

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9638 of 2020

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Abdul Samad Ansari S/o Sri Nejamuddin Ansari Resident of Village-
Sabeyakala, Post- Mushhari, P.S.- Sirisia O.P. (Shanichari), Block- Chanpatia,
Bettiah, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar.
2. The Additional Chief Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate cum Collector, West Champaran, Bettiah.
5. The Additional Collector, West Champaran, Bettiah.
6. The Sub Divisional Officer, Bagaha, West Champaran.
7. The Deputy Collector I/C Land Reforms, Bagha, West Champaran.
8. Shri Dharmendra Kumar, IAS the then Sub-Divisional Officer, Bagha, West Champaran, Male, Son of not known, Resident of not known presently posted as District Magistrate, Jamui, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amit Pandey, Advocate
Mr. M. Alam, Advocate

For the Respondent/s : Mr. Mukul Prasad, Advocate

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

Date : 15-09-2023

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

"(i) For issuance of an order (s)/direction(s) or writ(s) in the nature of writ of certiorari for quashing the order dated 20.03.2020 (IMPUGNED ORDER) passed in Service Appeal No.119 of 2019 whereby and whereunder the service appeal of the petitioner has been rejected by the Divisional



Commissioner, Tirhut Division, Muzaffarpur and quash/set aside the purported order contained in memo no.227 ated 25.03.2019 passed learned District Magistrate, West Champaran, Betiah, whereunder the Learned District Magistrate imposed major Penalty for compulsory retirement.

(IMPUGNED ORDER).

And/or

i(a) For issuance of an order(s)/direction(s) or writ (s) in the nature of writ of certiorari for quashing the charge memorandum i.e. Prapatra 'Ka' (Annexure P/3- which has been resolved by body of persons (consisting of five persons) and not by disciplinary authority) and consequent proceedings instituted there under.

(ii) For issuance of further order(s)/direction(s) or writ (s) in the nature of Mandamus directing the Respondents to reinstate the petitioner in the regular service without any further delay with all consequentail benefits.
And/or

(iii) A direction be issued upon the respondent authorities, each one of them, their servants and/or subordinates and/or agents to forthwith produce and/or caused to be produced the entire records relating to the Petitioner's case and on such production being made, render conscionable justice upon perusing the same;
And/or

(iv) For issuance of any further order(s)/direction(s) or writ (s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case."

2. Petitioner while holding the post of Revenue Karamchari he was placed under suspension on 22.02.2016 on the allegation that he was involved in interpolation of records and



removal of certain documents from the office records to do certain favour to some persons or to overcome certain misdeeds alleged to have committed by him. On 14.05.2016, charge was framed, however, it was communicated to the petitioner on 13.06.2016. In the meanwhile, Inquiring Officer and Presenting Officers were stated to have been appointed without waiting for the communication of charge memo and receipt of the petitioner's explanation pursuant to the charge memo dated 14.05.2016. In other words, disciplinary authority has committed serious error in not following Rule 17 Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (for short 'CCA Rules, 2005'). No reasons have been assigned as to why charge memo dated 14.05.2016 was not communicated to the petitioner till 13.06.2016 and, in the meanwhile, Inquiring Officer and Presenting Officer were stated to have been appointed. The inquiry proceeding was concluded in imposition of compulsory retirement penalty on 25.03.2019. The petitioner preferred appeal before the appellate authority in which he suffered an order and it is dated 20.03.2020. Hence, the present petition.

3. The above lacunas in the communication of charge memo and without waiting for petitioner's explanation, the disciplinary authority proceeded to appoint Inquiring Officer and



Presenting Officer. On receipt of the petitioner's explanation dated 05.10.2017 on charge memo dated 14.05.2016, the disciplinary authority has not taken any action. These are all serious lacunas in not adhering to the relevant provisions of the CCA Rules, 2005. On this count, the petitioner has made out a case.

4. The respondents' counsel has not disputed the aforementioned legal lacunas committed by the disciplinary authority and he has not defended the impugned order.

5. Accordingly, the orders of the disciplinary authority dated 25.03.2019 (Annexure-P/8) and appellate authority order dated 20.03.2020 (Annexure-P/1 series) are set aside. The matter is remanded to the disciplinary authority to issue a fresh charge memo and proceed further and complete inquiry proceeding in accordance with the relevant provisions of CCA Rules, 2005 within a period of six months from the date of receipt of this order.

6. Disciplinary authority is hereby directed to examine whether the petitioner could be reinstated during the pendency of the inquiry or he should be placed under suspension in the light of the decisions of the Hon'ble Apex Court in the case of **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in **2022 LiveLaw SC 736** and also 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 intervening period or suspension dated 22.02.2016 to 25.07.2016 and further consequential benefits were required to be decided by the disciplinary authority on outcoming of the fresh disciplinary proceedings. In this regard, disciplinary authority is hereby directed to pass speaking order insofar as intervening period as to how it has to be decided whether the petitioner is entitled to only subsistence allowance or difference of salary and further is he entitled to subsistence allowance from



25.03.2019, the date on which he was punished with compulsory retirement till today. In this regard, petitioner shall be issued notice and on receipt of petitioner's explanation a detailed speaking order shall be passed while taking note of petitioner's contentions. Speaking order shall be communicated to the petitioner within a period of three months from the date of receipt of final order to be passed in the disciplinary authority.

8. With the aforesaid observations, the present writ petition stands allowed.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

