

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24397 of 2013

=====

Suresh Mallick Son of Late Bishundeo Mallick Resident of Village - P.O. Manjhaul, P.S. Cheria Bariyarpur Dist Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director General and Inspector General of Police, Bihar, Patna.
3. The D.I.G. of Police, Northern Zone, Military Police Muzaffarpur.
4. The Commandant B.M.P. 8 Begusarai.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Subhash Pd. Singh, SC

=====

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

Date : 06-12-2021

Heard learned counsels for respective parties.

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

“For issuance of appropriate writ, order or direction to quash the order of dismissal dated 20.08.2010 (Annexure-1) passed by the Commandant, B.M.P. 8, Begusarai and order of D.I.G. of Police, Military Police, Norther Zone, Muzaffarpur dated 14.01.2011 (Annexure-2) and order of Director General of Police, Bihar, Patna dated 01.02.20212 (Annexure-9) by which memorial has been rejected and for grant of all consequential benefits.”

Petitioner was subjected to disciplinary proceedings and it was concluded in imposition of penalty of dismissal on 20.08.2010. One of the contention raised in the present petition



is that reply to the second show cause notice has not been considered by the disciplinary authority. In other words, there is non-compliance of Rule 18 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 for short Rules, 2013.

Perusal of disciplinary authorities order dated 20.08.2010 there is not even reference to second show cause notice dated 20.08.2010 read with petitioners reply dated 30.07.2010, thus, the petitioner has made out a *prima facie* case so as to interfere with the disciplinary authority and appellate authority order in non-compliance of Rule 18.

Accordingly, both the order of disciplinary authority dated 20.08.2010 (Annexure-1) and rejection of appeal dated 14.01.2011 (Annexure-2) are set aside.

The disciplinary authority is hereby directed to proceed from the defective stage and complete proceedings within a period of two months from the date of receipt of this order. Petitioner is entitled to subsistence allowance for the reasons that if the dismissal order is set aside on technicality, in that event, the petitioner would be treated as placed under suspension in the light 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 disciplinary/appointing authority is hereby directed to regulate intervening period from the date of dismissal to the date of the reinstatement. The same shall be calculated and disbursed in favour of the petitioner within a period of two months from the date of receipt of this order.

Accordingly, writ petition stands disposed off.

(P. B. Bajanthri, J)

Vikash/-

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

