

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10629 of 2020

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Lalan Prasad Son of Rangila Ram Resident of village and Post- Barkinainijor,
P.s.- Nainijor, District- Buxar

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The Additional Chief Secretary Cooperative Department, Govt. of Bihar,
Patna
3. The Registrar, Cooperative Societies, Bihar, Patna
4. The Joint Registrar, Cooperative Societies, Patna Division, Patna
5. The Deputy Registrar, Cooperative Societies, Patna Division, Patna
6. The District Cooperative Officer, Rohtas at Sasaram
7. The District Cooperative Officer, Kaimur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar
For the Respondent/s : Mr. R.B. Pd. Yadav, AAG-11

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

Date : 06-04-2022

Heard the learned counsels for the parties.

In the present petition, petitioner has prayed for
following reliefs:-

“1. That this is an application
on behalf of petitioner for issuance of a
writ of Certiorari for quashing of the order
bearing memo no. 8541 dated 06.09.2019
(Annexure-12) issued by respondent no. 3,
the disciplinary authority, whereby and
where under by way of aforesaid Ex-Parte
and cryptic order petitioner has been
visited with the major punishment of
Dismissal from service without affording
proper opportunity of defence to the
petitioner and it has further been order that
the alleged defalcated amount shall be



recovered from the petitioner **AND** petitioner further prays for quashing of the order bearing memo no. 1242 dated 18.03.2020 (Annexure-13) passed by respondent no. 2, the appellate authority, by which the order passed by disciplinary authority has been upheld **AND** petitioner further prays for issuance of any other writ/ writs, order/ orders, direction/directions which the Hon'ble Court may deem fit and proper.”

Petitioner was subjected to disciplinary proceeding. Second show cause notice was issued on 06.06.2019 and the same was not delivered on account of technicalities. Therefore, the disciplinary authority issued one more second show cause notice on 09.07.2019 and it was delivered to the petitioner on 26.07.2019. Petitioner has submitted his explanation to the second show cause notice dated 09.07.2019 on 27.08.2019. However, the disciplinary authority while imposing penalty of dismissal from service on 06.09.2019 ignored the petitioner's reply on the sole ground that it was not within the time-limit stipulated. However, perusal of the second show cause notice dated 09.07.2019 it does not stipulate any time-limit. That apart, as on the date of punishment on 06.09.2019 the petitioner's reply to the second show cause notice dated 27.08.2019 was very much on the record of the disciplinary authority. The same has not been appreciated by the



appellate authority while passing order dated 06.09.2019 and 18.03.2020.

Therefore, petitioner has made out a *prima facie* case that there is non-application of mind on the part of disciplinary authority/ appellate authority. Accordingly, both disciplinary authority's order and appellate authority's order dated 06.09.2019 (Annexure-12) and 18.03.2020 (Annexure-13) are set aside. The matter is remanded to the disciplinary authority to pass a final order after due examination of the petitioner's claim to the second show cause notice and thus appropriate order be passed and communicated the same to the petitioner. Above exercise shall be completed within a period of three months from the date of receipt of this order. The intervening period from the date of dismissal till passing of the final order is required to be regulated 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.”

Disciplinary authority is hereby directed to complete the enquiry proceedings and pass a final order within four months from the date of receipt of this order. Further, he is hereby directed to examine whether petitioner could be placed under suspension or he shall be taken back to the duty in the light of the Apex Court’s order (supra). Such decision shall be taken within two months from today.

with the above observations, the present petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.04.2022
Transmission Date	

