

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16022 of 2015

=====

Binod Kumar Son of Rajendra Prasad Singh resident of Flat No. 402, Birat Complex, Boring Road, P.S. and P.O. S.K. Puri, District - Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Agriculture Production Commissioner, Government of Bihar, Patna
3. The Principal Secretary, Department of Agriculture, Bihar, Patna
4. The Joint Secretary, Department of Agriculture, Bihar, Patna
5. The Deputy Secretary, Department of Agriculture, Bihar, Patna
6. The Under Secretary, Department of Agriculture, Bihar, Patna
7. Mr. Ashok Kumar Sinha, the then Chief Secretary, Government of Bihar, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Chittaranjan Sinha, Sr. Advocate Mr. Pritish Kumar Lal, Advocate
For the Respondent/s	:	Mr. Sarvesh Kumar Singh, AAG 13 Mr. Rajat Kumar Tiwary, AC to AAG 13 Mr. Arya Achint, AC to AAG 13

=====

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

Date : 17-10-2022

Heard learned counsels for the respective parties.

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

“(i) For issuance of a writ in the nature of certiorari for quashing the notification no. 476 dated 26.12.2014 as contained in Annexure- whereby penalty of removal from service has been imposed upon the petitioner as same being violative of the provisions contained in Bihar CCA Rules, 2005 and principles of natural justice.



(ii) Consequent upon the quashing of the aforesaid notification dated 26/12/2014 the respondents may be directed to treat the petitioner in continuous service with all consequential benefits.

(iii) For issuance of such other writ(s), order (s), direction (s) as your Lordships may deem fit and proper.”

3. The petitioner while working as Block Development Officer, he was subjected to disciplinary proceedings in framing article of charges on 07.02.2005 and further supplementary charge was issued on 27.03.2006. He had submitted his reply on 09.05.2006. Disciplinary authority was not satisfied with the petitioner's reply, in the result, he has proceeded to appoint inquiring officer to hold inquiry. Accordingly, inquiring officer submitted his report on 25.06.2006. On receipt of inquiring officer's report, the disciplinary authority proceeded to issue second show cause notice on 29.08.2006 and proceeded to impose penalty of dismissal from service on 03.12.2008 and it was subject matter of litigation in C.W.J.C. No. 15675 of 2009 and matter was remanded to the disciplinary authority on 06.12.2009. Thereafter, inquiring officer submitted further report on 14.01.2011 and second show cause notice was issued on 09.01.2012, 16.04.2012 and 19.12.2012. The petitioner had submitted his reply/explanation on 25.05.2012 read with 19.03.2013. The



disciplinary authority after due consideration of records proceeded to impose the penalty of dismissal from service on 26.12.2014. Hence the present petition.

3. Learned counsel for the petitioner submitted that the disciplinary authority while imposing the penalty of dismissal from service for the second time on 26.12.2014 has not considered petitioner's explanation/reply to the second show cause notice, therefore, there is total non-application of mind and there is violation of Rule 18 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. *Per contra*, learned counsel for the respondent tried to defend the penalty order while stating that disciplinary authority has passed a speaking order.

4. Heard learned counsels for the respective parties.

5. On the short ground of non-consideration of petitioner's reply the penalty order dated 26.12.2014 is liable to be set aside. Accordingly, penalty order dated 26.12.2014 stands set aside and matter is remanded to the disciplinary authority to pass afresh order after due consideration of each of the contentions raised by the petitioner in his explanation dated 25.05.2012 read with 19.03.2013 against second show cause notice along with inquiring officer's report dated 14.01.2011.



6. Apex Court in the case of *Kranti Associates (P) Ltd. v. Masood Ahmed Khan* reported in (2010) 9 SCC 496, Para 47 elaborately considered as how the judicial, quasi-judicial and other orders should be. Para 47 reads as under:

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.



(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anya v. University of Oxford* [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future.



Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process.”

7. In the light of the aforesaid principles laid down by the Apex Court, the petitioner has made out *prima facie* case so as to interfere with the penalty order dated 26.12.2014. The disciplinary authority is hereby directed to pass afresh speaking order within a period of four months from the date of receipt of this order. The disciplinary authority is hereby directed to take a decision as to whether the petitioner shall be placed under suspension or he shall be reinstated in the light of 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.”

8. The disciplinary authority is hereby directed to take note of the principles stated in the aforementioned decision before passing a detailed speaking final order in the disciplinary proceedings. Further, recently, Apex Court in the case of State of ***The State of Uttar Pradesh and Others vs. Prabhat Kumar, 2022*** LiveLaw (SC) 736 reiterated the principles laid down in 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**

9. On the point of reinstatement or suspension the disciplinary authority has to take a decision within a period of one month as to whether petitioner shall be placed under suspension or he shall be reinstated. Insofar as passing of final order in a departmental inquiry afresh shall be undertaken within a period of four months from the date of receipt of this order. The intervening period from the date of dismissal that is 26.12.2014 till passing of afresh order in a departmental inquiry shall be regulated in accordance with the Bihar Service Code or any other provision of law within a period of one month from the date of passing of final order in the departmental inquiry afresh.

10. Accordingly, writ petition stands allowed in part.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	20.10.2022
Transmission Date	

