

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1576 of 2018

In

Civil Writ Jurisdiction Case No.4303 of 2018

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Rabindra Kumar Singh S/o Late Sheo Dhari Singh, The then Assistant Engineer, O/o Engineer-in Chief, Rural Works Department Resident of Village and Post-Sarsauli, P.S. Jamhor, Distt.-Aurangabad Bihar.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Sri Gajendra Kumar Mishra, Deputy Secretary, Rural Works Department, Government of Bihar, patna.
3. Sri Arun Kumar Mahto, The Chief Engineer-2, Rural Works Department, Patna-Cum-Conducting Officer, P
4. Sri Kamlesh Singh, Officer on Special Duty, Rural Works Department, Patna, Bihar.
5. Sri Ujjwall Kumar Singh, Assistant Engineer, Quality Control-3-Cum-Presenting Officer, O/o Chief En
6. Uday Kant Choudhary, Under Secretary, Rural Works Department, Government of Bihar, Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Hemant Kumar, Advocate
For the State : Mr. Sanjeet Kumar Singh, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 07-09-2022

Heard learned counsels for respective parties.

Short question for consideration in the present Letters Patent Appeal is whether the learned single Judge has erred in not directing for reinstatement to the appellant in the light of setting aside the order of dismissal dated 07.02.2018 or



not?

Para 10 and 11 of the order dated 28.08.2018
passed in C.W.J.C. No. 4303 of 2018 reads as under:-

“10. In such view of the matter, the notification dated 07.02.2018 (Annexure-1) passed against the petitioner, dismissing him from the service, is hereby set aside. The matter is remanded back to the respondent authorities to conduct the inquiry in accordance with law after giving proper opportunity to the petitioner to defend his case. As this Court has already set aside the order of dismissal, that will not lead to reinstatement of the petitioner in service. It will only be subject to final decision of the competent authority.

11. With the aforesaid observations and directions, this writ petition is allowed to the aforesaid extent.”

In the light of the Apex Court's decision
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, recently Apex Court reiterated the aforesaid principle in the case of *The State of Uttar Pradesh & Ors. Vs. Prabhat Kumar* reported in *2022 Live Law (SC) 736*.

In the light of the aforesaid principle laid down by the Apex Court, the disciplinary authority is hereby directed to take a decision as to whether petitioner shall be placed under suspension or he shall be taken back to duty within a period of one month from the date of receipt of this order. Further disciplinary authority is hereby directed to complete the enquiry from the defective stage within a period of six months from the date of receipt of this order. On completion of disciplinary proceedings and subject to outcome of the order, the disciplinary authority is hereby directed to regulate the intervening period from the date of dismissal, i.e. 07.02.2018 till passing of final order in a departmental enquiry. Regulating the intervening period, speaking order shall be passed and communicated to the petitioner within a period of one month from the date of passing of final order in the departmental enquiry. To the above effect, para 10 and 11 of the order of the learned single Judge dated 28.08.2018 passed in C.W.J.C. No. 4303 of 2018 is modified, if the enquiry is not concluded as on this date.

Accordingly, the present Letters Patent Appeal



stands disposed of.

At this stage, learned counsel for the appellant submitted that during pendency of the Letters Patent Appeal, disciplinary proceedings have attained finality in imposition of penalty of dismissal from service.

In the light of aforesaid development, present Letters Patent Appeal has become infructuous.

Accordingly, the Letters Patent Appeal stands disposed of reserving liberty to the appellant to raise all the contentions in the appropriate forum.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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