

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.850 of 2021

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Ashok Kumar Ram @ Ashok Ram Son of Late Rangila Ram Resident of
village - Koran Sarai, P.S. - Koran Sarai, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Bihar, Patna.
2. The Director General-Cum-Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Koshi Range, Saharsa.
4. The Superintendent of Police, Saharsa.
5. The Additional Superintendent of Police-cum-Operating/Enquiry Officer,
Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Upendra Mishra
For the Respondent/s : Mr.

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

Date : 13-04-2022

Heard the learned counsels for the parties.

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

“1. That, in this writ application, the petitioner prays for issuance of an appropriate writ/order/direction, commanding the respondents for the following

RELIEFS;

i. For quashing the enquiry report dated 20.04.2020 submitted against the petitioner by the Additional Superintendent of Police-cum-Operating Enquiry officer, Saharsa (Respt. No.5) holding him guilty of the charges dated 22.01.2020 leveled against him in Departmental Proceeding No. 02/20, Saharsa District police.

ii. For quashing the Appellate order contained in Koshi Range, Saharsa District order No. 88/20, vide



memo no. 478 dated 11.05-2020 passed by the D.I.G. Koshi Range, Saharsa (Respt. no. 3) and also to quash the order dated 22.09.2020 by which Director General of Police (Respondent No. 2) has rejected the memorial appeal filed by the petitioner.

iii. For quashing the departmental proceeding no. 02/20, Saharsa, District Police, Saharsa, initiated against the petitioner.

iv. For directing the Respondents to reinstate the petitioner in service with all consequential and monetary benefits.

v. For any other relief/reliefs for which the petitioner may be found entitled to.”

Petitioner while working as Assistant Sub-Inspector, he was posted at Basnahi Police Station, Saharsa. He was found consuming alcohol in his residential quarters on 22.11.2019. Thereby he was subjected to criminal proceedings in filing F.I.R. for the offences under Section 37 (B) of the Bihar Prohibition and Excise Act, 2016. F.I.R. was registered on 22.11.2019. Based on the aforesaid allegations charge-memo was issued on 22.01.2020 and disciplinary proceeding was concluded in imposition of penalty of dismissal from service on 11.05.2020.

Feeling aggrieved and dissatisfied with the order of disciplinary authority, petitioner preferred appeal and the same was decided against the petitioner by confirming the order of dismissal on 22.09.2020. Thus, the petitioner has presented this petition.



Perusal of the records, it is evident that departmental enquiry was not conducted in accordance with law. One of the ground taken note of is that entire departmental enquiry is based on F.I.R. dated 22.11.2019. In the list of documents there is no reference to the video clipping which is stated to have been shot in respect of consumption of liquor by the petitioner on 22.11.2019 in his residential quarters so as to attract the offences under Section 37 (B) of the Bihar Prohibition and Excise Act, 2016 which is serious offence and register of F.I.R. is based on such video clipping.

In the light of these facts and circumstances, there is manifest error in conducting enquiry. Accordingly, the enquiry report dated 20.04.2020, order of the appellate authority dated 11.05.2020 and departmental proceeding no. 02/2020 stand set aside.

The disciplinary authority is hereby directed to take a decision as to whether petitioner is entitled for reinstatement or he should be placed under suspension or not? Further enquiry shall be conducted afresh. Having regard to the alleged serious charge against the petitioner the enquiry shall be initiated and completed within a period of six months.

The intervening period shall be decided in terms of the 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 take note of the aforesaid judicial pronouncements and decide as to whether petitioner shall be kept under suspension or he should be taken back to the duty or not. So also regulating intervening from the date of dismissal till final order to be passed in enquiry and regulating the period in accordance with law.

Accordingly, the present petition stands disposed of.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

