

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19077 of 2016

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Kumar Punam Chand S/o Late Radha Nand Mandal Resident of Village-
Hasanpur, P.O.-Meriganj, Police Station-Raniganj, District-Araria

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Revenue and Land Reforms, Department,
Government of Bihar, Patna
3. The Divisional Commissioner, Purnea Division, Purnea.
4. The Collector and District Magistrate, Araria
5. The Additional Collector, Araria, District-Araria
6. The Circle Officer, Raniganj, Anchal-Raniganj, District-Araria

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Advocate
For the Respondent/s : Mr. Rishi Raj Sinha- Sc19

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 19-07-2023

Pursuant to the order dated 05.07.2023, Ms. *Inayat*

Khan, District Magistrate, Araria is present in the Court.

2. On 05.07.2023 following order was passed:-

"Repeatedly this Court asked learned counsel for the State to apprise as to whether the charge memo dated 08.02.2013/ 06.03.2014 is consisting of list of documents, list of witnesses, statement of imputation or not? He is unable to apprise this Court with reference to the original records, therefore, the disciplinary authority – respondent No. 4, District Magistrate, Araria is hereby directed to appear in person so as to apprise this Court on the next date of hearing.

Re-list this matter on
19.07.2023."



3. The District Magistrate, Araria, who is present in the Court, has admitted that charge-memo dated 08.02.2014/06.03.2014 is not in terms of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (For short "Rules, 2005"). In the light of these lacuna, petitioner has made out a case. Accordingly, impugned orders dated 30.06.2016 (Annexure-1) and 15.09.2014 (Annexure-2) stand set aside. Matter is remanded to the disciplinary authority to initiate fresh inquiry and complete the inquiry proceedings in accordance with Rules, 2005 within a period of six months from the date of receipt of this order. The disciplinary authority is hereby directed to take a decision whether petitioner is required to be placed under suspension or he shall be taken back to duty. Further, the intervening period from the date of dismissal till passing of fresh order is required to be decided by the disciplinary authority by passing order under Rule 97 of Bihar Service Code. Such order shall be passed within a period of three months from the date of final order to be passed in disciplinary proceedings. In this regard disciplinary authority is hereby directed to take note 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 47 to 50 reads

as under:

“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.”

4. Principle laid down in the case of ***Managing Director, ECIL V. B. Karunakar*** reported in (1993) 4 SCC 727 has been reiterated in the case of ***The State of Uttar Pradesh & Ors. Vs. Prabhat Kumar*** reported in 2022 Live Law (SC) 736.



5. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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