

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21841 of 2019

Praduman Kumar Prasad Son of late Krishan Deo Prasad, Resident of Village-
Mahammadpur, P.S. Patahi, District- East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, SC/ST Welfare Department, Govt. of Bihar, Patna.
2. The Secretary, SC/ST Welfare Department, Govt. of Bihar, Patna.
3. The Director, SC/ST Welfare Department, Govt. of Bihar, Patna.
4. The District Magistrate, Bettiah, West Champaran.
5. The Deputy Director, SC/ST Welfare Department, Govt. of Bihar, Muzaffarpur.
6. The Deputy Director, SC/ST Welfare Department, Govt. of Bihar, Darbhanga.
7. The District Welfare Officer, West Champaran, Bettiah.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Satyavrat Verma, Advocate
For the Respondent/s : Mr. S.K.Mandal (SC 3)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

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

7 25-04-2022 In the instant petition the petitioner has prayed for the
following reliefs:

“The petitioner has prayed for issuance of a writ in the nature of writ of Certiorari, or any other appropriate Writ order, direction, quashing the order contained in Memo No. 1081 dated 16.04.2019 (Annexure -26) issued by the Respondent No. 3 and the order contained in Memo No. 141 dated 19.09.2019, issued by the Respondent No. 2. By the impugned order dated 16.04.2019, the petitioner has been inflicted with a punishment of compulsory retirement with a direction for



recovering the defalcated amount of Rs.37,41,060/- from the retiral dues of the petitioner and in the event the defalcated amount is not recovered from his retiral dues, then to recover the same from his movable and immovable property, further apart from the subsistence allowance nothing would be payable for the period of suspension and order in Appeal dated 19.09.2019, passed by the Respondent No. 2, upholds the order dated 16.04.2019, passed by the Respondent No. 3, even without remotely dealing with issues raised in the Appeal by the petitioner. The petitioner further prays for a consequential Writ of Mandamus, commanding the Respondents to reinstate the petitioner back in service with all consequential benefits.”

The petitioner was initially appointed as a clerk on 08.06.1984. He has earned promotion to the post of Nazir. While he was working as such he was subjected to disciplinary proceedings in framing article charges on 01.04.2013. The petitioner submitted his reply to the charge memo on 11.03.2014 and it was not satisfied by the disciplinary authority, thus, disciplinary authority proceeded to appoint the Enquiry Officer as well as the Presenting Officer. The Enquiry Officer held that the charges leveled against the petitioner were proved. On receipt of the Enquiry Officer’s report, Appellate Authority issued 2nd show cause notice on 19.02.2015 for which the petitioner had submitted his explanation on 11.03.2015.



Perusal of the records, the Appellate Authority stepped into the shoe of the Disciplinary Authority and proceeded to impose penalty of compulsory retirement on 17.02.2016.

Feeling aggrieved and dissatisfied with the order of the penalty dated 17.02.2016, the petitioner filed a CWJC No. 1088 of 2017 and it was disposed of on 26.06.2018 while setting aside the order of penalty dated 17.02.2016 and reserving the liberty to the Disciplinary Authority to pass order. Thus, the Disciplinary Authority imposed the penalty of compulsory retirement on 16.04.2019.

Feeling aggrieved and dissatisfied with the order of penalty dated 16.04.2019, the petitioner preferred an appeal before the Appellate Authority and it was rejected on 19.09.2019, thus, the petitioner presented this petition in questioning both the Disciplinary and Appellate Authority's orders dated 16.04.2019 and 19.09.2019.

Learned counsel for the petitioner vehemently contended that there is a procedural lapse in initiating and conclusion of the proceedings. Learned counsel for the petitioner submitted that against 2nd show cause notice dated 19.02.2015, he has submitted his explanation on 11.03.2015 in which he specifically taken the contention that the Disciplinary



Authority has not furnished documents and list of witnesses further despite demand for inspection of record the same was not allowed. The same was not appreciated by the Disciplinary and Appellate Authority.

Per-contra, learned counsel for the respondent resisted the aforesaid contentions of the petitioner and submitted that in the counter affidavit there is a specific contention that procedures have been followed. Therefore, there is no infirmity so as to interfere with the penalty order as well as Appellate Authority's order.

Heard the learned counsel for the respective parties. Question for consideration in the present petition is whether the Disciplinary Authority/Enquiry Authority have conducted proceedings in terms of Rule 17 of the Bihar State Civil CCA Rules, 2005 (hereinafter referred to as '2005 Rules') or not ?

Undisputed facts are that the petitioner was subjected to disciplinary proceedings in framing charges on 01.04.2013 and it was concluded in imposition of penalty of compulsory retirement on 17.02.2016 and it was subject matter of a CWJC No. 1088 of 2017 and it was allowed on 26.06.2018, thereafter the matter was remanded to the Disciplinary Authority to pass order in a disciplinary proceedings.



The Disciplinary Authority imposed the penalty of compulsory retirement on 16.04.2019 and it was confirmed by the Appellate Authority on 19.09.2019. Perusal of charge memo at Annexure '8', it is crystal clear that it is not accompanied by list of statement of imputation, list of documents and list of witnesses which are mandatory requirements in terms of sub-Rule (4) of Rule 17 of 2005 Rules. Further it is to be noted that the petitioner has specifically taken the contention against the second show cause notice dated 19.02.2015 in his explanation dated 11.03.2015 contended that the copy of the documents and list of witnesses have not been furnished. Further it is also stated that the petitioner was not permitted to inspect the records. The aforesaid contentions have not been countered by the State counsel Mr. S.K. Mandal with reference to records. Therefore, perusal of the records, it is evident that there is a non-compliance to Sub-Rule (4) of Rule 17 of 2005 Rules. On this legal issue, the Disciplinary and Appellate Authority have not apprised the petitioner's contention in their orders dated 16.04.2019 and 19.09.2019. Thus, the petitioner has made out a *prima-facie* case so as to interfere with the impugned order contained in Memo No. 1081 dated 16.04.2019 (Annexure -26) and the order contained in Memo No. 141 dated 19.09.2019.



Accordingly they are set aside.

Reserving liberty to the Disciplinary Authority to commence the enquiry from the defective stage and proceed to complete the enquiry proceedings within a period of 6 months from the date of receipt of this order.

The intervening period from the date of compulsory retirement i.e. 16.04.2019 till reinstatement or keeping the petitioner under suspension shall be regulated. Further the intervening period from the date of the suspension or reinstatement till passing of a final order is required to be regulated in accordance with the observation made by the Apex Court 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 & Ors.* reported in (2011) 5 SCC 142 para 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 or arrears of salary till date. Shri Bandhopadhyay, 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 and Union of India V. Y.S. Sadhu*, 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 the Apex Court’s decision, the disciplinary authority is hereby directed to take a decision whether the petitioner is to be reinstated or to place him under suspension. Such a decision shall be taken within a period of two months from the date of receipt of this order.

With the above aforesaid observations, the present petition stands allowed in part.

(P. B. Bajanthri, J)

(Rajeev Ranjan Prasad, J)

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