

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16256 of 2006

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Gopal Lal Son of Late Ramavtar Lal Resident of Mohalla - Usari Sikarpur,
P.O. Sahpur, P.S. Sahpur, Distt- Patna. Ex- Typist cum Clerk, Bhojpur, Distt.
Arrah.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary.
2. The Secretary, Welfare Department, Bihar.
3. The Director, Welfare Department, Bihar, Patna.
4. The Deputy Director, Welfare Deppt. Bihar, Patna.
5. The District Magistrate, Bhojpur at Arrah.
6. The Deputy Development Commissioner, Arrah.
7. The District Welfare Officer, Bhojpur at Arrah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arup Kumar Chongdar, Advocate Mr. Md. Nazir Ansari, Advocate
For the Respondent/s	:	Mr. Sriram Krishna, Ac to SC-11

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

Date : 16-08-2022

Pursuant to the order dated 02.08.2022, Mr. Divesh Sehara, Secretary, SC/ST Welfare Department (Respondent No. 2) and Mr. Gautam Paswan, Director, SC/ST Department (Respondent No. 3) are present in the Court. The Secretary has apprised rule position as on 24.05.2003 with reference to the **Bihar and Orrisa Sub-Ordinate Service (Discipline & Appeal) Rules, 1935**, in particularly, Note-1 to Rule 2 read with Item No. 1 of the bottom of the Rules, namely, **“Bihar Board Miscellaneous Rules, 1958”**. Further he has



pointed out Rules 166 and 167 of the Bihar Board Miscellaneous Rules, 1958. This Court appreciates the assistance of the Secretary, Mr. Divesh Sehara.

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

“1. That his is an application for issuance of a writ/order(s)/direction(s) preferably a writ in the nature of CERTIORARI and thereafter MANDAMUS or any other appropriate writ(s)/ order(s)/ direction(s) commanding the respondent authorities to grant the following relief/reliefs to the petitioner.

- i) For quashing the impugned memo 6379, Patna dt. 30.10.2006, passed by Secretary Welfare Deptt. Govt. of Bihar as well as order dt. 21.11.2005 (as contained in Anne-) vide memo no. 6564 issued by the Director, Welfare Department, Bihar, Patna whereby and whereunder the petitioner has been discharged (terminated) from his service, on the basis of frivolous ground/charges and without giving proper opportunity of hearing to the petitioner and without any evidence.**
- ii) Further the petitioner prays for a direction to the respondent authorities to treat service of the petitioner without any breakage and to make payment the total arrears of salary from the date of suspension or to make the all consequential monetary benefits.**
- iii) For also a direction to respondent to make payment, salary from the period of suspension since 24.9.2002**



to 3.1.2003.

iv) To grant any other relief/reliefs which the petitioner may be found entitled to in the eye of law.”

Petitioner was placed under suspension on 25.04.2003. Thereafter, charge-memo was issued on 24.05.2003 by the District Magistrate which was required to be countersigned by the appointing authority. The appointing authority modified the article of charge or rephrasing the charge. The aforesaid charge-memo is supported by list of evidences and list of documents. However, it is not supported by list of witnesses. Enquiring officer submitted his report on 8th July, 2005. Petitioner was provided show cause notice along with the enquiring Officer's report on 28.07.2005. The disciplinary authority proceeded to impose the penalty of dismissal from service on 21.11.2005. Feeling aggrieved and dissatisfied with the order of dismissal, petitioner preferred appeal and it was rejected on 30.10.2006. Thus, petitioner has presented this petition.

Learned counsel for the petitioner submitted that no list of evidence and list of witnesses were furnished. The enquiring officer's finding is in his favour in so far as two charges are concerned. On this count, the impugned orders dated 21.11.2005 and 30.10.2006 (Annexure-16 and 23 respectively)



are liable to be set aside.

Per contra, Mr. Divesh Sehara, Secretary, SC/ST Welfare Department, assisted in the matter, submitted that the District Magistrate framed the article of charge and it was rephrased by the appointing authority and it was supported by list of evidence and documents.

Perusal of the records suffice that the petitioner has made out a *prima facie* case so as to interfere with the orders of disciplinary authority and appellate authority.

Mr. Divesh Sehara submitted that the relevant provision of law has been followed in completion of disciplinary proceedings launched against the petitioner.

Heard the learned counsels for respective parties.

Undisputed facts are that the petitioner was placed under suspension and he was charge-sheeted in a departmental enquiry on 24.05.2003 by the District Magistrate and it was required to be countersigned by the appointing authority. The appointing authority modified the charge-memo. In other words, rephrasing the charge. The appointing authority is required to initiate enquiry. Such power cannot be sub-delegated or delegated to sub-ordinate to the appointing authority in terms of Article 311 of the Constitution of India.



Further, it is to be noted that charge-memo is not in terms of Rules 166 and 167 of Bihar Board Miscellaneous Rules, 1958. For example, article of charge is not supported by statement of imputation and list of witnesses were not furnished. In fact, none of the witnesses have been examined and cross-examined. In the present petition, petitioner is disputing the issuance of bearer cheque which was the alleged allegation levelled against him. When the accused-government official disputed the alleged charge in that event it was bounden duty of the department to adduce corroborative evidence in support of documents, like examination of the author of the documents. If the documents are disputed in that event matter is required to be decided with adducing evidence on behalf of both the parties. Such process is not forthcoming in the enquiring officer's report. Having regard to the fact that huge amount alleged misappropriation is involved in the matter. Therefore, it is necessary to issue a direction to the disciplinary authority to commence fresh enquiry from the stage of issuance of charge-memo till passing of a final order.

In view of the aforesaid facts, petitioner has made out a *prima facie* case that there is non-compliance to Rules 166 and 167 of Bihar Board Miscellaneous Rules, 1958 read with



the Bihar Orrisa Services (Discipline and Appeal) Rules, 1935.

In the light of these facts and circumstances, impugned orders dated 21.11.2005 and 30.10.2006, vide Annexure- 16 & 23 respectively stand set aside.

The matter is remanded to the disciplinary authority to complete the enquiry proceedings within a period of six months from the date of receipt of this order.

The intervening period from the date of dismissal till completion of a fresh enquiry, the disciplinary authority is required to take a decision as to whether petitioner shall be placed under suspension or he shall be taken back to duty and further regularization of the intervening period from the date of dismissal dated 21.11.2005 and passing of fresh final order by the disciplinary authority. In this regard, disciplinary authority is hereby directed to take note 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 of 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 is hereby directed to take a decision as to whether petitioner is to be placed under deemed suspension or he shall be taken back to duty. Such a decision shall be taken with a period of one month from the date of receipt of this order.

Accordingly, present petition stands allowed in part.

At this stage, Mr. Divesh Sehara, Secretary, SC/ST Welfare Department submitted that petitioner must have attained age of superannuation and retired from service. Had he been in service, the same shall be taken note of. If he is already deemed to be retired in that event, question of reinstatement and deemed suspension is not warranted.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	18.08.2022
Transmission Date	

