

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8700 of 2011

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Lal Bahadur Ram S/O Birkma Ram R/O Vill- Karsar, P.S Ragunathpur, Distt-Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Director General Of Police, Bihar, Patna
3. Inspector General Of Police, Muzaffarpur Range, Muzaffarpur.
4. Deputy Inspector General Of Police , East Champaran, Bettiah.
5. Superintendent Of Police, East Champaran, Motihari.
6. Deputy Superintendent Of Police, Areraj, East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamlesh Sharma
For the Respondent/s : Mr. Ajeet Kumar, GA-9

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

Date : 27-07-2022

Superintendent of Police, East Champaran, Motihari

is hereby directed to appear in person and apprise this Court by producing order-sheet maintained by the enquiry officer (day to day). If the enquiry has been held on three dates, for all the dates and so also notice issued by the enquiring authority to the petitioner on all three occasions further recording by the enquiry officer to the extent that though notice has been issued to the petitioner he did not appear on the date fixed. These materials shall be placed on record before the next date of hearing.

At this stage, learned counsel for the State on instruction submitted that enquiring authority has not maintained the record so as to apprise this Court necessary formalities have



been completed in issuing notice from time to time to the petitioner for his appearance in the enquiry on the date fixed.

In the light of these facts and circumstances, petitioner has made out a *prima facie* case that he has not been provided ample opportunity in participating in the enquiry. Accordingly, the impugned order dated 22.07.2006 (Annexure-8) stands set aside. The intervening period from the date of dismissal till reinstatement should be regulated after completion of further enquiry from the defective stage. Disciplinary authority is hereby directed to complete the disciplinary proceedings from the defective stage i.e. issuance of notice to the petitioner for his appearance before the enquiring authority. If the enquiring authority has retired from service in that event disciplinary authority is permitted to appoint fresh enquiring officer and complete the enquiry proceedings within a period of six months from the date of receipt of this order.

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 or 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.”

In the light of the Apex Court’s observation, the disciplinary authority is hereby directed to regulate the intervening period in accordance with law. Further, the disciplinary authority is hereby directed to take a decision as to whether petitioner is entitled to be continued under suspension or deemed to be under suspension or he is entitled to reinstatement. Even on this issue, the disciplinary authority is required to take a decision. The later portion of the direction regulating to reinstatement or deemed to be under suspension, in this regard necessary order shall be passed within a period of one week from the date of receipt of this order and communicate the same to the petitioner.

Accordingly, the present petition stands disposed of.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	02.08.2022
Transmission Date	

