

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11616 of 2017

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Rishideo Paswan S/o Late Satya Narayan Paswan R/o Village Vijay Nagar,
P.S. - Bariyarpur, District - Munger.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Director General of Police, Bihar, Patna.
3. Inspector General of Police Magadh Range, Bihar, Patna.
4. Deputy Inspector General, Magadh Division, Gaya.
5. Superintendent of Police, Aurangabad.
6. Deputy Superintendent of Police Head Quarter, Aurangabad.
7. Assistant Sub Inspector namely Rati Lal Bhagat, Aurangabad.
8. Superintendent of Police, Araria.
9. Deputy Superintendent of Police, Araria.
10. Station Head Officer, Jokihat, P.S. Araria.
11. Investigating Officer of Jokihat P.S. Case No. 37 of 2014, Jokihat, Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Niranjana Kumar, Advocate
		Mr. Kumar Kishan, Advocate
For the Respondent/s	:	Mr. Manish Kumar - Gp4

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

Date : 22-03-2022

Heard learned counsel for respective parties.

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

“(i) For issuance of writ in the nature of certiorari to set aside the order dated 10.01.2017 vide memo no. 98 passed by Superintendent of police Aurangabad (Respondent No. 5) in Departmental proceeding no. 07/2015 against the petitioner (D.P.S. 587 Rishideo Paswan), whereby and where under the petitioner has been arbitrarily and illegally been terminated from his service.



(ii) For issuance of writ in the nature of mandamus for commanding the respondent authority to reinstate the petitioner for the post of Constable With all Consequential benefits such as payment of real of salary with statutory interest etc.

(iii) For stay of the operation of impugned order dated 10.01.2017 Contained in memo no.98 passed by the superintendent of Police Aurangabad and Alternatively for Commanding the respondent authority to consider and decide the appeal in accordance of law against the order dated 10.1.2017 passed in Departmental Proceeding No. 7/2015 within the stipulated time framed.

(iv) For other relief (s) which petitioner be found entitled in the fact and circumstances of the case.”

On 09.03.2022, the following order was passed:-

“Heard learned counsel for the parties.

Pursuant to the order dated 02.12.2021, there is error committed by the disciplinary authority in ordering fresh enquiry without withdrawing order of dismissal dated 10.01.2017. Therefore, the competent authority is hereby directed to withdraw the order of dismissal dated 10.01.2017 before the next date of hearing in order to give effect to the fresh enquiry stated to have been initiated while appointing the presenting officer on 31.12.2017, failing which order would be passed on the next date of hearing.

List this case on 22.03.2022.”



Learned counsel for the State filed supplementary counter affidavit while furnishing Memo No. 1263 dated 20.03.2022 (Aurangabad District Order No. 576 of 2022) issued by the Superintendent of Police, Aurangabad vide Annexure-B by which order of dismissal dated 10.01.2017 has been withdrawn and further proceedings have been passed. In the light of the afore-said later development the present petition does not survive for consideration.

The intervening period from 10.01.2017 till the date of retirement how it has been regulated is required to be taken note of with reference to decision of the Hon'ble Apex Court decision in the case of **ECIL vs. B. Karunakaran** reported in (1993) 4 SCC 727 and **Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors.** reported in (2011) 5 SCC 142. Paragraphs 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 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, Punjab Dairy Development Corpn. Ltd. v. Kala Singh and Graphite India Ltd. v. Durgapur Projects Ltd.

48. In ECIL v. B. Karunakar, 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 tri-



bunal, 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."

The concerned disciplinary authority is hereby directed to regulate the aforesaid period within a period of two months from the date of receipt of this order. If the petitioner is aggrieved



by the part of the order dated 20.03.2022 he is at liberty to ques-
tion before the appropriate forum in accordance with law.

With the aforesaid observations, the present writ petition
stands disposed off.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.03.2022
Transmission Date	N/A

