

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6410 of 2021

=====

Pappu Kumar, Son of Jaychandra Sah Resident of village- Khawachandra Tola, P.O.- Kiranpur, P.S.- Medani Chauki, District- Lakhisarai (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna
2. The Principal Secretary, Home Department, Government of Bihar, Patna
3. The Director General of Police (Administration) Sardar Patel Bhawan, Bailey Road, patna
4. The Deputy Inspector General of Police, Bihar Military Police (Central Zone), Patna, District- Patna
5. The Commandant, Bihar Military Police-2, Dehri, District- rohtas

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Advocate
		Mr. Santosh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Lalit Kishore (Ag)

=====

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

Date : 06-04-2022

Heard learned counsel for respective parties.

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

“(i) To issue an appropriate writ/order/direction in the nature of certiorari for quashing the Order dated 01.04.2020 passed by the Commandant, Bihar Military Police-2, Dehri as contained in Memo No. 1131 dated 01.04.2020 by which the Petitioner has been dismissed from Service (as Contained in Annexure-5).

(ii). To issue writ order an appropriate direction, of certiorari for in the nature quashing the Order dated 07.01.2021 passed by the Deputy Inspector General of Police, Bihar Military Police (Central Zone)



Patna as contained in Memo No. 63 dated 07.01.2021 by which the Appeal of the Petitioner has been rejected (as contained in Annexure-7).

(iii). To issue an appropriate writ/ order / direction, in the nature of mandamus commanding the Respondents to reinstate the Petitioner in service with all consequential benefits i.e. back salary, etc. iv. To any other relief or reliefs for which the Petitioner is entitled to.

(iv) To any other relief or reliefs for which the petitioner is entitled to.”

Petitioner has been dismissed from service while invoking Article 311(2)(b) of the Constitution. The disciplinary authority has not assigned any reasons as to why he is dispensing the inquiry. In the absence of recording reasons invoking Article 311(2)(b) of the Constitution is impermissible.

This Court in identical matter decided on 09.03.2022 in **CWJC No. 10670 of 2020 (Lal Babu Manjhi vs. The State of Bihar and Ors.)** wherein it has been taken note of interpretation of Article 311(2)(b) of the Constitution. In the light of the same, dismissal order dated 01.04.2020 (Annexure-5) is set aside. Accordingly, the petition stands allowed and it is directed to the disciplinary authority to proceed further in initiating inquiry or invoking Article 311(2)(b) in accordance with law. The above exercise



shall be completed within a period of six months from the date of receipt of this order.

The intervening period from the date of dismissal till reinstatement and keeping the petitioner under suspension and further monetary and other service benefits' entitlement shall be taken note of with reference to 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 auto-*



matically 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 is hereby directed to pass order as to whether the petitioner is entitled for reinstatement or suspension in the light of the aforesaid decision of Hon’ble Apex Court and take a decision within a period of two months from the date of receipt of this order.

(P. B. Bajanthri, J)

Vikash/-



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

