

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8651 of 2019

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Nagendra Thakur S/o Late Hari Charan Thakur, Resident of Village-Molan-
pur,P.O.Sobhpur,P.S.-Bheldi,Dist.-Saran at Chapra

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary Govt. of Bihar,Patna
2. The Director General of Police, Bihar,Patna
3. D.I.G. of Police, Military Police,Central Zone,Patna
4. The Commandant, B.M.P.-5,Patna
5. The Dy.S.P. B.M.P.-5,Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Manish Kumar (GP 4)

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

Date : 17-10-2022

In the instant petition, petitioner has prayed for the fol-
lowing reliefs:-

"For issuance of appropriate writ, order or direction to quash the order of dismissal dated 29.11.2017 (Annexure-5) passed by the commandant B.M.P.-5, Patna and order of D.I.G. of Police, Military Police, Central Zone, Patna dated 30.07.2018 (Annexure-7) by which appeal of petitioner has been rejected and order of Director General of Police Bihar, Patna dated 02.04.2019 (Annexur-9) by which memorial of petitioner has been rejected and for grant of all consequential benefits."



On 05.09.2022, the following order was passed:-

"Learned counsel for the petitioner submitted that presenting officer was not appointed to present the case before the inquiring authority. It is further submitted that alleged allegation is relating to that the petitioner was under intoxication when he was part and parcel of destroying seized wine/liquor squad. It is learnt that he was subjected to medical examination. However, it is argued that there were no medical test of blood and urine so as to determine whether the petitioner was under intoxication of alcohol or not? In this regard, State counsel is hereby directed to secure original records and peruse the same and make his submission on the next date of hearing.

Re-list this matter on 10.10.2022."

Today, learned counsel for the State on instruction submitted that presenting officer was not appointed to present the case on behalf of the department in the inquiry before the inquiring authority against the petitioner and it is in violation of Rule 17 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

Therefore, order of penalty dated 29.11.2017 (Anneuxre-5), rejection of appeal dated 30.07.2018 (Anneuxre-7) and memorial dated 02.04.2019 (Annexure-9) are set aside. The matter is re-



manded to the disciplinary authority to proceed further from the defective stage and complete the inquiry proceedings within a period of six months from the date of receipt of this order. The disciplinary authority is hereby directed to take decision as to whether petitioner be placed under suspension or he should be taken back to duty in the light of Hon'ble 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.** Paragraphs 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 the light of aforesaid decision, the disciplinary authority is hereby directed to take decision as to whether petitioner shall be placed under suspension or he shall be taken back to duty or not? The intervening period from the date of dismissal dated



29.11.2017 till passing of final order is required to be regulated in accordance with the Bihar Service Code or any other provision and regulate the same within a period of two months from the date of passing final order in fresh inquiry.

Accordingly, the present writ petition stands allowed in part.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

