

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6863 of 2021

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Anrudh Kumar Son of Shri Narsingh Paswan resident of village- Asma, P.O.-
Mheshdih, P.s.- Akbarpur, District- Nawada, Pin Code- 805121

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary (Home), Police Department, Bihar, Patna
2. Director General of Police, Bihar, Patna
3. Inspector General of Police, Central Range, Patna
4. Senior Superintendent of Police, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate
		Mr. Rudrank Shivam Singh, Advocate
For the State	:	Mr. Ajay Kumar, AC to GP 4

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

Date : 31-03-2022

Heard learned counsel for respective parties.

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

“(i) Issuance of a direction, order or writ, including writ in the nature of certiorari for quashing the Patna District order no. 1382/2020 dated 26/3/2020 bearing memo no. 2579 passed by the Senior Superintendent of Police, Patna, by which while invoking the provisions under article 311(2)(b) of the Constitution of India, amongst other persons, the petitioner has been dismissed from the service in the most illegal and arbitrary manner;

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order dated 27/01/2021 bearing memo no. 24 passed by the Inspector General of Police, Cen-



tral Range, Patna by which appeal preferred by the petitioner against the aforesaid Patna District order no. 1382/2020 dated 26/3/2020 bearing memo no. 2579 passed by the Senior Superintendent of Police, Patna, by which the petitioner has been dismissed from service has been rejected;

(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to take steps towards reinstating the petitioner in the services of Bihar Police in the capacity of Constable and accordingly, allow his joining and extend him all the consequential benefits, including payment of arrears of salary that he has been deprived on account of the order of dismissal from service having passed against him in the most illegal and arbitrary manner;

(iv) Issuance of a declaration holding that the action on the part of the (iv) concerned respondent authorities in dismissing the petitioner from service purportedly in terms of article 311(2)(b) of the Constitution of India is completely misconceived and misplaced in the eyes of law as no just and cogent reason has been assigned for recording a finding to the effect that it was not reasonably practical to hold an enquiry before dismissing the petitioner from service;

(v) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”

Petitioner while working as a Constable he was alleged to have involved in firing cases. Arising out of the aforesaid inci-



dent petitioner is stated to be under judicial custody. Based on the fact that petitioner was in judicial custody, he was dismissed from service on 26.03.2020 and it was affirmed by the Appellate Authority on 27.01.2021. Dismissal order is while invoking Article 311(2)(b) of Constitution of India.

This Court in identical matter in CWJC No. 10670 of 2020 on 09.03.2020 has decided and this Court has taken note of Article 311(2)(b) of the Constitution of India. Accordingly, the impugned order dated 26.03.2020 (Annexure-3) and order dated 27.01.2021 (Annexure-6) stands sets aside reserving liberty to the concerned respondent to initiate inquiry and conclude the same at the earliest. The intervening period shall be determined subject to outcome of the inquiry proceedings to be initiated in the light of 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 Bandyopadhyay, 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 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 is hereby directed to take decision whether petitioner is entitled for reinstatement or he shall be kept under suspension till conclusion of the inquiry to be initiated or not in the light of the observation made by the Hon’ble Apex Court in the aforesaid decision. The above exercise shall be completed within a period of two months from the date of receipt of this order.

Accordingly, the present petition stands allowed.

(P. B. Bajanthri, J)

Vikash/-

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

