

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4982 of 2008

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Narendra Mishra, son of Late Ram Bihari Mishra, Resident of Village –
Gunsari, P.S. Sikraul Lakh, District – Buxar.

... .. Petitioner/s

Versus

1. The Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan,
5th Floor, Birchand Patel Path, Patna through the Managing Director.
2. The Managing Director, The Bihar State Food and Civil Supplies
Corporation Ltd., Sone Bhawan, 5th Floor, Birchand Patel Path, Patna.
3. The Chief of Administration, The Bihar State Food and Civil Supplies
Corporation Ltd., Sone Bhawan, 5th Floor, Birchand Patel Path, Patna.
4. The District Manager, The Bihar State Food and Civil Supplies Corporation
Ltd., Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arup Kumar Chongdar, Advocate
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate

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

Date : 18-08-2022

Heard learned counsels for the parties.

2. On 01.08.2022, following order was passed:

“One of the question for consideration in the present petition is whether petitioner has been provided inquiry officer’s report along with the second show cause notice or not?

Perusal of para 25 of the counter affidavit it is evident that copy of the inquiry officer’s report was furnished pursuant to RTI application in December, 2007 whereas the order of dismissal dated 16.10.2007. In this backdrop, learned counsel for the respondent is given one



more opportunity so as to ascertain whether the copy of the inquiry report has been furnished along with the second show cause notice is prior to passing of dismissal order or not? He is also hereby directed to bring the relevant regulation or rules in respect of disciplinary action against employees of the respondent – Corporation failing which the second respondent, Managing Director, Bihar State Food and Civil Supplies Corporation Ltd. is hereby directed to appear in person along with complete records.

Relist this matter on 16.08.2022.”

3. Today, learned counsel for the respondent – Food and Civil Supplies Corporation Limited, on instruction, submitted that copy of the inquiry report was not made available to the petitioner along with second show cause notice. Therefore, on technical ground, the present petition is allowed in part while setting aside the impugned orders dated 16.10.2007, 07.02.2008 and 30.05.2007 *vide* Annexures – 11, 13 and 8 respectively.

4. The disciplinary authority is hereby directed to continue the disciplinary proceedings from the stage of issuance of second show cause notice along with inquiring officers report and complete the proceedings within a period of four months from the date of receipt of this order. The disciplinary authority is hereby directed to take note of the fact that during pendency of the present petition, the petitioner deemed to have retired from



service, in that event the concerned disciplinary authority is hereby directed to examine who is the competent authority to step into the shoe of disciplinary authority insofar as retired employees are concerned with reference to disciplinary rules read with the pension rules. The intervening period from the date of dismissal namely 16.10.2007 till passing of a fresh order, the disciplinary authority is required to regulate the period in terms of the Apex Court decision 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 and Others** 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* [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC 633] , *Punjab Dairy Development Corpn. Ltd. v. Kala Singh* [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661] and *Graphite India Ltd. v. Durgapur Projects Ltd.* [(1999) 7 SCC 645].

48. In *ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and *Union of India v. Y.S. Sadhu* [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161] , 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* [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR



2006 SC 3018] , Akola Taluka Education Society v. Shivaji [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC (L&S) 372].

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.

5. Once the disciplinary authority decides the disciplinary proceedings and further he is hereby directed to decide to regulate the intervening period from 16.10.2007 till passing of the final order or date of deemed retirement from service be regulated in accordance with law after giving notice to the petitioner, the above exercise shall be completed within a period of six months.

6. Accordingly, petition allowed in part.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	24.08.2022
Transmission Date	

