

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1203 of 2019

In
Civil Writ Jurisdiction Case No.5243 of 2018

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The State of Bihar through the Principal Secretary, C.C./S.T. Welfare Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

1. Sagar Kumar Roy Son of Late Hem Kant Roy, Resident of Village-Pauri, P.S. Bahera, District-Darbhangha.
2. The Secretary, S.C./S.T. Welfare Department, Government of Bihar, Patna.
3. The Director, S.C./S.T. Welfare Department, Government of Bihar, Patna.
4. The Deputy Director, S/C/.ST Welfare, Darbhanga Division, Darbhanga.
5. The District Magistrate, Darbhanga.
6. The Under Secretary, S.C./S.T. Welfare Department, Government of Bihar, Patna.
7. The District Welfare Officer, Sc/St Welfare, District-Darbhangha, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Gyan Shankar, AC to GP 2
For the Respondent/s : Mr. Shashank Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 29-08-2022

Heard learned counsels for the parties.

2. The present appeal is filed by the State in assailing the order of the learned Single Judge dated 10.05.2018 passed in C.W.J.C. No. 5243 of 2018.

3. The respondent – *Sagar Kumar Roy* while working as a Nazir, he is alleged to have misappropriated sum of Rs.



2,05,62,000/- (Two Crores Five Lakh Sixty Two Thousands) in connivance with bank officials. Arising out of the aforesaid alleged allegations – respondent was subjected to parallel proceedings like departmental inquiry and criminal case. Criminal proceedings are still pending consideration before the jurisdictional forum whereas departmental inquiry was concluded in imposition of penalty of dismissal and ordering recovery of 2.5 crores.

4. Feeling aggrieved and dissatisfied with the order of the dismissal and recovery, respondent invoked remedy under Article 226 in filing C.W.J.C. No. 5243 of 2018. The aforesaid writ petition was allowed in favour of the respondent on 10.05.2018. Hence the present appeal is preferred by the State of Bihar.

5. Learned counsel for the appellant vehemently submitted that it is a serious case relating to misappropriation of huge amount of Rs. 2.5 crores and odd. If the learned Single Judge has set aside the order of penalty of dismissal from service and recovery on technicalities, in such an event, matter is required to be remanded to the disciplinary authority to commence inquiry from the defective stage and conclude within the stipulated period.

6. Learned counsel for the respondents resisted the aforesaid contention and submitted that it is a case of no evidence



and no witnesses have been examined. It is also submitted that even though listing of witnesses have been cited along with article of charges, however, none of the witnesses have been examined in support of the alleged charge. It is also submitted that list of witnesses have not been made available, therefore, there is defect from the initial stage while issuing article of charges under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short “CCA Rules, 2005”).

7. Heard learned counsels for the respective parties.

8. Perusal of the records, it is crystal clear that there is serious alleged charge relating to misappropriation of 2,05,60,000/- and odd. If the disciplinary authority has committed certain errors in not following the relevant CCA Rules, 2005 from the stage of issuance of article of charge, statement of imputation, list of documents and list of witnesses and further there is no examination of witnesses, in such an event entire proceedings were required to be set aside and matter is required to be remanded to the disciplinary authority to commence fresh inquiry from the defective stage.

9. Learned Single Judge has has not noticed the Apex Court’s decision in the case of *Managing Director, ECIL vs. B. Karunakaran reported in (1993) 4 SCC 727 and Coal India Ltd.*



vs. Ananta Saha and Ors. reported in (2011) 5 SCC 142 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* [(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.”



10. Infact, it is bounden duty of the State counsel to apprise the learned Single Judge about remanding the matter if the proceedings are set aside on technicality, however, the same was not brought to the notice of the learned Single Judge. Therefore, order of the learned Single Judge is modified to the following extent :- the matter is remanded to the disciplinary authority to commence inquiry afresh in terms of CCA Rules, 2005.

11. This Court has come across now and then there is one or the other legal issues which have been ignored by the disciplinary authority/inquiring authority/appellate authority. Here is a case relating to alleged allegations related to misappropriation of 2,05,60,000/- and odd. Therefore, the order of the learned Single Judge is modified to the extent of remanding the present matter to the disciplinary authority to commence fresh inquiry and conclude within a period of six months from the date of receipt of this order. The disciplinary authority/inquiring authority are hereby directed to provide ample opportunity of hearing to the respondent. At the same time respondent shall co-operate in the inquiry to decide the inquiry proceedings within a period of six months. In the light of the paragraph 46 to 50 of the aforesaid Apex Court's decision, the disciplinary authority is hereby directed to take a decision as to whether respondent shall be



reinstated into service or he should be suspended. If he is reinstated or suspended, such order shall be subject to outcome of final order to be passed in the disciplinary inquiry. The intervening period from the date of dismissal till final order to be passed by the disciplinary authority shall be regulated in accordance with law within a period of one month from the date of passing of final order afresh in the departmental inquiry. Insofar as reinstatement or suspension is concerned, the disciplinary authority is hereby directed to pass a speaking order and communicate to the respondent within a period of one month from the date of receipt of this order.

12. Copy of this order shall be forwarded to the Chief Secretary, State of Bihar. He is requested to formulate guidelines in respect of implementation of CCA Rules, 2005 to the Heads of the Department and Secretariat level or appointing authority/disciplinary authority. We suggest that disciplinary authority or any other authority who invokes various provisions of CCA Rules, 2005 in a disciplinary proceedings and if if/she/they side track such a mandatory provisions and proceeded to pass order in a disciplinary proceedings, he/she/they must be liable for penal action under the very same set of CCA Rules, 2005. In that regard, State Government must examine whether penal action is



warranted against disciplinary/inquiring/appellate or appointing authority for violation of various provisions of CCA Rules, 2005 in a departmental inquiry. In such an event only disciplinary/inquiring/appellate or appointing authority would be very much alert in invoking CCA Rules, 2005 in respect of initiation and completion of disciplinary proceedings against his/her subordinate officer/employee of the State.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
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