

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19528 of 2011

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Parwez Alam S/O Late Wali Mohammad R/O Mohalla- Gulistan,
Phulwarisharif, P.S. and P.O.- Phulwarisharif, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Finance Department, Government Of Bihar
3. The Commissioner, Patna Division, Patna
4. The District Magistrate, Patna
5. The Treasury Officer, Secretariat, Sichai Bhawan, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhaneshwar Prasad Gupta, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG 3
		Mr. Saroj Kumar Sharma, AC to AAG 3

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

Date : 05-09-2022

Pursuant to earlier order dated 25.08.2022 *Dr. Chandrashekhar Singh*, District Magistrate, Patna is present in the Court.

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

“That this is an application for issuance of the appropriate writ/ writs, order/ orders or direction/directions for quashing the order dated 23.07.2011 passed by the Learned Commissioner, Patna Division Patna in Service Appeal No. 27/04 and also for quashing the order dated 06.07.2002 passed by the Learned District Magistrate / Collector, Patna Vide Memo No. 56/ Mukhya dated 06.07.2002, Whereby and whereunder the petitioner was



dismissed from the service and also holding that petitioner would not be entitled to payment of any salary during period of Suspension from service prior to his dismissal from the Service. This Hon'ble Court further be pleased to direct the respondents authorities for making the payment of the other consequential benefits for which the petitioner is legally entitle."

3. The petitioner while working as Routine Clerk, he is alleged to have misappropriated huge amount and he was subjected to disciplinary proceedings in framing article of charges on 31.12.2001. He had stated to have submitted his reply to the charge memo and it was not satisfied by the disciplinary authority. In the result, inquiry was held against the petitioner. In the inquiry proceedings, the petitioner is stated to have submitted written submission on 15.01.2002. The inquiring officer submitted report to the District Magistrate, Patna on 05.04.2002 while holding that the charges levelled against the petitioner were proved. In the result, disciplinary authority issued a show cause notice seeking petitioner's explanation on the inquiring officer's report. The petitioner stated to have submitted his reply to the second show cause notice on 22.06.2002. Based on the inquiry records, the disciplinary authority proceeded to impose the penalty of dismissal from service on 06.07.2002. Feeling aggrieved and dissatisfied with the order of dismissal, petitioner preferred



Appeal No. 27 of 2004 before the Commissioner, Patna Division, Patna and it was dismissed on 23.07.2011. Hence the present petition.

4. Learned counsel for the petitioner submitted that initiation of inquiry is not in accordance with the relevant rules as on the date of framing of article of charges on 31.12.2001 like providing list of documents in support of the alleged charge etc. In the result, further proceedings till dismissal of appeal are liable to be set aside and petition be allowed.

5. *Per contra*, learned counsel for the respondents fairly submitted that list of documents have not been made available to the petitioner along with the charge memo in support of the alleged charge relating to misappropriation of huge amount. In the light of the aforesaid submission on behalf of the respondent – District Magistrate to the extent that petitioner has not been provided opportunity of countering the alleged allegations with reference to documentary evidence on behalf of the Department. On this point itself, the matter is required to be remitted to the disciplinary authority to commence afresh inquiry in respect of providing list of documents and other materials in terms of the relevant provisions of law as on 31.12.2001 and proceeded to settle the disciplinary proceedings within a period of four months



from the date of receipt of this order. Petitioner shall co-operate in the aforesaid inquiry proceedings from the defective stage.

6. The disciplinary authority/District Magistrate is hereby directed to take a decision as to whether the petitioner shall be placed under suspension or he shall be taken back to duty for the reasons that impugned order of dismissal and appellate authority's order are set aside on technical ground. Apex Court 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 held 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.”

Recently Apex Court in the case of *The State of Uttar Pradesh and Others vs. Prabhat Kumar*, 2022 LiveLaw (SC) 736 reiterated the aforesaid principle.

7. The disciplinary authority is hereby directed to take a decision whether the petitioner shall be placed under suspension or he shall be reinstated within a period of one month from the date of receipt of this order and the disciplinary authority is also hereby directed to complete the inquiry within the period of four months. Accordingly orders dated 06.07.2002 and 23.07.2011 are set aside.

8. The District Magistrate is hereby directed to verify from his office as to whether the petitioner has been provided subsistence allowance during the period from the date of suspension with effect from 15.07.1997 till dismissal from service i.e. 06.07.2002 or not. If the petitioner has not been extended



subsistence allowance/enhanced subsistence allowance. In that event, the same shall be extended to him within a period of two months from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	09.09.2022
Transmission Date	

