

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19347 of 2018

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Krityanand Ram S/o Puhuplal Ram, Resident of Village- Manikpur, Ward No.12, P.S.- Phulkaha Bazar, District- Araria.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Bihar State Power Holding Company Limited, Patna.
3. The Senior Manager Personnel South Bihar Power Distribution Company Limited, Bihar, Patna.
4. The General Manager, Bihar State Power Holding Company Limited, South Bihar Power Distribution Com
5. The Executive Engineer, Electricity Supply Division, Bihar Sharif, Nalanda, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrityunjay Kumar, Advocate
For the Respondent/s	:	Mr. Yogendra Prasad Sinha, AAG 7
		Dr. Kislay, Advocate

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

Date : 10-03-2022

Heard learned counsel for the parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“(i) For issuance of writ in the nature of certiorari or any other appropriate writ/order/direction to quash the office order contained in Memo No. 1591 dated 27.08.2018 issued by the Senior Manager (Personnel) South Bihar power Distribution Company Limite, Bihar, Patna whereby and whereunder direction has been issued to dismiss the petitioner from



the post of Junior Lineman under Central Electricity Supply Area, Harnaut, Biharsharif, Nalanda.

(ii) For calling upon the respondents to produce any other letter/order by which service of the petitioner has been cancelled and quash the same.

(iii) For issuance of appropriate writ/writs commanding the respondents to reinstate the service of the petitioner with all consequential reliefs including payment of arrears of salary.

(iv) Further for issuance of writ in the nature of mandamus or any other appropriate writ/order/direction to the respondent to stay the operation of the impugned order dated 27.08.2018 (Annexure – 8) till final disposal of this writ application.

(v) For any other relief(s) as your lordships may deem fit and proper as per the facts and circumstances of the case.”

3. Petitioner was initially appointed on contract basis to the post of Junior Lineman on 31.12.2008. Thereafter, his services were regularized against the post of Junior Lineman on 31.03.2015. The concerned appointing authority has taken note of the alleged allegations relating to certain discrepancies in the mark-sheet furnished by the petitioner. Based on such alleged allegations, disciplinary authority proceeded to dismiss the services of the petitioner without holding enquiry. Thus, the petitioner has presented this petition.



4. Short question for consideration is whether petitioner could be dismissed from service without holding enquiry or not?

5. Undisputed facts are that petitioner was initially appointed on contract basis on 31.12.2008 and his services were regularized on 31.03.2015 against the post of Junior Lineman. Petitioner was dismissed from service on 27.08.2018. It is also undisputed that petitioner is regular holder of the post of Junior Lineman with the respondent organization. Before terminating or dismissing permanent employee from service on certain allegations, in that event, the official respondent – disciplinary authority was required to resort domestic enquiry under the relevant disciplinary Rules/Regulations. The aforesaid formalities has not been complied before dismissing the petitioner from service on 27.08.2018. The aforesaid issue has also not been disputed by the learned counsel for the official respondent. Thus, petitioner has made out *prima facie* case to interfere with the office order contained in Memo No. 1591 dated 27.08.2018 issued by the Senior Manager (Personnel), South Bihar Power Distribution Company Limited, Bihar, Patna.

6. Accordingly, Memo No. 1591 dated 27.08.2018 is set aside, reserving liberty to the concerned respondent to initiate disciplinary proceedings on the alleged allegations stated in the



order of dismissal and complete the enquiry proceedings within a period of six months from the date of receipt of this order.

The intervening period is required to be regulated in terms of Hon'ble Apex Court decisions 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 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.”



7. The aforesaid exercise shall be completed insofar as regulating the intervening period within a period of two months from the date of receipt of this order.

8. Pending I.A. No. 1 of 2022 stands disposed off.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	12.03.2022
Transmission Date	

