

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6674 of 2009

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Deepak Kumar, son of Late Ramakant Prasad, resident of Village Masaurhi,
Police Station Masaurhi, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through Director-in-Chief, Health Services, Government of Bihar, Patna.
2. The Civil Surgeon-cum-Chief Medical Officer, Jehanabad.
3. Dr. Baleshwar Chaudhary, (the then Civil Surgeon, Jehanabad between July 1994 to December 1995) at present reverted to the post of Additional Chief Medical Officer and placed under suspension, C/o Secretary Department of Health and Family Welfare Government, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Verma, Advocate
For the Respondent/s : Mr.AAG-9

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

Date : 16-12-2021

Heard learned counsel for the parties.

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

“A. For quashing/setting aside alleged part of enquiry report of 3 members committee of the Health Department Government of Bihar date Nil (Annexure- 30) whereby case of petitioner (who worked for more than 10 years in service and whose appointment was already earlier confirmed by this Hon'ble High Court, the Hon'ble Supreme Court as also by the state respondent superior authorities in consequence of his earlier termination of service three when he under his earlier twice termination of service stands reinstated in service with payment of arrear and current salary by maintaining continuity of his service and thereafter under his trice thrice termination of service his termination order



was set aside with again direction dated 8.2.2003 (Annexure-25) of petitioner to be reinstated in service by this Hon'ble High court in C.W.J.C. No. 14393/02 (Deepak Kumar Vs. The State of Bihar & others) out of total 295 analogous writ cases giving rise to L.P.A. No. 946/2003 (The State of Bihar & others Vs. Purendra Sulankit) with 819 analogous cases i.e. 820 cases including L.P.A. No. 151/2004 (State of Bihar & others Vs. Deepak Kumar relating to petitioner disposed by order/observation dated 26.6.2006 (Annexure-28) for consideration of regularisation of service of affected employees including petitioner, all followed by order dated 27.4.95 (Annexure-4) in C.W.J.C. No. 6466/93 (Deepak Kumar Vs. The State of Bihar & others) order dated 27.12.97 (Annexure-12) of the Regional Dy. Director, Health Services Magadh Division Gaya order dated 21.12.98 (Annexure-13) in C.W.J.C. No.7433/96 order dated 14.9.99 (Annexure-14) of dismissed of L.P.A. No. 238/99 of the Division Bench of this Hon'ble preferred by the state respondents against aforesaid writ courts order dated 21.12.98 order dated 10.5.2000 & 21.7.2000 (Annexure-15 series), order dated 3.8.2000 (Annexure-16) of the Secretary-cum-Health Commissioner Health Department, Government of Bihar, Patna the Hon'ble S.Cs dismissed order dated 10.1.2000 (Annexure-17) of S.L.P. No. 19478/99. (State of Bihar & others Vs. Deepak Kumar) preferred against Division Bench order dated 14.9.99 in L.P.A. No. 238/99 aforesaid, order dt. 8.9.2003 (Annexure-25) in C.W.J.C. No. 14393/02 (Deepak Kumar Vs. The State of Bihar & others) & the D.B's order observation dated 26.6.2006 (Annexure-28) in L.P.A. No. 151/2004 (State of Bihar & others Vs. Deepak Kumar) has been allegedly, thrown from category 'A' of irregular candidates of the previous enquiry report of 5 members committee of the said



Health Department with affidavit hereto (Annexure-29) of the state appellants filed in L.P.A. No. 946/03 & its analogues cases (State of Bihar & others Vs. Purandra Sulankits & others respondent of other analogous cases) with placement of petitioner thereby at Sl. No. 15 under category A of irregular candidates by wrongly placing him now thereby in the list of forged category of candidates at sl. no. 45 in most illegal arbitrary mechanical manner coupled with violation of aforesaid direction of this Hon'ble High Court, Hon'ble S.C. & Superior respondent authorities.

It is stated that no communication of placing & showing petitioner, allegedly under category of forged candidates has ever been given and served upon petitioner however, could be able to learn & get same later on from another, reliable sources. Further ignoring aforesaid directives of the Hon'ble High Court the Hon'ble Supreme court and the State respondent superior authorities no cogent reasons were assigned and petitioner was compelled to file M.J.C. No. 785 of 2008 (Contempt) when this Hon'ble High Court has been pleased to dispose of contempt proceeding with direction/observation that petitioner will be at liberty to challenge the decision of the concerned authority through an appropriate proceeding in accordance with law by order dated 13.5.2009 (Annexure-32)

B. For reinstating petitioner back in service as Head clerk in the office of Civil Surgeon-cum-Chief Medical Officer, Jehanabad with all consequential benefits by maintaining continuity of his service as stood under aforesaid directives of this Hon'ble High court, the Hon'ble Supreme court and state respondent superior authorities even under account of non observation of the Division Bench of this Hon'ble High Court vide order dated 26.6.2006 (Annexure-



28) in L.P.A. No. 946/03 (State of Bihar & others Vs. Purandra Sulankit & others) with analogous cases aforesaid including L.P.A. No. 151/2004 (The State of Bihar & others Vs. Deepak Kumar) relating to petitioner.

C. And also for other necessary reliefs/writs/orders & directions in view of factual and legal profiles of the case.”

3. Petitioner was terminated while holding the post of Class-III on the allegation that he had furnished fake documents. Even assuming that the petitioner produced fake documents and obtained order of appointment in that event it is necessary to initiate a domestic enquiry and in a domestic enquiry it is to be proved that the petitioner had furnished fake documents.

4. Perusal of Annexure-30 dated 29.06.2007, it is evident that no show-cause notice/no enquiry has been held.

5. Today, learned counsel for the State, on instruction from the Director-in-Chief, Health Service, has submitted that notice was issued before issuance of termination order. If it is so, the order of termination should have disclosed relating to issuance of notice or submission of petitioner's explanation and its consideration. Assuming that the petitioner has not filed explanation to the show-cause notice even then the competent authority, who has terminated the services of the petitioner, should have reflected in the order of termination that the petitioner has not responded to the notice. Therefore, it is a clear case of total non-



application of mind in issuance of order termination dated 29.06.2007. The same is set aside.

6. The concerned respondent authority is hereby directed to initiate domestic enquiry and conclude the same within three months from the date of receipt of this order.

7. During the intervening period from the date of termination till fresh order is passed, the petitioner is entitled to monetary benefits in the light of Apex Court decision in the case of **Managing Director ECIL Hyderabad vs B. Karunakar Etc.**, reported in **(1993) 4 SCC 727** read with **Chairman-cum-Managing Director, Coal India Ltd. & Ors. Vs. Ananta Saha & Ors** , 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.”

8. The disciplinary authority/appointing authority is hereby directed to take note of the aforesaid decision of the Apex Court in order to extend monetary benefits during the intervening



period i.e. from the date of termination till the date fresh order is passed.

9. The petition stands disposed of.

(P. B. Bajanthri, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.12.2021
Transmission Date	NA

