

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.808 of 2020

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Surendra Prasad Yadav Son of Late Tapsi Prasad Yadav, resident of Village and P.O. Gokhula, Police Station- Shikarpur, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue Department, Old Secretariat, Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate cum Collector, West Champaran, Bettiah.
4. The Additional Collector, West Champaran, Bettiah.
5. The Establishment Deputy Collector, West Champaran, Bettiah.
6. The Additional Collector, West Champaran, Departmental Enquiry, West Champaran, Bettiah.
7. The Circle Officer, Bhitaha, West Champaran, Bettiah.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arvind Kumar, Advocate

For the Respondent/s : Mr.Raj Kishore Roy (GP-18)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

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

Date : 25-04-2022

Heard learned counsels for the parties.

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

“(i) The order of petitioner dismissal from the post of Revenue Karamchari by the Collector, Bettiah, West Champaran in being order contained in memo no. 150 dated 05.03.2019 be quashed.

(ii) The order passed in Appeal by the Commissioner, Tirhut Division, Muzaffarpur in Service Appeal No. 91 of 2019 dated 20.09.2019 by which the order of the Collector, dismissing the petitioner from service has been approved, be also quashed.



(iii) The necessary direction be issued to reinstate the petitioner on his post from where he was dismissed with back wages with all consequential benefits.

(iv) The necessary cost be awarded, for the harassment caused of the petitioner.

(v) Any other relief/reliefs also be guaranteed, which this Hon'ble Court may seem fit and proper.

(vi) It is further prayed that during the pendency of the present application the operation of the order passed by the Collector approved by the Commissioner be stayed.”

3. Petitioner while working as Revenue Karamchari under the Collectorate of Bettiah, West Champaran was subjected to disciplinary proceedings and concluded in imposition of penalty of dismissal from service on 05.03.2019.

4. Feeling aggrieved and dissatisfied with the order of disciplinary authority, petitioner preferred an appeal bearing Appeal No. 91 of 2019 before the Commissioner, Tirhut Division, Muzaffarpur which was dismissed on 20.09.2019 in affirming the disciplinary authority's order. Hence, the present petition.

5. Brief facts of the case is that petitioner was subjected to disciplinary proceedings by framing Article of charges. The enquiry officer submitted report on 25.10.2013 by holding charges levelled against the petitioner were proved. Thereafter formalities like issuance of show-cause notice and



receipt of reply and further imposition of penalty on 05.03.2019 and its confirmation by the Appellate authority.

6. Perusal of the charge-memo it is crystal clear that there is non-compliance of Sub-rule 4 of Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

7. Learned counsel for Respondent-State could not resist the aforesaid contention with reference to the records.

8. Perusal of the records it is evident that there is non-compliance of Sub-rule 4 of Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. On this legal issue, impugned orders dated 05.03.2019 and 20.09.2019 are set aside.

9. The disciplinary authority is hereby directed to commence enquiry from the defective stage and complete the proceedings within a period of six months from the date of receipt of this order.

10. Disciplinary authority is hereby directed to take decision in respect of re-instatement or suspension in the light of Apex Court's decision rendered 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.”

11. The disciplinary authority is hereby directed to take decision either to keep the petitioner under suspension or re-instatement within a period of two months from the date of receipt of this order.

12. The intervening period from the date of dismissal from service till a fresh order is passed is required to be examined and take a decision how to regulate the aforesaid intervening period, after completion of inquiry proceedings, in accordance with law.

13. With the above observations, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Rajeev Ranjan Prasad, J)

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CAV DATE	
Uploading Date	29.04.2022
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