

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8091 of 2011

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Krishna Singh S/O Late Ramashish Singh R/O Vilage-Kartahan, P.S. and
Distt.-Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Minister, Govt. Of Bihar Patna
3. The Chief Secretary, Govt. Of Bihar Patna
4. The Agriculture Production Commissioner, Govt. Of Bihar Patna
5. The Secretary, Agriculture, Govt. Of Bihar Patna
6. The Director Agriculture-Cum-Punishing Authority, Govt. Of Bihar, Patna
7. The Deputy Director-Cum-Director Administration, Agriculture, Govt. Of Bihar Patna
8. The Deputy Director-Cum-Conducting Officer Of The Departmental Proceeding, Govt. Of Bihar Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akhilesh Dutt Verma, Advocate
For the Respondent/s	:	Mr. Alok Ranjan, AC to AAG-5
Agriculture Department	:	Mr. Mukesh Kumar Agarwal, Dy. Director (Administration)

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

Date : 06-09-2022

Heard Learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following relief(s):-

“1. That this is an application for issuance of a writ in the nature of certiorari or any other appropriate Writ/Rule/Direction for quashing the order as contained in Memo no. 7483 dated 03.10.2008 (Annexure-19) issued under the signature of Agriculture Director (Respondent no. 6) whereby and whereunder the services of the petitioner has been dismissed in view of the powers as provided under Rule 14(10) of Bihar



Government Servant (Classification, Control and Appeal) Rules, 2005 after the approval of the chief Minister as also for quashing the enquiry report submitted by the conducting officer of the departmental enquiry dated 15.04.2008 supplied to the petitioner on 16.07.2008 (Annexure-16) whereby and whereunder the petitioner has been held guilty of the charges without examination of any witness in support of the charges and/or without conduct of a fair departmental enquiry in the eye of law that too without paying any subsistence allowances as also salaries for the period under which the petitioner's suspension was revoked by the respondents but neither any salary nor any subsistence allowance could be paid to the petitioner during his service tenure which has been paid much after the dismissal from service and consequently the petitioner may be directed to be reinstated in service from the date of dismissal and to pay the regular salaries as also the full salaries for the period under which his suspension was revoked i.e 19.11.2007 to 12.02.2008 (for which only subsistence allowance has been paid)."

3. The petitioner while working as a District Horticulture officer, Samastipur, he was alleged to have involved in a trap proceedings under Prevention of Corruption Act, 1988. Such a trap proceedings was led against him on 29.03.2007. Resultantly, parallel proceedings were launched against the petitioner. Criminal proceedings launched against him is still pending consideration for the offences under Prevention of Corruption Act, 1988. He was taken into custody on 29.03.2007.



He was placed under suspension on 03.04.2007. It is stated to have been retrospectively revoked with effect from 19.11.2007. Further on the very same day, he was placed under suspension. So also charge-memo was issued on the very same day. The petitioner submitted two replies to the charge memo 12.03.2008 and 19.03.2008. The disciplinary authority was not satisfied with the petitioner's reply to the charge memo. Therefore, he proceeded to hold inquiry. Inquiring officer submitted his report on 15.04.2008 to the disciplinary authority. The disciplinary authority issued a second show cause notice along with the inquiring officer's report on 16.07.2008. Petitioner had submitted reply to the second show cause notice on 04.08.2008. Based on the disciplinary proceedings record, disciplinary authority proceeded to impose penalty of removal from service on 03.10.2008. Feeling aggrieved and dissatisfied with the order of penalty of removal from service, petitioner preferred appeal before the appellate authority on 03.12.2008. The same is stated to have been converted into Review Petition. Since it was not decided against him, thus the petitioner has approached this court in filing the present petition. The competent authority to decide review/appeal has not taken decision either in accepting or rejecting the petitioner's grievance. Thus the present petition is presented.

4. During pendency of the present petition,



petitioner's review application is stated to have been rejected on 06.01.2022. It is also subject matter of present petition by way of Interlocutory Application.

5. Learned counsel for the petitioner vehemently contended that along with the charge memo, list of witnesses has not been provided, pursuant to the charge memo dated 12.02.2008. Consequently, none of the witnesses have been examined on this count itself, entire proceedings are liable to be set aside for want of evidence to be adduced by the witness in support of alleged charge relating to demand and acceptance of illegal gratification.

6. Per contra, learned counsel for the respondent resisted the aforesaid contention and submitted that all due procedures have been complied. There is no infirmity in the disciplinary procedure. Therefore, no interference is called for.

7. Heard learned counsels for the respective parties.

8. The petitioner was involved in the alleged demand and acceptance of illegal gratification, for which he was subject to parallel proceedings. Criminal proceedings are pending consideration. In the departmental inquiry, charge memo was issued on 12.02.2008 and it was concluded in imposition of penalty of removal from service on 03.10.2008. Further petitioner's appeal/review application was rejected on 06.01.2022.



9. The petitioner contended that along with the charge memo it was bounden duty of the disciplinary authority to provide list of article of charges, statement of imputation, list of documents and list of witnesses in terms of Rule 17 of Bihar CCA rules 2005. None of the witness was cited to support the charge. Non-examination of witness vitiate proceedings in terms of Hon'ble Supreme Court decision in the case of ***Rajiv Arora V. Union of India & Ors.*** reported in ***AIR 2009 SC 1100.***

10. The Learned Counsel for the respondent could not apprise this court that there is compliance to Rule 17 and consequently Rule 18, Action on the inquiry report and Rule 27 of consideration of appeal. It was noticed that petitioner has preferred appeal under Rule 23. However the official respondent were stated to have converted the appeal into review petition. For such conversion, there is no provision. Perusal of CCA rules, it is evident that Rule 23 provides for orders against which appeal lies and further revision under Rule 28. The petitioner had he been in service he would have attained age of superannuation and retired from service on 29.02.2012.

11. In the light of these facts and circumstances, having regard to the alleged charge relating to illegal demand and acceptance of the illegal gratification, it is a case of remand even after lapse of these many years.



12. The disciplinary authority/Government is hereby directed to examine from the date of issuance of charge memo i.e.12.02.2008 and rectify the procedure from the stage of initiation of the enquiry till completion of disciplinary proceedings and complete the inquiry strictly in accordance with CCA Rules within a period of six months from the date of receipt of this order. Regulation of intervening period as a duty or suspension is required to be examined as and when final order is passed. The aforesaid direction is required to be taken note of by the disciplinary authority 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.”

Recently Apex court in the case of *The State of Uttar Pradesh & Ors. Vs. Prabhat Kumar* reported in *2022 Live Law (SC) 736* reiterated the aforesaid principle.

13. Even the disciplinary authority is hereby directed to take note of the latest decision cited supra.

14. On passing of final order in a departmental



inquiry, the disciplinary authority is hereby directed to regulate the intervening period from the date of suspension till final order to be passed and regulate in accordance with law, within a period of two months from the date of passing final order in a departmental inquiry. Accordingly the impugned orders dated 16.07.2008 (Annexure- 16) and 03.10.2008 (Annexure-19) stands set aside.

15. The petitioner is hereby directed to cooperate in the departmental inquiry. If the petitioner fails to cooperate in the departmental enquiry, it is for the inquiring /disciplinary authority to proceed *Ex parte*.

(P. B. Bajanthri, J)

rakhi/Shoaib

AFR/NAFR	
CAV DATE	
Uploading Date	15.09.2022
Transmission Date	

