

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8941 of 2017

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Dinesh Kumar Singh son of Late Hira Singh, resident of Village- Madhopur,
P.S.- Vaishali, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Member, Board of Revenue, Bihar, Patna.
3. Principal Secretary, Finance Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate
For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

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

Date : 23-03-2022

Heard learned counsel for the parties.

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

“(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order dated 09.05.2017 passed by the Appellate Authority-cum-Member, Board of Revenue, Bihar, Patna, by which the appeal preferred



by the petitioner against the order of punishment contained in Memo No. 7350 dated 24.05.2016 passed by the disciplinary authority, by which the punishment of dismissal from service has been inflicted upon the petitioner has been rejected;

(ii) Issuance of direction, order or writ, including writ in the nature of certiorari quashing the order dated 24.05.2016 bearing Memo No. 7350 issued by the concerned authorities under the General Administration Department of the State Government, by which the punishment of dismissal from service has been inflicted upon the petitioner in terms of the provisions contained under rule 14 (xi) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005;

(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the General Administration Department of the State Government to take steps towards reinstating the petitioner against the post of Assistant in the Bihar Secretariat Service of the State government alongwith all the consequential benefits in terms of arrears of salary, promotion, increment, etc. that have been denied to the petitioner on account of



the passing of the impugned order of punishment of dismissal from service against him;

(iv) Issuance of a direction, order or writ including writ in the nature of certiorari quashing in order dated 16.02.2017 bearing memo no. 1819 issued by the concerned authorities under the General Administration department of the State Government, by which on account of punishment of dismissal from service having been inflicted upon petitioner under rule 14 (ix) of the Bihar Government Servants (Classification, Control and Appeal) rules 2005, it has been ordered that the petitioner would not be entitled for any payment other than subsistence allowance paid to him for the period of suspension between 31.07.2008 to 21.07.2009 and 13.10.2009 to 23.05.2016.

(v) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”

The petitioner while working as Assistant in the Secretariat, he was alleged to have demanded and accepted illegal gratification, a sum of Rs.1600/- (Rupees Sixteen Hundred), on 31.07.2008 from the complainant-Radha Mohan Singh. Based on the complaint of Radha Mohan Singh authorized officer of the vigilance department apprehended the



petitioner while accepting illegal gratification, a sum of Rs.1600/- (Rupees Sixteen Hundred), on 31.07.2008. Arising out of the aforesaid incident, department proceeded with parallel proceedings. Criminal proceedings is still pending consideration before the jurisdictional forum. Insofar as departmental proceedings is concerned, it was initiated on 20.04.2009 in framing article of charges and it was concluded in imposition of penalty of dismissal from service on 24.05.2016. Feeling aggrieved by the order of dismissal, petitioner preferred appeal on 30.06.2016 and it was rejected on 09.05.2017. Hence, the present petition.

Learned counsel for the petitioner submitted that petitioner has not been provided letter dated 25.06.2008 which is stated to be a copy of the complaint furnished by the complainant-Radha Mohan Singh despite demand before the concerned authority. It is also submitted that none of the witnesses were examined in the enquiry like vigilance authority or panch-independent witnesses in order to corroborate that there was a demand and acceptance of illegal gratification of a sum of Rs.1600/- (Rupees Sixteen Hundred) on 31.07.2008. It is further pointed out that alongwith article of charges issued on 21.04.2009 list of witnesses and list of documents were not



supported by article of charges and statement of imputation. On these grounds, entire proceedings are liable to be set aside.

Per contra, learned counsel for the respondent-State resisted the contentions and submitted that it is a serious charge that petitioner is involved in demand and acceptance of illegal gratification to do certain favour in favour of the complainant. It is also submitted that criminal proceedings are pending against the petitioner. The enquiring authority, disciplinary authority and appellate authority have not committed any error in the disciplinary proceedings, therefore, no interference is called for. However, he has admitted that article of charges issued on 20.04.2009, even though supported by list of documents to be relied in the enquiry, there are no list of witnesses. It is also submitted that witnesses have not been examine in support of the alleged charge.

Heard learned counsel for the respective parties.

Undisputed facts are that the petitioner was subjected to parallel proceedings. Criminal proceedings are still pending consideration before the jurisdictional forum. Insofar as, departmental enquiry initiated on 20.04.2009, it has attained finality while imposing a penalty of dismissal from service on 24.05.2016. Even the petitioner's appeal was rejected on



09.05.2017.

Learned counsel for the petitioner submitted that letter dated 25.06.2008 relied in the enquiry has not been made available despite demand by the petitioner. It is also submitted that list of witnesses have not been made available alongwith the charge memo dated 20.04.2009. It is to be noted that charge memo dated 20.04.2009 (Annexure-2) suffice that it is not supported by list of witnesses, even though certain documents have been cited. However, copy of the list of documents have not been prepared in support of article of charge and statement of imputation. Thus, *prima facie*, the disciplinary authority has committed error in not following the procedure laid down under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'Rules, 2005'). Consequently, petitioner has made out a *prima facie* case on technicality that the charge memo is not supported by list of documents and list of witnesses. Documents which were cited have not been made available to the petitioner. Thus, there is a violation of principles of natural justice in not providing list of documents, demand of a document, namely, letter dated 26.05.2008 and in not citing list of witnesses so also none of the witnesses have supported the alleged charge.



In the light of these facts and circumstances, the impugned orders at Annexure-32 and Annexure-35 dated 24.05.2016 and 09.05.17 respectively stands set aside. Matter is remanded to the disciplinary authority to commence a fresh enquiry from the stage of initiation of enquiry, namely, framing of article of charge, statement of imputation, list of witnesses and list of documents and thereafter proceed and complete the enquiry proceedings after giving ample opportunity of hearing to the petitioner in accordance with the Rules, 2005. The aforesaid proceedings shall be completed within a period of six months from the date of receipt of this order. The intervening period from the date of dismissal i.e., 24.05.2016 to this day shall be taken note of and regulate in terms of 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.***

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, 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.”

The disciplinary authority is hereby directed to take a decision either to reinstate the petitioner or to place him under suspension till disciplinary proceedings are concluded. This action shall be taken in terms of the aforesaid decision of the



Apex Court.

Accordingly, writ petition stands allowed in part.

(P. B. Bajanthri, J)

Ankit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2022
Transmission Date	NA

