

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.571 of 2018
In
Civil Writ Jurisdiction Case No.8589 of 2014**

The State of Bihar, through the Principal Secretary, Water Resources Department Government of Bihar, Patna. ... Appellant/s

Versus

1. Ram Tawakal Singh and Ors Son of Late Nandu Singh, Resident of Village- Maap Kalam, P.S. Imadpur, District- Ara.
2. The Special Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Deputy Secretary, Water Resources Department, Government of Bihar. null null
4. The Additional Department Enquiry Commissioner, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Prasad, Advocate
For the Respondent/s : Mr. Ravindra Nath Dubey, Advocate

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

Date : 14-07-2022

In the instant appeal, the appellant-State has assailed the order of the learned Single Judge dated 23.11.2017 passed in CWJC No. 8589 of 2014.

Respondent while working as an Executive Engineer on certain allegations relating to construction of Dam in the year 2008-09 an inspection was conducted. In terms of the inspection report they found certain alleged misdeed is stated to have com-



mitted by the respondent. Thereafter, the disciplinary authority initiated inquiry while framing six charges on 05.11.09 the inquiry was completed and proceeded to impose the penalty of withholding of 40% pension for a period of ten years on 15.03.2013. Feeling aggrieved and dissatisfied with the order of punishment dated 15.03.2013 the respondent preferred CWJC No. 8589 of 2014. Learned Single Judge allowed the petition on 23.11.2017 while setting aside the order of the penalty order dated 15.03.2013. Hence the present appeal by the State.

Learned counsel for the state restricted his argument that the learned Single Judge should have remanded the matter to the disciplinary authority instead of merely quashing the order of penalty. He has pointed out that in the inquiry there is a non-adherence of sub-rule (14) of Rule 17 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Therefore, penalty order was set aside on technicality. It is further submitted that the alleged charge is in respect of certain financial loss due to alleged negligence on the part of the respondent. Therefore, it is a case for remand in terms 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.



Per contra, learned counsel for the respondent resisted the aforesaid contention and submitted that alleged allegation is relates back to the year 2008-09, departmental inquiry was initiated on 05.11.2009 while it was completed on 15.03.2013. In the meanwhile, respondent attained the age of superannuation and retired from service on 30.06.2008.

In the light of these facts and circumstances, question of remanding the matter to commence the inquiry from the defective stage is not fair and proper for the reasons that petitioner-department have taken about four years in completion of inquiry. It was also submitted that no loss has been caused to the State exchequer. It is also submitted that the alleged loss amount has been paid by the contractor.

Heard learned counsels for the respective parties.

Undisputed facts are that, respondent was Executive Engineer. While he was discharging the duty of his post in the year 2008-09 petitioner-department noticed certain irregularities stated to have been committed by him. Based on such allegation departmental inquiry was initiated on 05.11.2009 and it was concluded in imposition of penalty on 15.03.2013 to the extent of withholding of 40% pension of the respondent for a period of ten years.



Feeling aggrieved and dissatisfied with the order, respondent preferred writ petition and it was decided against the petitioner department thus the present appeal.

Learned counsel for the appellate State had restricted his argument only to the extent that departmental inquiry is required to be remanded to the disciplinary/inquiry authority to commence inquiry from the defective stage and he is not aggrieved by the reasoning assigned by the learned Single Judge in quashing the penalty order. In support of aforesaid contention he relied on 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.

On the other hand, learned counsel for the respondent submitted that the petitioner-department had already taken sufficient time and further no loss has caused. However, at the same time, it was submitted that whatever the loss alleged to have caused to the State appellant it was remitted by the contractor. To that affect, he has not furnished any documentary evidence so as to reconcile the alleged loss stated to have committed by the respondent.



Therefore, we find *prima facie* case that the learned Single Judge erred in not remanding the matter to the inquiring /disciplinary authority to commence the inquiry from the defective stage. In other words compliance to sub-rule (14) of Rule 17 and other provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. We would not have remanded the matter to the disciplinary authority having regard to the fact that four years time has been consumed by the Appellant-department in initiation and completion of inquiry and respondent has attained the age of superannuation on 30.06.2008 itself. However, having regard to the allegation that there were alleged financial irregularities, therefore, we are compelled to remand the matter to the inquiring authority to commence the inquiry from the defective stage and complete within the time limit. In fact, the present matter is squarely covered by 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 con-



tending 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 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."

In the light of aforesaid decisions and the fact that the penalty order has been set aside by the learned Single Judge on technicality and further there is alleged financial irregularities stated to have been committed by the respondent.



In the light of these facts and circumstances, order of the learned Single Judge is modified to the aforesaid extent in remanding the matter to the inquiring authority to commence inquiry from the defective stage and complete within a period of four months from the date of receipt of this order, failing which it is held that inquiry stands abated. The respondent is hereby directed to co-operate in conclusion of the inquiry from the defective stage. In this regard, inquiring/disciplinary authority is hereby directed to issue notice in advance for his appearance from time to time in order to complete inquiry within four months. Withheld pension amount shall be released in favour of Respondent within four months. Liberty to impose afresh penalty in the event of proving alleged charges.

Accordingly, the Letters Patents Appeal No. 571 of 2018 stands allowed in part.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

shanu/-

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

