

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4437 of 2018

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Dhananjay Kumar Rakesh Son of Sri Surendra Thakur, Resident of Village-
Gulzana, P.O.- Arkdhi Bariya, P.S.- Tekari, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principle Secretary, Welfare Department, Govt. of Bihar, Patna.
3. The Director, Integrated Child, Development Service, Govt. of Bihar, Patna.
4. The Child Development Project Officer, Kouch, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Kumar
For the Respondent/s	:	Mr.Gyan Prakash Ojha -Ga7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 03-01-2022

Heard learned counsels for the parties.

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

“1. That this is an application
for issuance of appropriate writ/ writs
and/ or order/ orders and/or direction/
directions for the following reliefs:-

(i) For issuance of writ in the
nature of certiorari for quashing the order
issued by District Programme Officer,
Gaya contained in Memo No. 1331 dated
22.11.2017 whereby the District
Programme Officer has been pleased to
cancelled the selection of the petitioner
from immediate effect.

(ii) For issuance of writ of
Mandamus commanding the respondents
to reinstate the petitioner on the post on
which he was working as he is malafidely
implicated in a criminal case & he was



granted bail by the competent court on the ground that nothing recovered from the possession of the petitioner.

(iii) Other reliefs for which petitioner is entitled in the facts & circumstances of the case.”

3. The petitioner was subjected to criminal proceedings as is evident from the F.I.R. dated 15.11.2017. Based on the filing of the F.I.R., petitioner's services were terminated on 17.11.2017 by the District Magistrate thereafter District Programme Officer, Gaya issued memo no. 1331/Ji.pro. Dated 22.11.2017 regarding termination of petitioner. He was also acquitted in the criminal case on 23.01.2018. Petitioner was not taken back to duty.

4. Learned counsel for the respondent resisted the petitioner's contention and submitted that in terms of Clause VI of agreement dated 19.09.2012, no notice is required before termination of petitioner's service.

Clause VI of the agreement dated 19.09.2012 reads as under:

“(vi) The employer may terminate your engagement without giving any notice in the event of 7 days or more continuous absence from duty without taking permission from the competent authority. You will not be paid for your absence on duty.”



5. Having regard to the date of filing of F.I.R. dated 15.11.2017 and the fact that petitioner was arrested and followed by termination order dated 17.11.2017, the respondent cannot take shelter under clause VI of the agreement dated 19.09.2012 as extracted (supra) for the reasons that date of arrest is 15.11.2017 and order of termination is 17.11.2017 i.e. much before seven days of continuous absence. On this count, respondents have not made out a case and there is violation of Clause VI mentioned in the agreement before terminating the petitioner's service.

6. In the light of these facts and circumstances, order of termination dated 17.11.2017 and 22.11.2017 are set aside. Petitioner is entitled to reinstatement.

7. Concerned respondent is hereby directed to proceed in accordance with law within a period of three months from the date of receipt of this order. The intervening period from 22.11.2017, the date of termination, till the final order to be passed shall be determined in the light of Apex Court's decision 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 of 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.”

8. With the above observations, the instant petition stands allowed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

