managing Director, Bihar, Patna.
3. The Managing Director, Bihar State Food and Civil Supplies Corporation, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rupak Kumar
For the State	:	Mr.S. Raja Ahmad (AAG-5) Mr. Anisul Haque, AC to AAG-5
For BSFC	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 16-12-2021

None appears for the petitioner.

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

“That this writ application is filed for issuance of writ in the nature of mandamus directing the respondents to pay subsistence grant/ subsistence allowance from 14.09.2002 to 14.12.2002 at the rate of 50% and from 14.12.2002 to 31.01.2021 at the rate of 75% with all consequential benefits to the petitioner in view of enhanced subsistence grant/subsistence allowance in the light of provision of Bihar State Food and Civil Supplies Corporation service conduct and disciplinary Rules 2001.”



3. In a disciplinary proceeding petitioner was dismissed from service and petitioner has exhausted all the remedies and ultimately he got relief in CWJC No. 4042 of 2015 decided on 25.02.2020 in LPA No. 801 of 2016 in which the proceedings of dismissal and consequently orders were set aside and the matter was remanded to the disciplinary authority to commence enquiry from the defective stage.

4. In this backdrop, the intervening period from the date of dismissal till passing of a fresh order, the petitioner is entitled to certain monetary benefits which is not extended as is evident from the records. Therefore, the disciplinary authority/appointing authority is hereby directed to decide the monetary benefits during the intervening period from the date of dismissal till passing of fresh order in terms of order passed in LPA No. 801 of 2016 dated 25.02.2020 in the light of Apex Court's decision rendered in the case of ***Managing Director, ECIL V. B. Karunakar*** reported in ***(1993) 4 SCC 727*** read with the case of ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.*** reported in ***(2011) 5 SCC 142*** para 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 or arrears of salary till date. Shri



Bandhopadhyay, 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 and Union of India V. Y.S. Sadhu*, 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.”

5. The appointing authority/disciplinary authority to take note of the aforesaid judicial pronouncements in deciding the petitioner's grievance. Petitioner is entitled to monetary benefits to what extend, the same shall be considered within a period of two months from the date of receipt of this order.

6. With the above observations, the instant petition stands disposed of.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2021
Transmission Date	

