

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2721 of 2021

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Sakuntala Devi, W/o Nand Kishor Sah, R/o Village Pachlakh Tole Lalapur,
P.S. Parsa, Distt. Saran.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Chief Secretary, State of Bihar, Patna.
3. The Principle Secretary, General Administrative Department, Bihar, Patna.
4. The Director, Mass Education, Education Department, Bihar, Patna.
5. The Director (Janshiksha) Education Department, Bihar, Patna.
6. The District Magistrate, Saran.
7. The District Transport Officer, Saran.
8. The District Education Officer, Saran.
9. The District Programme Officer, (Establishment), Saran.
10. The District Program Officer (Literacy), Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar, Advocate
For the Respondent/s	:	Mr. Manish Kumar, GP 4
		Mr. Ajay Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 20-04-2022

Heard learned counsel for the parties.

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

“i) To quash the Memo No. 1713 dated 06.11.2020 issued by the director Jan shiksha Cum Additional Secretary Education Department, Bihar, Patna whereby and where under the appointment of the petitioner has been cancelled on the ground he was not working as a instructor continuously three



years on the basis of his payment and also direct the authority to recover the paid salary. A copy of memo dated 06.11.2020 is annexed herewith and marked as Annexure-1 to this application.

ii) To further quash the follow up order contained in memo no. 4536 dated 11.11.2020 by which recovery order has been issued. A copy of memo dated 11.11.2020 is annexed herewith and marked as Annexure-2 to this application.

iii) To further direct the respondent authority not disturb the petitioner in his discharging duty as a Group-D post in Higher School Parsa.

And/or any other appropriate relief(s) to the petitioners for which she may be found entitle under the fact and circumstances of the case.”

3. Petitioner was appointed against one of the Class IV post. When he was absorbed on regular basis, the Department received complaint against the petitioner that he is not eligible to be absorbed on regular basis. Based on such complaint read with preliminary enquiry, the concerned respondent proceeded to cancel the petitioner’s regular appointment and further order for recovery. Feeling aggrieved by the aforesaid decision of the respondent, petitioner has presented this petition.

4. Learned counsel for the petitioner submitted that the impugned action is without holding an enquiry. It is further



submitted that cancellation of appointment is based on certain complaint alleged to have been received by the respondents. Therefore, disciplinary proceedings is warranted once the petitioner was regularly appointed and holder of a post in the Government department. It is further submitted that the respondents are not entitled to recover any amount in terms of Memo No. 4536 dated 11.11.2020 and it is contrary to Apex Court decision in the case of *State of Punjab vs. Rafiq Masih* reported in **(2015) 4 SCC 334**.

5. Learned counsel for the State-respondent resisted the aforesaid contention and submitted that there is no infirmity in the impugned orders. It is submitted that after preliminary enquiry the authorities have cancelled the order of appointment issued to the petitioner and further ordered for recovery.

6. Heard the learned counsel for the respective parties.

7. Crux of the matter in the present petition is whether orders dated 06.11.2020 and 11.11.2020 is after holding due enquiry against the petitioner or not? Undisputedly, petitioner was regular holder of the post in the department as on 06.11.2020, the date on which appointment was cancelled. Therefore, disciplinary proceedings is warranted that too if there is complaint against the petitioner. The alleged allegations were required to be proved in a



domestic enquiry. In the absence of such enquiry the impugned order of cancelling the appointment do not stand and further recovery order also.

8. Accordingly, Annexures – 1 and 2 dated 06.11.2020 and 11.11.2020 stand set aside. Writ petition stands allowed. Reserving liberty to the respondents to initiate domestic enquiry if it is warranted, it be initiated and completed within six months and in accordance with law.

9. The intervening period from the date of termination till reinstatement, how it has to be regulated is required to be examined in terms 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 and Others*** reported in (2011) 5 SCC 142

"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 [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC 633] , Punjab Dairy Development Corpn. Ltd. v. Kala Singh [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661] and Graphite India Ltd. v. Durgapur Projects Ltd. [(1999) 7 SCC 645].

48. In ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161] , 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 [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC 3018] , Akola Taluka Education Society v. Shivaji [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC (L&S) 372].*

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.”

10. In this regard, the disciplinary authority/appointing authority is hereby directed to take a decision and communicate to the petitioner as to whether petitioner is entitled for reinstatement or suspension within a period of two months from the date of receipt of this order. Further intervening period be regulated within two months from the date of completing of enquiry proceedings, in accordance with law.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	22.04.2022
Transmission Date	

