

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12752 of 2021**

Dr. Manindra Kumar Manish S/o Late Sidheshwar Prasad Mandal, Resident of Binodpur, P.S. - Katihar Sadar, District - Katihar, Pin - 854105.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Director, Health Department, Government of Bihar, Patna.
3. The Additional Director Cum Conducting Officer, Health Department, Government of Bihar, Patna.
4. The Under Secretary, Health Department, Government of Bihar, Patna.
5. The District Magistrate, Katihar, District - Katihar.
6. The Civil Surgeon, Katihar, District - Katihar.

... .. Respondent/s

**Appearance :**

|                      |   |                                    |
|----------------------|---|------------------------------------|
| For the Petitioner/s | : | Mr. Rajendra Narayan, Sr. Advocate |
|                      | : | Mr. Bhola Prasad, Advocate         |
|                      | : | Mr. Shubham Kumar, Advocate        |
|                      | : | Mr. Pratik Kumar, Advocate         |
| For the Respondent/s | : | Mr. Ajay Behari Sinha, GA 9        |
|                      | : | Mr. Upendra Kumar Singh, Advocate  |

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**ORAL JUDGMENT**  
**Date : 20-12-2021**

In the instant petition, petitioner has sought for the following relief/reliefs:

- “(i) For setting aside the order of Health Department, State of Bihar issued vide Memo No. 1187 dated 18.11.2016 initiating Departmental Proceedings against the Petitioner;
- (ii) For setting aside the learning's of the Conducting Officer issued vide Memo No. 58 dated 05.04.2018 finding Petitioner guilty on three (3) charges out of six (6) charges framed;
- (iii) For setting aside the order of penalty issued by Health Department, Government of Bihar vide Memo No. 260(9) dated 08.06.2021 through



which the Petitioner was made to compulsorily retire on a lower pay scale;

(iv) For directing the Respondent Authorities to reinstate the Petitioner on the post held by him prior to the order of compulsory retirement with all consequential benefits upon retirement;

(v) For any other relief (s) for which the petitioner is found to be entitled in the facts and circumstances of the case.”

One of the contention raised in the present petition is that there is non compliance to Rule 18 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as CCA Rules, 2005). Respondents have filed their counter statement/affidavit in which they have not responded to the compliance of Rule 18 of CCA Rules, 2005 or not? Therefore, one has to proceed that there is a non compliance of Rule 18 of CCA Rules, 2005. Accordingly, petitioner has made out a case.

Hence, order dated 08.06.2021 is set aside and writ petition stands allowed in part.

Matter is remanded to the disciplinary authority to commence and complete the enquiry from the defective stage within a period of three months from the date of receipt of this order. During the intervening period from 08.06.2021 till 30.09.2021 with reference to date of compulsory retirement read with the normal date of retirement, if petitioner was in service, it is



required to be decided in terms of Apex Court decision in

***Managing Director, ECIL, Hyderabad and Others Vs. B.***

***Karunakar and Others*** (Para 31). Para 31 reads as under:

“Hence, in all cases where the enquiry officer’s report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts. Since it is the Courts/Tribunal which will apply their judicial mind to the question and given their reasons for setting aside or not setting aside the order of punishment, (and for any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to



what benefit, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

In yet another case, Apex Court in the case of ***Chairman Cum Managing Director, Coal India Ltd. Vs. Ananta Saha 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.”

Leaving open to urge any other contents before disciplinary authority or before any forum. The above exercise shall be completed within a period of three months from the date of receipt of this order.

**(P. B. Bajanthri, J)**

GAURAV S./-

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