

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13867 of 2014

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Jagnarayan Ram S/O Sri Bagadu Ram Residence of Vill. Hungora P.O.-
Nawhatta, P.S.- Balawoun, Dist- Kaimur Bhabhua

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors Home Department, Govt. of Bihar, Patna
2. The Director General of Police, Department of Home, Govt. of Bihar, Patna
3. The Inspector General of Police, Patna Range, Patna
4. The Deputy Inspector General of Police, Magadh Range, Gaya
5. The Superintendent of Police, Nawada
6. The Dy. S.P. Headquarter Nawada-cum-Enquiry Officer

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Sinha Adv.
Mr. Deepak Kumar Adv.
For the State : Mr.Ajay Kumar A.C to G.P 4

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 17-10-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following relief(s):-

**“That the present
application is being filed on behalf of the
petitioner for issuance of a writ/writs,
order/orders, direction/directions to the
respondents for the following reliefs.**

**(a) For issuance of a
direction to the respondents to
quash/setting aside the order dated
07/02/2014 passed by D.I.G Magadh
range Gaya vide memo no – 285 dated
07/02/2014 on the basis of the report
submitted by the Dy S.P (Hq) – cum –
conducting officer vide memo no – 228
dated 30/06/2013 in the departmental**



proceeding no – 29/2012 against the petitioner in which the major penalty has been imposed upon the petitioner dismissed him from the service without following the rules norms and the procedure of the departmental proceeding and without giving him any opportunity to be heard before the competent authority who examined altogether nine witnesses in one day in absence and behind the back of the delinquent/petitioner when admittedly the petitioner was in jail custody in vigilance case no 65/2012 in complete violation of the principle of natural justice which completely vitiate the departmental proceeding conducting by the conducting officer (Resp no-6).

(b) For issuance of a direction to the respondents concerned for setting aside the order dated 21/05/2014 passed by I.G Patna range Patna vide memo no 800 dated 21/05/2014 on the appeal preferred by the petitioner against the order dated 07/02/2014 passed by the disciplinary authority D.I.G Range Gaya.

(c) for issuance of a direction to the respondents to quash the enquiry report submitted by enquiry officer/conducting officer (Resp no-6) on 30/06/2013 in complete violation of the principle of natural justice without following the rules, norms and the procedure of the departmental proceeding and came out with the finding by proving the charge leveled against the petitioner.

(d) For any other relief/reliefs for which the petitioner is found entitled to be in the facts and the circumstances of the case.”



3. Petitioner was subjected to parallel proceedings on the alleged allegations relating to demand and acceptance of illegal gratification. The aforesaid incident resulted in placing the petitioner under suspension and he was sent to jail. Charge memo was issued on 15.09.2012. The inquiring officer has examined certain witnesses when the petitioner was in judicial custody. He was released from the judicial custody on bail on 11.02.2013. The official respondent were stated to have issued a notice of petitioner's appearance with reference to notice dated 09.03.2013 in the enquiry to examine certain witnesses. Thereafter, the inquiring officer had submitted report on 30th June 2013 based on that second show cause notice was prepared and it was not communicated to the petitioner. On the other hand D.I.G Gaya proceeded to impose the penalty of dismissal from service. The Petitioner has exhausted the remedy of appeal before the appellate authority and it was rejected on 21.05.2014, hence the present petition.

4. Learned counsel for the petitioner vehemently contended that the petitioner has not been provided opportunity of adducing evidence, certain witnesses have been examined behind the back of the petitioner when he was under judicial custody. One or two witnesses were stated to have been



examined in the presence of the petitioner after 09.03.2013. It is also submitted that second show cause notice along with the inquiring officer's report was not made available to the petitioner whereby the petitioner has been denied the opportunity in terms of the relevant provision. It is further submitted that appellate authority has also not apprised the aforesaid lacunas in the departmental inquiry.

5. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that certain witnesses have been examined in presence of the petitioner. Though show cause notice has been prepared along with the inquiring officer's report, at the same time, the department have not retained the material information to the extent that second show cause notice along with the inquiring officer's report was furnished to the petitioner. Having regard to the alleged charge relating to demand and acceptance of illegal gratification and it is a serious offence and petitioner is facing criminal proceedings and it is still pending consideration. Therefore, no interference is called for in so far as dismissal order read with appellate authority's order dated 21.05.2013.

6. Heard the learned counsels for the respective parties.



7. The petitioner was subjected to parallel proceedings, like disciplinary and criminal proceedings. As on today criminal proceedings is still pending. The petitioner is stated to have demanded and accepted illegal gratification in order to favour certain issues in the police department. He was placed under suspension on 13.09.2012, the date on which he was arrested. He was charge-sheeted on 15.09.2012 and it was concluded in imposition of penalty of dismissal from service on 07.02.2014 and it was affirmed by the appellate authority on 21.05.2014, hence the present petition.

8. Learned counsel for the petitioner vehemently contended that the petitioner has not been provided an opportunity of examination and cross-examination of the relevant witnesses prior to 11.02.2013, the date on which the petitioner was released on bail from judicial custody. No doubt the petitioner was permitted to examine one or two witnesses. At the same time, such of those who have examined prior to 11.02.2013, the petitioner has not been provided an opportunity of cross-examine of such of those witnesses. It is also submitted that it was impracticable to the petitioner to cross-examine such of witnesses who have examined prior to 11.02.2013 as he was in judicial custody. The aforesaid contention is appreciable for



the reasons that imposition of major penalty and denial of reasonable opportunity of examination and cross-examination of relevant witnesses before the inquiring authority has been denied to the petitioner. Further contention of the petitioner that the petitioner has not been provided second show cause notice along with the inquiring officer's report and it was disputed by the learned counsel for the State. However, State counsel could not apprise this court in so far as providing second show cause notice along with the inquiring officer's report has been served on the petitioner.

9. Perusal of the disciplinary authority order dated 07.02.2014 or appellate authority order dated 21.05.2014 does not reveal relating to service of second show cause notice along with the inquiring officer's report on the petitioner. Therefore, even on this count the petitioner has made out a *prima facie* case. Accordingly the impugned order dated 07.02.2014 read with appellate authority's order 21.05.2014, Annexures- 10 and 12, are set aside.

10. The matter is remanded to the disciplinary authority to commence inquiry from the defective stage. The disciplinary authority is hereby directed to take note of from what stage the inquiring officer has committed error in not



providing opportunity of adducing evidence or examination and cross-examination of relevant witnesses, from that stage the enquiry shall be commenced and completed within a period of six months from the date of receipt of this order. The disciplinary authority is hereby directed to examine whether the relevant inquiring officer is still in service or not? If he is not in service, in that event, another inquiring officer shall be appointed to conclude the disciplinary proceedings lodged against the petitioner.

11. The disciplinary authority is hereby directed to take a decision as to whether petitioner shall be placed under suspension or he shall be reinstated 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 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 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.”

Further the Apex Court recently in the case of

State of Uttar Pradesh and Others Vs. Prabhat Kumar, 2022

LiveLaw (SC)736, reiterated the aforesaid principle.



12. The Disciplinary authority is hereby directed to conclude the disciplinary proceedings within a period of six months from the date of receipt of this order. Once the final order is passed in a departmental inquiry thereafter the disciplinary authority is hereby directed to regulate the intervening period from the date of dismissal/07.02.2014 till passing of final order in accordance with Bihar Service Code or any other provision of law.

13. If petitioner has attained age of superannuation and retired from service. In that event, question of reinstatement or keeping him under suspension is not warranted.

14. Accordingly, petition stands allowed in part.

(P. B. Bajanthri, J)

shoaib/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.10.2022
Transmission Date	

