

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10704 of 2015

Radhey Krishna Singh, Son of Late Lal Bihari Singh, Resident of village-
Dhawapar, PS- Parasbigha, District- Jehanabad

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Excise and Prohibition Department, Govt. of Bihar, Patna
3. The Chairman cum Member, Board of Revenue, Govt. of Bihar Patna
4. The Commissioner, Excise and Prohibition Department, Bihar, Patna
5. Deputy Commissioner, Excise and Prohibition Department, Bihar, Patna
6. The Superintendent of Excise, Madhepura
7. The Superintendent of Excise, Banka

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Indu Bhushan, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, GA-2
		Mr. Binay Kumar Pandey, AC to GA-2

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

Date : 16-12-2021

Heard learned counsel for the parties.

2. The petitioner in the instant petition has prayed for the following reliefs:

“i. For quashing of office order contained in Memo no. 1204 dated 20.03.14 passed by the Excise Commissioner, Bihar, Patna by which petitioner has been dismissed from service in purported exercise of powers under Rule 2(14)(xi) of Bihar CCS Rules (amended 2007).

ii. For quashing of order dated 14.11.2014 passed by Chairman cum Member, Board of Revenue, Bihar, Patna passed in case no. 14/2014 (Sri Radhey Krishna Singh Vs. the State of Bihar & Ors.) by which service appeal filed by the petitioner has been dismissed upholding order of dismissal contained in Memo no. 1204 dated 20.03.14.

iii. Further for a direction upon respondents to reinstate the petitioner in service on the post of Sub Inspector,



Excise with entire consequential benefits including due salary and other service benefits including promotion etc. admissible to the petitioner.

iv. And/or for any other relief/relief to which petitioner is entitled in the facts and circumstances of the present case.”

3. Short question for consideration in the present petition is whether the petitioner has been provided ample opportunity/ample time to submit his explanation to the second show-cause notice dated 06.01.2014 read with 17.02.2014. The petitioner was subjected to disciplinary proceeding. The enquiry officer has exonerated the petitioner. The disciplinary authority disagreeing with the enquiry officer's report, issued show-cause notice on 06.01.2014 so as to seek explanation from the petitioner within a period of 15 days.

4. Since the reasons have not been assigned in the show-cause notice dated 06.01.2014, therefore, the petitioner submitted communication to the disciplinary authority on 13.02.2014 stating that he has not received show-cause notice timely and reasons to disagreement is not forth coming so as to give effective reply to such show-cause notice.

5. Pursuant to the communication dated 13.02.2014 of the petitioner, the disciplinary authority issued one more notice on 17.02.2014 and it has been communicated to the petitioner on



21.03.2014 and it is being disputed by the learned counsel for the State that it was communicated timely.

6. The State counsel could not appreciate this Court in producing necessary materials to show that show-cause notice was communicated to the petitioner prior to 21.03.2014 and prior to 15 days from the date of dismissal order dated 20.03.2014. Therefore, one has to draw inference that the petitioner has not been given ample opportunity to submit his explanation to the show-cause notice dated 06.01.2014 read with 17.02.2014, hence the petitioner has made out a case. According, the impugned order of dismissal dated 20.03.2014 stands set aside. The matter is remanded to the disciplinary authority.

7. The petitioner is hereby directed to furnish his detailed explanation to both the notices (06.01.2014 and 17.02.2014) within a period of two months from today. On receipt of petitioner's explanation, the disciplinary authority is hereby directed to pass afresh order in the disciplinary proceeding in according with the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

8. The intervening period from the date of dismissal dated 20.03.2014 till final order is passed in the disciplinary proceeding. The disciplinary authority is hereby directed to take note of the 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.”

9. The intervening period from the date of dismissal till final order is passed in respect of monetary benefits, the disciplinary authority is hereby directed to take note of the aforesaid decision of the Apex Court, thereafter, pass a speaking order within a period of one month.

10. The dismissal and appellate authority orders dated 20.03.2014 and 14.11.2014 respectively are set aside.

(P. B. Bajanthri, J)

uday/-

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

