

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10973 of 2017

Amber Singh Son of Tejnarayan Singh Resident of Tenduri, P.S.-Vikramganj,
District Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Bihar State Electricity Board Electricity Board, Patna. through its Secretary.
3. The North Bihar Power Distribution Company Limited, Having its registered Office at Vidyut Bhawan,
4. The Managing Director, North Bihar Power Distribution Company, Vidyut Bhawan, Bailey Road, Patna
5. The General Manager Human Resources and Administration, North Bihar Power Distribution Company, Vidyut Bhawan, Bailey Road, Patna.
6. The Deputy General Manager Human Resources/ Administration North Bihar Power Distribution Company,
7. Officer on Special Duty Human Resources and Administration, North Bihar Power Distribution Company
8. The General Manager-Cum-Chief Engineer, North Bihar Power Distribution Company Limited.
9. The Electrical Executive Engineer, Electric Supply Division, Sheohar, North Bihar Power Distribution
10. The Electrical Executive Engineer, Electric Supply Division, Raxaul, North Bihar Power Distribution

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Advocate Mr. Yash Singh, Advocate Mr. Tej Pratap Singh, Advocate
For the Respondent/s	:	Mr. Abbas Haidar-SC 6

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

Date : 07-04-2022

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

“(i) Issuance of a writ in the nature of certiorari for quashing the Resolution No. 11/N-1/PF-AEE-41049/2014 dated 07.01.17 issued by North Bihar Power Distribution



Company Limited (herein after referred to as NBPDCCL for the sake of brevity) whereby the services of the petitioner with the said Company has been terminated with effect from 09.10.2014.

(ii) Issuance of a writ in the nature of certiorari for quashing the letter bearing letter No. 779 dated 01.09.2016 of the above said Company by which the application dated 05.04.2016 of the petitioner requesting to accept his joining has been rejected.

(iii) Issuance of a writ in the nature of mandamus and or directing the above said Company to accept the joining of the petitioner as requested by him through application dated 05.04.2016 (followed by reminders through applications dated 08.08.2016 and 30.09.2016) and to permit him to continue his services with the said Company.

(iv) Issuance of a writ in the nature of mandamus and/or directing the above said Company, as a consequence of the above, to treat the petitioner in continuous service of the said Company without any break at any time and to accordingly pay him salary and other emoluments and benefits.

(v) For any other relief(s) to which the petitioner may be entitled for.”

The petitioner was appointed as Assistant Electrical Engineer on 03.01.2014 while undergoing M. Tech course in Roorkie. Thus, the petitioner sought permission to complete the M. Tech course. Such a permission was granted on 13.05.2014. The petitioner has not returned back to duty in terms of the permission granted on 13.05.2014 for the academic year 2013-14. In other



words, petitioner should have reported back to duty as and when the M. Tech course was completed in the month of July-August, 2014. The petitioner is stated to have submitted representation or leave application on 17.10.2014 to his immediate superior and it was neither accepted nor rejected. The petitioner was suffering from certain illness, therefore, he could not report for duty during the intervening period from July-August, 2014. Thus, he has reported on 05.04.2016 in the respondents-company and the respondents proceeded to terminate the service of the petitioner on 07.01.2017. In the meanwhile, petitioner has applied for new job in new organization on 01.09.2016.

Learned counsel for the petitioner submitted that order of termination is without holding any inquiry even though in the order of termination there is a reference relating to alleged misconduct of the petitioner in not joining within the time limit stipulated and various allegations have been made against the petitioner in respect of illness read with the manner in which medical certificate obtained by the petitioner. Therefore, it is submitted that in the absence of holding inquiry the impugned order of termination is not tenable and it is in violation of clauses imposed in the order of appointment.



Per contra, learned counsel for the respondents resisted the contention of the petitioner and submitted that having regard to the conduct of the petitioner that he has not obeyed terms in the permission order given to him to pursue the M. Tech course 2013-14 on 13.05.2014. In other words, he should have reported for duty as and when M. Tech course was completed in the year 2013-14. He has submitted medical fitness certificate on 05.04.2016. It is submitted that in terms of Regulation 73(i)(a)(v) of the Bihar State Electricity Board Service Regulation, 1976 (for short 'the Regulation, 1976') that if an employee failure of return to duty from leave for a period of eight days without any intimation or sufficient cause in that event employee's services will be terminated. In the light of these facts and circumstances, interference is not warranted in respect of termination order dated 07.01.2017.

Heard learned counsel for respective parties.

Undisputed facts are that petitioner was appointed as Assistant Electrical Engineer on 03.01.2014 in respondents-company for which he had to complete course in the year 2013-14. Permission was granted on 13.05.2014 for completion of M. Tech course in the year 2013-14. If the course of M. Tech in the year 2013-14 was completed in the month of July-August, 2014, in that event, the petitioner should have reported for duty or he should have



made necessary application seeking for extension of time to complete the course or if he is suffering from certain illness he should have submitted the medical records in the month of August, 2014. On the contrary, he has submitted leave application on 17.10.2014 to his immediate superior and not to the appointing authority. Thereafter, the petitioner has joined service on 05.04.2016. In this background, the respondents have terminated the services of the petitioner on 07.01.2017.

Undisputedly, termination order dated 07.01.2017 is without inquiry. Termination of Service and Terminal Benefits is reflected in Chapter VIII of Regulation, 1976. Regulation 73 (i) (a) (v) and (vii) relating to Termination of Service reads as under:-

*“73. Termination of Service:-
(i)(a)(v) Failure of return to duty
from leave for a period of eight days without any intimation or sufficient cause.*

(i)(a)(vii) As a measure of punishment after departmental proceedings in accordance with Discipline and Appeal Regulations in force.”

The respondents company should have resorted to termination only with reference to the Termination of service and Terminal Benefits cited supra, since petitioner failure to return to duty from leave after eight days without intimation or sufficient cause so as to invoke aforesaid clause (i)(a)(v) whereas in the order of



termination the respondents have highlighted various alleged misconduct stated to have been committed by the petitioner. In other words, if the punishment of termination as a measure of penalty in that event such punishment should be imposed only after subjecting such employee to departmental proceedings which is in vogue as on the date of termination.

Having regard to the narration made in the termination order, the petitioner's case would fall under Clause (i)(a)(vii) of Regulation 73 of the Regulation, 1976 and not clause (i)(a)(v). Thus, the petitioner has made out a case so as to interfere with the order of termination dated 07.01.2017 as departmental inquiry has not been initiated having regard to the allegation levelled in the order of termination against the petitioner.

Accordingly, the present petition is allowed and the order of termination dated 07.01.2017 (Annexure-20) is set aside. The matter is remanded to the respondent to initiate disciplinary proceedings and complete within a period of six months from the date of receipt of this order. The petitioner shall co-operate in the departmental proceedings without seeking unnecessary time as and when date and time would be fixed by the inquiry authority. The intervening period from the date of termination dated 07.01.2017 shall be taken note of for the purpose of regularization as and



when inquiry is completed and final order is passed. Insofar as reinstatement is concerned, the disciplinary authority is hereby directed to take note of decision of Hon'ble Apex Court 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 particu-



larly 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.”

The disciplinary authority is hereby directed to take a decision as to whether the petitioner is to be placed under suspension during the inquiry to be held and completed or he shall be taken on duty. At this stage authority may also take note of the fact that petitioner is working in an organization. Such a decision shall be taken with reference to the cited decision within a period of two months from the date of receipt of this order.

(P. B. Bajanthri, J)

Vikash/-

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

