

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19633 of 2014

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Munna Kewat Son of Late Yugal Kishore Kewat Resident of Village P.O-
Baladih, P.S-Sikandra, Distreict-Jamui

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Purnea Region, Purnea.
4. The Superintendent of Police, Kishanganj

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Niranjana Kumar, Advocate
	:	Mr. Kumar Kishan, Advocate
For the Respondent/s	:	Mr. Abbas Haider, SC-16

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 23-03-2022

Heard learned counsel for the parties.

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

*“That, a writ of ‘certiorari’ be
issued :-*

*(i) For quashing the order dated
30.06.2014 passed by the Respondent No. 4
whereby the petitioner was dismissed from
service with immediate effect on the ground
of his immoral character based on the
allegation of rape of a mad woman and
scuffle with the persons present at the
relevant time in retaliation of being
apprehended causing law and order problem
as also lowering the image of police in
connection with Pothia Police Station Case
No. 24 of 2009 under Section 376 of the*



Indian Penal Code.

(ii) For quashing the order dated 09.02.2012 passed by the Respondent No. 3 whereby the appeal preferred by the petitioner against his dismissal from service was rejected holding the allegation proved in the departmental proceeding.

(iii) For quashing the order dated 13.02.2014 passed by the Respondent No. 3 whereby the memorial of appeal filed by the petitioner against the appellate order was also rejected concurring with the findings of the departmental proceeding.

Further, a writ of 'mandamus' by issued :-

(iv) For direction to the Respondent no. 4 to reinstate the petitioner on the post of Constable in Police Line, Kishanganj with effect from the date of dismissal i.e., 30.06.2011 with all consequential benefits.

(v) For petitioner further prays for issuance of any other appropriate writ/ writs, order/ orders direction/ directions and relief/ reliefs which he is entitled to in the facts and circumstances of the case."

On 20.12.2021, following order was passed:

"Superintendent of Police, Kishanganj is hereby directed to file an affidavit as to whether is there any compliance of Rule 17(5)(c) relating to



appointment of Presenting Officer and Sub-rule 14 of Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 relating to leading evidence by the Presenting Officer and further whether copy of the Enquiring Officer's report has been furnished to the petitioner or not? Further is there any examination of Enquiring Officer's report read with the petitioner's explanation in the disciplinary authority's decision or order, if any. Such affidavit be filed before the next date of hearing.

List this matter on 06.01.2022."

The concerned authority-respondent has admitted that the Presenting Officer was not appointed in terms of Rule 17(5)(c) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (CCA Rules, 2005).

In view of the aforesaid submission, proceedings from the stage of enquiry till imposition of penalty stands set aside and petition allowed in part.

The disciplinary authority is hereby directed to continue the disciplinary proceedings from the stage of appointing the Presenting Officer. The disciplinary authority/enquiring authority are hereby directed to complete the enquiry proceedings in terms of Rules, 2005 within a period



of six months from the date of receipt of this order.

The intervening period, from the date of dismissal till further order is passed by the disciplinary authority, is required to be taken note of in terms of the 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.*** Paragraph nos. 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.”

In this regard, the disciplinary authority is hereby directed to pass order for reinstatement or to place petitioner under suspension till final order is passed in the inquiry proceedings, within a period of two months from the date of receipt of this order.

(P. B. Bajanthri, J)

Ankit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.03.2022
Transmission Date	NA

