

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2068 of 2021

=====

Santosh Kumar S/o Jagnarayan Ram R/o Vill - Sahejni, P.S. - Piro, Dist-
Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary Home Department, Govt. of Bihar, Patna.
2. The D.G.P. Bihar, Patna.
3. The Additional D.G.P. (Appar Police Mahanidashak), Law and Order, Govt. of Bihar, Patna.
4. The Inspector General of Police, (I.G. Police) Sahabad Range, Dehri on Sone, Dist- Sasaram.
5. The Deputy Inspector General of Police (Police Up Mahanirikshak), Shahbad Range, Dehri on Sone, Dist- Sasaram.
6. The Senior S.P. Buxar, Dist- Buxar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Arun Kumar No. 1
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

=====

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

Date : 12-04-2022

Heard the learned counsels for the parties.

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

“(i) For issuance of a writ in the nature of certiorari for setting aside the unconstitutional appellate impugned orders dated 06-11-20 bearing Buxar District order no. 1469/20 Memo no. 3366/R. Ka. issued by the office of superintendent of Police Buxar contained in Annx- 4 and subsequently for setting aside the initial dismissal order dated 05-04-2020 issued by the D.I.G. Police, Sahabad Range, Dehri-on-son contained in Annx-2. Whereby and where under without any show cause, without any previous notice, without initiating any



departmental proceeding, violating the basic norms of natural justice, 21 years old regular service of the Petitioner has been terminated in a dictatorship manner, which is not permissible in the eye of Law in a Democratic Country like India.

(ii) For further issuance of a writ in the nature of mandamus directing the Respondents to reinstate this innocent Petitioner on his previous post of Assistant Sub Inspector of Police forthwith with his full arrears with 18% interest, current and consequential benefits within a short fixed period.

(iii) That the Respondents be also directed to pay the appropriate cost and compensation for unnecessary mental, physical and economical harassment done by the unconstitutional and illegal acts of the Respondents.

(iv) That any other relief or reliefs may kindly be granted in favor of this innocent Petitioner, as it may be deemed fit and proper to the facts and circumstances of this case.”

Petitioner has been dismissed from service on the allegation that he was spreading hatredness through video clipping being a police officer. The disciplinary authority is stated to have conducted summary enquiry on a particular day and proceeded to impose penalty of dismissal from service on the very same day. Further disciplinary authority is taking shelter under Clause (b) to second proviso of Article 311 of the Constitution of India. Even if the disciplinary authority intends to impose major penalty of dismissal from service with reference to Article 311 (2)(b) of the Constitution of India, still the disciplinary authority is required to



write reasons for dispensation of holding domestic enquiry.

Perusal of the records it is evident that no reasons have been recorded except stating the alleged allegations.

The appellate authority has also not taken note of relevant provision of law that for imposition of major penalty domestic enquiry is warranted under Police Manual. In order to dispense enquiry under the Police Manual read with Article 311 (2)(b) of the Constitution, the disciplinary authority was required to record reasons as to why the dispensation of enquiry was warranted. Such examination was not undertaken by the appellate authority.

In the light of these facts and circumstances, the petitioner has made out a *prima facie* case so as to interfere with the disciplinary authority and appellate authority's order dated 05.04.2020 and 06.11.2020 (Annexures-2 and 4). Both the orders are set aside.

Respondents are at liberty to initiate enquiry and complete the same within a period of six months from the date of receipt of this order. The intervening period from the date of dismissal till final order to be passed in disciplinary proceeding shall be determined with reference to 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.”

Before initiation and conclusion of the enquiry, the disciplinary authority is hereby directed to take a decision as to whether petitioner is required to be placed under suspension or he shall be re-instated in the light of the aforesaid decision by which the disciplinary authority has been empowered to take a decision. Such a decision shall be taken within a period of two months from the date of receipt of this order.

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

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

