

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15551 of 2016

Pranwesh Singh son of Sri Bipin Bihari Singh Permanent Resident of Krishna Toli, Road No.-03, Brahmpura, P.S.- Brahmpura, District- Muzaffarpur at present residing at Krishna Toli, Road No.-3, P.O.- M.I.T. P.S.- Brahmpura District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Departmental Enquiry, General administrative Department, Bihar, Patna.
3. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Additional Secretary, Public Health Engineering Department, Government of Bihar, Patna.
5. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Patna.
6. The Special Executive Officer, Public Health Engineering Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli, Sr. Advocate Mr. Sanjay Kumar, Advocate Mr. Anil Kumar Singh, Advocate
For the State	:	Mr. Saroj Kr. Sharma, AC to AAG-3

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

Date : 18-04-2022

Registry is hereby directed to not to show the
pendency of I.A. No. 01 of 2022.

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

“(a) For issuance of writ in
the nature of Certiorari quashing the
Notification contained in Memo no. 442
dated 06.06.2016 issued by the Joint
Secretary, Public Health Engineering
Department (hereinafter referred to as



PHED) whereby the Petitioner has been visited with the 'major penalty' of dismissal from the service under Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the Bihar CCA Rules).

(b) For issuance of Writ in nature of Certiorari quashing the Memo of Charge dated 06.12.2013 wherein it has been alleged that the Petitioner has been in possession of the assets disproportionate to his known source of income and for which Economic Offence Case No. 39/2013 registered by Economic Offence Unit, Patna (hereinafter referred to as EOU for brevity)- under Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act, 1988 against the petitioner for acquiring disproportionate asset to his known source of income- as the alleged charges had not been proved.

(c) For issuance of writ in nature of Certiorari quashing the Memo No. 559 dated 06.12.2013 issued by the Additional Secretary Public Health Engineering Department, Government of Bihar, whereby the order to initiate the Departmental Proceeding bearing Departmental Proceeding No. 71/13 against the petitioner had been passed under Rule 17 of the Bihar CCA Rules, 2005 for the alleged misconduct committed by the petitioner in terms of Rule 19(2), 19(3) and 19(6) of the Bihar Government Servant Conduct Rules, 1976.

(d) For issuance of writ in the nature of Mandamus as a consequence of setting aside the dismissal order – directing the Respondent Authorities for re-instating the petitioner with full back wages and



consequential benefits as the petitioner has not been gainfully employed elsewhere since the date of his dismissal.

(e) For any other writ/writs, order/orders, directions for which the petitioner is found to be entitled in facts and circumstances of the present case.”

Petitioner while working as Executive Engineer in Public Health Engineering Department, Begusarai he was subjected to disciplinary proceedings by framing article of charges on 06.12.2013 in respect alleged violation of Rule 19(2)(3) of the Bihar Servants Conduct Rules 1976. Simultaneously, criminal proceedings were stated to have been launched against the petitioner in filing F.I.R. on 03.09.2013 for the offence under Sections 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988 in which charge-sheet is yet to be filed.

Learned counsel for the petitioner submitted that while filing charge-memo there is violation of Rule 17(3)(ii)(b) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (For short “Rules, 2005”).

State counsel has not disputed that there is non-compliance to the aforesaid provision.

Heard learned counsels for respective parties.



On short ground the matter is to be allowed while remanding the matter to the disciplinary authority to proceed fresh from the defective stage. Rule 17(3)(ii)(b) reads as under:-

“17. Procedure for imposing major penalties.-

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.”

Perusal of the charge-memo it reveals only furnishing of list of three documents. However, author of the documents has not been cited as witness. In the absence of witness being cited, question of relying on cited documents is impracticable. Apex Court time and again held that in a domestic enquiry author of the document is required to be examined and cross-examined. In the present case object of providing list of documents and list of such witness by holding



the article of charges are proposed to be sustained would suffice that author of documents were to be examined and cross-examined in a domestic enquiry. Thus, the disciplinary authority has failed to identify the witnesses in support of the list of documents. On this legal issue the impugned orders dated 06.06.2016 and 06.12.2013 stand set aside and the matter is remanded to the disciplinary authority to commence enquiry from the defective stage and conclude the same within a period of six months from the date of receipt of this order.

The intervening period from the date of dismissal till final order is passed in the disciplinary proceedings on remand is required to be examined in the light of Apex Court's Decision rendered in the case of ***Managing Director, ECIL V. B. Karunakar*** reported in ***(1993) 4 SCC 727*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.*** reported in ***(2011) 5 SCC 142*** para 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 or arrears of salary till date. Shri Bandhopadhyay, 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 and Union of India V. Y.S. Sadhu*, 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 authority has to take two decisions; one is whether petitioner is entitled to be re-instated or he should be placed under suspension within two months. The other decision is required to be taken is how to regulate the date of dismissal till passing of final order. In that regard also disciplinary authority is required to take a decision. Such decision shall be taken within a period of six months from the



date of receipt of this order.

The disciplinary authority is also hereby directed to verify as to why the charge-sheet has not been filed in respect of Prevention of Corruption Act case.

With the above observations, the present petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2022
Transmission Date	

