

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13178 of 2018

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Ishwar Dayal S/o Bishwanath Prasad R/o Mohalla-Ram Krishna Mission Lane, Langartoli, Police Station- Kadam Kuan, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director, Directorate of Economics and Statics, Planning and Development Department. Govt. of Bi
3. The Joint Director, Directorate of Economics and Statics, Planning and Development Department, Govt
4. The Additional Secretary-cum-Chief Vigilance Officer, Rural Development Department, Govt. of Bihar,
5. The Additional Collector, Patna-cum-Conducting Officer, Departmental Inquiry Patna Commissioner, Pa

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mukesh Kumar, Advocate
For the Respondent/s : Mr.Harish Kumar- GP 8

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

Date : 13-12-2021

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

“I. For quashing the office order no. 361 contained in memo no. 2387 dated 31.10.2017 issued by the respondent no.2 and reinstate the petitioner with all consequential monetary benefit.

II. For quashing the Appellate order bearing no.167 contained in Memo No. 1010 dated 11.5.2018 issued by the respondent no.1 whereby and whereunder the appeal preferred by the petitioner against the order of dismissal has been rejected.

III. For any other relief/reliefs to which the petitioner may be entitled to.”

On 29.11.2021 the following order was passed:



“The petitioner has assailed the order of the disciplinary proceeding and appellant authority in respect of punishment.

One of the contention raised in the present petition is that initiation of enquiry is not in accordance with Sub-Rule (3) and (4) of Rule 17 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. On this point the 2nd respondent-director who has initiated a disciplinary proceeding against the petitioner is hereby directed to file an affidavit as to whether is there any compliance to the aforesaid provision or not. Such affidavit be filed before the next date of hearing after serving a copy to the other side. The 2nd respondent is also hereby directed to appraise if there is compliance of the aforesaid provision on what date it was complied. Be made known to this Court by furnishing material information.

Copy of this order be given to the State counsel.

Re-list this matter on 06.12.2021.”

The respondents have not apprised this Court relating to compliance of Sub Rule (3) and (4) of Rule 17 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. In the result, further proceedings from the date of issuance of charge memo till passing of penalty order and Appellate Authority's order stands nullified.

Accordingly, orders dated 31.10.2017 and 11.05.2018 are set aside. Having regard to the fact that impugned orders are set aside on technical ground/legal issue. Matter is remanded to the disciplinary authority to commence enquiry from the defective stage and complete the enquiry proceedings within a period of four months from the date of receipt of this order.



In the meanwhile, the disciplinary authority is hereby directed to take note of paragraph 46 to 50 of Apex Court decision in *Coal India Ltd. Vs. Ananta Saha reported in (2011) 5 SCC 142*, for extending monetary benefits paragraph nos. 46 to 50 of the aforementioned 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* [(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.”



In the result, petition stands allowed to the above extent.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2021
Transmission Date	NA

