

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.833 of 2014

In
Civil Writ Jurisdiction Case No.11307 of 2011

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1. The State of Bihar.
 2. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur
 3. The Senior Superintendent of Office, District - Muzaffarpur
 4. The Additional Superintendent of Police Town , District - Muzaffarpur
- Appellant/s
- Versus

1. Manoj Madhup S/o Sri Ram Vilash Sahni Resident of village and P.O. Godna, P.S. Bachwara, District - Begusarai at Present resident at Club Road, Mithanpura, Post Ramna, District - Muzaffarpur
 2. Bihar Public Service Commission, through its Chairman, Bailey Road, Patna
- Respondent/s
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Appearance :

For the Appellant/s : Mr. Deepak Sahay Jamuar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-02-2023

In the instant L.P.A., appellant has assailed the order of the learned Single Judge dated 18.12.2022 passed in C.W.J.C. No. 11307 of 2011.

2. The respondent remained on unauthorized absence while holding the post of Sub Inspector of police with effect from 30.10.2007 for which he was subjected to disciplinary proceedings in framing article of charges on 23.04.2008. He had replied denying the alleged charge while submitting certain documents on 19.05.2008. Disciplinary authority was not satisfied with the respondent's reply, in the result, he proceeded to appoint Inquiring



Officer to hold inquiry on the alleged charges leveled against him on 23.04.2008. It is learnt that the appellant did not appear before the Inquiring Authority, in the result, Inquiring Officer proceeded *ex-parte* inquiry and submitted his report to the disciplinary authority. Disciplinary authority issued a second show cause notice on 17.06.2010 for which there was no reply from the respondent, in the result, disciplinary authority proceeded to impose the penalty of dismissal from service on 03.01.2011.

3. In this backdrop, the respondent invoked remedy under Article 226 of Constitution in filing C.W.J.C. Even though, respondent had a remedy of appeal before the appellate authority, he has approached this Court on the score that DIG who has dismissed the respondent from the service was not the competent authority. This issue was taken up before the L.P.A. Bench, Full Bench and Apex Court. Ultimately, it was decided that DIG, who has dismissed the respondent from service, is the competent authority.

4. The remaining question involved in the present *lis* is whether Presenting Officer was appointed to present the departmental case before the inquiring authority or not? Further, whether copy of the Inquiring Officer's report was made available to him along with second show cause notice or not? The respondent has not addressed any other argument other than the



aforementioned contentions.

5. Learned counsel for the appellant-State submitted that respondent had not raised the aforementioned contentions in the writ petition, therefore, he is prevented from raising such contentions in further proceedings. Copy of the inquiry officer's report has been made available to him, however, it is disputed on behalf of the respondent.

6. Learned counsel for the respondent resisted the aforesaid contentions of the appellant insofar as non-appointment of Presenting Officer and non-furnishing of Inquiring Officer's report. It is submitted that appellant-State could not apprise this Court with material information to the extent that Presenting Officer was appointed and copy of the Inquiring Officer's report was made available to respondent.

7. Heard learned counsel for the respective parties.

8. Perusal of the records, it is evident that disciplinary authority who has framed the charges on 23.04.2008 and on receipt of reply of the respondent on 19.05.2008 and when he was not satisfied with the reply of the respondent, in that event, he is required to proceed with the inquiry matter in appointing the Inquiry Officer and Presenting Officer.

9. Perusal of the records, it is evident that only inquiry officer was appointed. In other words, to present the case on behalf



of the department against the respondent, presenting officer was not appointed which is a legal issue and it can be raised at any point of time. Further, in non-furnishing the Inquiring Officer's report, even though, appellant-State has taken a contention that it has been served on the respondent. However, material information has not been placed on record to establish that copy of the Inquiring Officer's report was furnished to the respondent. Even, perusal of the dismissal order, it does not reveal relating to furnish of Inquiring Officer's report. Therefore, one has to draw inference that copy of the inquiring officer's report was not made available to the respondent.

10. On these counts, appellants have not made out a case so as to interfere with the order of the learned Single Judge dated 18.12.2022 passed in C.W.J.C. No. 11307 of 2011.

11. Even though, learned Single has passed the following order:-

“11. In this view of the matter, I set aside the order of punishment and remit the matter to the appropriate officer of the rank of I.G. of police to pass a fresh order after considering 2nd show-cause reply without being influenced by earlier order of termination passed by respondent no. 3.

12. This court has not expressed any opinion on the other submissions, as the matter is being disposed of on the issue of jurisdiction alone.

13. This application is accordingly disposed of with the aforesaid liberty to the respondent concerned.”



12. However, matter requires to be remanded to the disciplinary authority to proceed from the defective stage, for the reasons that impugned departmental proceedings are set aside on technicality. In the case of quashing of departmental proceedings on technicality, Apex Court 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.”

13. In a latest decision of the Apex Court it is reiterated the principle laid down in *Managing Director, ECIL V. B. Karunakar* case and it is reported in *2022 Live Law (SC) 736* in the case of *The State of Uttar Pradesh & Ors. Vs. Prabhat Kumar*. Moreover, in the present case respondent who was working as a Sub Inspector of Police, the alleged allegations that he remained unauthorized absence for more than one year. If, date of unauthorized absence is taken from 30.10.2007 till 23.04.2008 the date on which *charge-memo* was issued, his being in a disciplined force of the State remaining on unauthorized absence is a misconduct. Therefore, we are of the view that matter be remanded to the disciplinary authority to commence the inquiry from the stage of appointing the Presenting Officer and to proceed



to complete the inquiry within a period of four months from the date of receipt of this order. The respondent is hereby directed to cooperate in disciplinary proceedings. In the event of non-cooperation of respondent in the departmental inquiry, the concerned departmental authority is permitted to proceed *ex-parte*.

14. The intervening period from the date of dismissal i.e. 03.01.2011 till passing of afresh order, the concerned authority shall take note of Apex Court’s decision cited (supra) and proceeded to pass orders accordingly in regulating the services. The above exercise shall be completed within a period of three months from the date of passing afresh order in a departmental inquiry.

15. Accordingly, order of the learned Single Judge is modified to the above extent. Present L.P.A. stands allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.02.2023.
Transmission Date	NA

