

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17024 of 2012

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Bindhyachal Rai S/O Late Basant Rai R/O Vill-Kharauna, P.S.-Tarari, Distt-Bhojpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Director General Of Police D.G.P., Patna
3. Inspector General Of Police, Patna Range, Patna
4. Deputy Inspector General Of Police , Shahabad, Dehri On Sone Region
5. Superintendent Of Police Buxar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Ram Vinay Pd. Singh @ Sanjay, AC to GAXII

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 13-10-2022

Heard learned counsels for the parties.

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

“(i) That an appropriate writ may be issued, quashing the Order vide Memo No. 2299 dated 22.6.08, passed by the Superintendent of Police, Buxar as contained in Annexure-5 by which petitioner has been dismissed from service.

(ii) That an appropriate writ may be issued, quashing the Order passed by D.I.G. (Respondent No. 4) by which he has pleased to dismiss the Appeal filed by the petitioner against the Order dated 22.6.08, which has been communicated by the S.P. vide Memo No. 22 dated 4.1.10.

(iii) That an appropriate writ may be issued quashing the



communication vide Memo No. 1489 dated 19.8.10 as contained in Annexure-8 issued by the Inspector General of Police, Patna Region, Patna by which it is communicated that the Petition filed by the petitioner before him against the Order passed in Appeal by the D.I.G. has been rejected only on technical ground.

(iv) That an appropriate Writ may be issued, commanding upon the Respondent-Authority to allow the consequential benefits after quashing of the impugned Order.

(v) That an appropriate writ may be issued, quashing the Order vide Memo No. 238/12 dated 21.2.12 as contained in Annexure-10 whereby and whereunder the D.G.P., Bihar, Patna has dismissed the Memorial filed by the petitioner.

(vi) Any other relief or reliefs may be granted for which the petitioner is found entitled to.”

3. Petitioner was placed under suspension and it was revoked on 10.10.2006 and he was charge-sheeted on 12.05.2007 in a departmental enquiry. Petitioner is stated to have denied the charge levelled against him. The inquiring officer has submitted report to the disciplinary authority. On receipt of inquiring officer's report, the disciplinary authority proceeded to issue show cause notice on 06.06.2008 vide Annexure-3. Petitioner is stated to have submitted reply to the show cause notice in the absence of inquiring officer's report. Thereafter, disciplinary authority imposed penalty of dismissal



from service on 22.06.2008. Feeling aggrieved and dissatisfied with the order of penalty, petitioner has exhausted remedy of appeal, revision and memorial and suffered orders before the Appellate, Revisional Authority and further before the competent authority who has decided the memorial. Hence, the present petition.

4. Learned counsel for the petitioner submitted that while ordering to hold enquiry against the petitioner for the alleged charge stated in the charge-memo dated 12.05.2007, disciplinary authority has appointed only inquiring officer. Presenting officer has not been appointed to present the departmental case before the inquiring authority. It is further submitted that along with show cause notice dated 06.06.2008, petitioner has not been provided copy of the inquiring officer's report. On these two legal issues, proceedings from the date of holding enquiry by the inquiring officer till rejection of memorial dated 21.02.2012 are to be set aside.

5. Per contra, learned counsel for the respondent resisted the aforesaid contentions and submitted that enquiry has been held in accordance with relevant procedure and there is no lacuna. In non appointment of presenting officer and not furnishing inquiring officer's report would not be hurdle in



imposition of penalty and its confirmation by the three authorities.

6. Heard learned counsels for the parties.

7. Petitioner was chargesheeted in a departmental enquiry for the alleged misdeeds relating to remaining unauthorized absent on number of spells. Enquiry was concluded in imposition of penalty of dismissal from service on 22.06.2008 and it was affirmed by the next three higher authorities in appeal, revision and memorial.

8. Learned counsel for the petitioner submitted that disciplinary authority has violated para 828 read with Appendix 49- Rules for proceedings for departmental punishment vide Police Manual, like in not appointing presenting officer to present the departmental case before the inquiring authority and further in not providing copy of the inquiring officer's report along with second show cause notice. Petitioner has been denied opportunity of his say on the inquiring officer's report by the disciplinary authority. That apart, in the absence of appointment of presenting officer, who has presented the departmental version along with material information before the inquiring authority, procedure mandates appointment of presenting officer to present the departmental case against the petitioner in a



departmental enquiry before the inquiring authority.

9. In the light of above legal issues, petitioner has made out a *prima facie* case. Hence, Order of penalty dated 22.06.2008 (Annexure-5) and further Appellate Authority's order dated 04.01.2010 (Annexure-7), Revisional Authority's order dated 19.08.2010 (Annexure-8) and memorial dated 21.02.2012 (Annexure-10) are set aside. The matter is remanded to the disciplinary authority to complete the enquiry proceedings afresh from the stage of appointing presenting officer to present the departmental case before the inquiring authority. If the inquiring authority has already attained age of superannuation and retired from service in that event disciplinary authority is at liberty to appoint a new enquiry officer. Such a disciplinary proceedings shall be completed within a period of six months from the date of receipt of this order. The disciplinary authority is hereby directed to take a decision as to whether petitioner is to be placed under suspension or he should be re-instated. Such a decision shall be taken within a period of one month from the date of receipt of this order in the light 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.”

Further in the light latest decision of the Hon’ble Apex Court rendered in the case of *The State of Uttar Pradesh and Others vs. Prabhat Kumar, 2022 LiveLaw (SC) 736*.

10. The intervening period from the date of dismissal i.e. 22.06.2008 till passing of fresh or final order by the disciplinary authority, it is to be regulated in accordance with law, such a decision shall be taken by the disciplinary authority within a period of two months from the date of passing final order in the disciplinary proceedings.

11. Accordingly, the present writ petition stands allowed in part.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	19.10.2022
Transmission Date	

