

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.950 of 2016

In
Civil Writ Jurisdiction Case No.12672 of 2000

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1. The State Of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
 2. Director General – cum – Inspector General of Police, Bihar, Old Secretariat, Patna.
 3. D.I.G. of Police, Rail, Bihar, Patna.
 4. S.P., Rail, Patna.

... .. Appellant/s

Versus

Md. Shafique Ansari, Son of Sheikhha Rahman resident of Mohalla – Kanka, Millat Colony, (Churi Tola) P.S. + P.S. Kanke, Dist: - Ranchi

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prabhat Kumar, Advocate
For the Respondent/s	:	Ms. Shruti Sinha, Advocate
		Mr. Kumar Rajiv, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 01-11-2022

Heard learned counsels for the respective parties.

2. The instant appeal is filed by State of Bihar. They have questioned the validity of order of the learned Single Judge dated 22.07.2015 passed in C.W.J.C. No. 12672 of 2000.

3. The respondent – *Md. Shafique Ansari* who was a Constable of the Police Department (Railway Police) alleged to



have remained unauthorized absent on two spells namely from 09.05.1995 to 22.01.1996 and from 12.04.1996 to 05.07.1996. For remaining unauthorized absent for the aforesaid period, respondent was subjected to disciplinary proceedings and it was concluded in imposing penalty of dismissal from service on 08.07.1997. Thereafter, respondent preferred appeal before the appellate authority and it was affirmed by the appellate authority on 15.09.1998. Further respondent is stated to have submitted representation to Inspector General of Police, Railway against the order of the disciplinary and appellate authority and it was rejected on 26.11.1999. Thus, the respondent preferred C.W.J.C. No. 12672 of 2000 in which he has questioned the orders dated 08.07.1997, 15.09.1998 and 26.11.1999.

4. The learned Single Judge proceeded to set aside all the orders on the score that disciplinary authority has failed to provide opportunity of hearing or say of the respondent in respect of disagreeing with the inquiring officer's report. The order of the learned Single Judge is extracted herein:

“10. Consequences of quashing of the orders shall follow. The respondents are directed to reinstate the petitioner in service forthwith. In the facts and circumstances of the case, I hold that the petitioner shall be entitled for entire back wages for the period during which he had to remain out



of service because of illegal orders passed by the respondents.

11. It will, however, be open to the respondents to proceed against the petitioner after giving him due opportunity by supplying him notes of disagreement from the report of the Inquiry Officer. The disciplinary authority may thereafter, upon considering the petitioner's explanation against the tentative notes of disagreement come to his own finding and pass appropriate orders in accordance with law. The order directing the respondents to reinstate the petitioner has been passed, in view of the submissions made on behalf of the petitioner that he has not yet attained the age of superannuation."

5. No doubt the disciplinary authority has not followed Rule 18 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'Rules, 2005') or corresponding any provision of the Police Manual to the extent that if the disciplinary authority is disagreeing with the inquiring officer's report, in that event, the disciplinary authority had option of remanding the matter to the inquiring authority from the defective stage or he or she himself/herself can continue the disciplinary proceedings by issuing show cause notice from the defective stage. Further, holding of inquiry in the event of any oral evidence are to be adduced. Such proceedings have not been undertaken by



the disciplinary authority before imposing the penalty of dismissal from service and it was affirmed by the next two higher authorities. In all fairness, learned Single Judge should have remanded the matter to the disciplinary authority to continue the disciplinary proceedings from the defective stage like remanding the matter to the inquiring authority or he himself should have issued a show cause notice from the defective stage and continue the proceedings in accordance with the Rules, 2005 or relevant Police Manual. Apex Court time and again held that if any penalty order or appellate authority's order are set aside on the technicality, matter should be referred back to the disciplinary authority to continue the inquiry from the defective stage. 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 and Others* reported in (2011) 5 SCC 142, para 46 to 50 it is held as under:

“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.”

6. That apart, recently Apex Court in the case of ***The State of Uttar Pradesh and Others vs. Prabhat Kumar, 2022 LiveLaw (SC) 736*** reiterated the Apex Court’s decision 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 and Others*** reported in **(2011) 5 SCC 142**.

7. In the light of these facts and circumstances, order of the learned Single Judge dated 22.07.2015 is modified to the extent that inquiry matter is referred back to the disciplinary authority to commence inquiry from the defective stage and proceed to complete the inquiry proceedings strictly in accordance with the Rules like Rules, 2005/ Police Manual whichever is applicable to the case of the respondent having regard to the status of the respondent that he was a Constable (Railway Police). The above exercise shall be completed within a period of four months from the date of receipt of this order.

8. It is noticed that on 19.02.2018, this Court passed the following orders:



“This appeal will be heard.

No notice is required to be issued to the private respondent since he is duly represented through a counsel.

The impugned order dated 22.07.2015 shall remain in abeyance till further order.”

9. In the light of these facts and circumstances, disciplinary authority is hereby directed to pass a detailed order in regulating the period from the date of dismissal till passing of a final order to be passed in a disciplinary proceedings within a period of two months from the date of passing of final order in the disciplinary proceedings.

10. Accordingly, L.P.A. is allowed in part.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	04.11.2022
Transmission Date	

