

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12204 of 2016

1. Abinash Chandra and Anr s/o Shri Wakil Singh resident of Village and P.O. - Madan Sirsiyan, P.S. - Kalyanpur, District - East Champaran, Bihar.
2. Pankaj Nayan Srivastava s/o Shri Ganesh Prasad Srivastava resident of Mohalla - Kanta Toli Second Lane, District - Ranchi.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Commissioner-cum-Secretary, Department of Animal Husbandary and Fisheries, Government of Bihar,
3. The Deputy Secretary, Department of Animal Husbandary and Fisheries, Government of Bihar, Patna.
4. The Director, Department of Animal Husbandary and Fisheries, Government of Bihar, Patna.
5. The State of Jharkhand, through the Commissioner-cum-Secretary, Department of Agriculture, Animal H
6. The Commissioner-cum-Secretary, Department of Agriculture, Animal Husbandary and Co-operative Dept.
7. The Deputy Secretary, Department of Agriculture, Animal Husbandary and Co-operative Dept. Animal Hu
8. The Director, Animal Husbandary, Department of Agriculture, Animal Husbandary and Co-operative Dept

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate
For the Respondent/s	:	Mr. Binodji Verma, GP 17
		Dhruba Mukherjee, Advocate
		Mr. Raj Kishore Roy, GP 18

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

Date : 17-05-2022

Heard learned counsel for the respective parties.

2. In the instant petition, petitioners have prayed for the following relief/reliefs:



“i. To issue an appropriate writ(s)/ order(s)/ direction(s) in the nature of Certiorari quashing the order dated 20.05.2016 as contained in memo no. 802 dated 24.05.2016 (Annexure – 5) whereby and whereunder the services of the Petitioners were terminated abruptly and illegally.

ii. To issue an appropriate writ(s)/ order(s)/ direction(s) in the nature of Certiorari quashing the order dated 20.06.2016 as contained in memo no. 1525 dated 25.06.2016 (Annexure – 9) whereby the services of the Petitioners has been terminated which is wholly based on order dated 24.05.2016.

iii. To issue an appropriate writ/order/direction in the nature of Mandamus commanding the Respondents to reinstate the Petitioners into service and pay all consequential benefits legally admissible to them.

iv. To issue an appropriate writ/order/direction in the nature of Mandamus commanding the Respondents to produce the entire service record of the Petitioners which would show that the Petitioners have been working continuously without any back or blemish.

v. To any other relief(s) that the Petitioner is entitled to in the facts and circumstances of the case.”



3. When the matter was heard on 20.04.2022, the following order was passed:

“Heard learned counsel for respective parties.

Learned State counsel seeks time to get instruction with reference to para 8 and 9 of the rejoinder filed on behalf of the petitioners. He is also hereby directed to ascertain instruction as to before passing of the impugned order whether inquiry has been held by the concerned authorities or not for the reasons that petitioner was regularly paid all benefits including ACP and other benefits.

Re-list this matter on 09.05.2022.”

4. Thereafter, it was listed on 09.05.2022 and the following order was passed:

“Pursuant to the order dated 20.04.2022, the Joint Director is stated to have filed an affidavit.

Registry is hereby directed to put up the same on the record.

It is learnt that Joint Director has not answered in the affidavit as to whether enquiry has been held before passing the impugned order or not which was the question posed by this Court on 20.04.2022. Therefore, the Joint Director who has filed affidavit is hereby directed to appear in person on the next date of hearing with all relevant records so as



to ascertain as to whether enquiry has been held before passing the impugned order or not?

Re-list this matter on 17.05.2022.”

5. Today *Dr. Praveen Kumar Pathak*, Joint Director is present in the Court along with complete records. Both the Joint Director and the learned government advocate have examined the records whether disciplinary authority has invoked the discretionary power under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short “Rules 2005”) in initiating enquiry before passing an impugned order or not? From the records they found that certain preliminary inquiry/investigation is stated to have been conducted. Based on the preliminary inquiry/investigation, the disciplinary authority should have initiated disciplinary proceedings under Rules 2005 either for imposition of major penalty or for minor penalty. In other words article of charges, statement of imputation, list of documents and list of witnesses should have been issued to the petitioners before the impugned order was passed by the concerned authority.

6. *Dr. Praveen Kumar Pathak*, Joint Director submitted with reference to the records that no charge memo has been issued before passing the impugned order. In the light of these facts and circumstances, accordingly, impugned order dated 20.05.2016 as



contained in memo no. 802 dated 24.05.2016 (**Annexure - 5**) and order dated 20.06.2016 as contained in memo no. 1525 dated 25.06.2016 (**Annexure - 9**) stand set aside, reserving liberty to the official respondent to initiate enquiry and complete within a period of three months from the date of receipt of this order, failing which, petitioners are entitled to all consequential benefits. In the light of Apex Court decision in the case ***Managing Director, 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, 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."

7. In the light of quashing of the impugned orders, the disciplinary authority/appointing authority is hereby directed to take a decision as to whether petitioners are entitled for reinstatement or suspension in the light of Apex Court decision stated supra. The disciplinary authority/appointing authority is hereby directed to take a decision within a period of one month from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	20.05.2022
Transmission Date	

