

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4447 of 2016

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Jay Shankar Singh, aged about 46 years, Son of Sri Shashi Bhushan Prasad Singh, Resident of Village- Gilanichak, P.O.- Telmar, P.S.- Chandi, District-Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Patna Division, Patna.
4. The District Magistrate, Patna.
5. The Sub-Divisional Officer, Patna Sadar, Patna.
6. The Additional Collector, Departmental Enquiry-cum-Conducting Officer, Patna.
7. The Additional Collector, Patna.
8. The Circle Officer, Patna Sadar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Advocate Mr. Raghubir Chandrayan, Advocate
For the Respondent/s	:	Mr. Avnish Nandan Sinha, GP 11

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

Date : 03-05-2023

Heard learned counsels for the respective parties.

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

“a. For issuance of an appropriate writ in the nature of certiorari quashing the order as contained in Memo No. 787, dated 01.03.2014, passed by the Collector Patna, in the Departmental proceeding (File No. XLII-34/2013), by which the Petitioner has been dismissed from his service from the date of issuance of the aforesaid order.



b. For issuance of an appropriate writ in the nature of certiorari quashing the order dated 19.01.2016 passed by the Commissioner, Patna in Service Appeal No. 65 of 2015 by which the Appeal preferred by the Petitioner against the order as contained in Annexure – 1 has been rejected and the order passed by the District Magistrate dismissing the Petitioner from Service has been upheld.

c. For issuance of an appropriate Writ in the nature of Mandamus directing the Respondents to reinstate the Petitioner into service with all consequential benefits including the subsistence allowance as due from July 2013 to the date of the order of dismissal as well as the salary for the period of October and November 2012.

d. For issuance of an appropriate writ holding and declaring the aforesaid act of the respondents to be in teeth of the procedure to be adopted by the Respondents in a Departmental Proceeding and furthermore for holding the Quantum of punishment as imposed by the Respondents against the Petitioner is not in consonance with the charges as well as materials on record in the Departmental Proceeding.

e. For issuance of any other order/orders or relief/reliefs for which the Petitioner may found to be entitled in the facts and circumstances of the case.”

3. The petitioner while working as *Revenue Karmchari* was placed under suspension on 06.12.2012. Later on it was revoked. He was subjected to disciplinary proceedings in framing article of charges on 10.01.2013. He had submitted his reply to the



charge memo denying the alleged charges. Still not satisfied by the disciplinary authority, disciplinary authority proceeded to hold the inquiry. Inquiry officer submitted report on 10.06.2013 to the extent that charges levelled against the petitioner were proved. On receipt of inquiry officer's report, the disciplinary authority proceeded to issue second show cause notice on 04.11.2013. Thereafter, proceeded to impose penalty of dismissal from service on 01.03.2014. Petitioner feeling aggrieved by the order of dismissal preferred appeal before the appellate authority and it was rejected on 19.01.2016. Hence, the present petition.

4. Learned counsel for the petitioner submitted that the charge memo dated 10.01.2013 and further proceedings are not in accordance with Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'Rules, 2005').

5. Learned counsel for the respondents has not disputed that there is a compliance to Rule 17 of Rules, 2005. In the light of these legal lacunae, the petitioner has made out *prima facie* case. Accordingly, dismissal order dated 01.03.2014 and rejection of appeal dated 19.01.2016 are set aside. Reserving liberty to the respondent/disciplinary authority to initiate fresh inquiry and conclude the inquiry within a period of six months from the date of



receipt of this order. In the meanwhile, disciplinary authority is hereby directed to take a decision as to whether petitioner could be placed under suspension or he shall be taken back to duty or not in the light of Apex Court decision in the case of ***Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Others*** reported in (1993) 4 SCC 727 read with ***Coal India Ltd. Vs. Ananta Saha*** reported in (2011) 5 SCC 142, paragraph nos. 46 to 50 held 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* [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC 633] , *Punjab Dairy Development Corpn. Ltd. v. Kala Singh* [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661] and *Graphite India Ltd. v. Durgapur Projects Ltd.* [(1999) 7 SCC 645].



48. In *ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and *Union of India v. Y.S. Sadhu* [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161] , 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* [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC 3018] , *Akola Taluka Education Society v. Shivaji* [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and *Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale* [(2009) 2 SCC 288 : (2009) 1 SCC (L&S) 372].

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.”



6. Disciplinary authority is hereby directed to pass a speaking order as to how to regulate intervening period from the date of dismissal till passing of fresh order in the disciplinary proceedings. The speaking order shall be passed within a period of two months from the date of passing of a fresh order in a departmental inquiry.

7. With the above observation, writ petition stands allowed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.05.2023
Transmission Date	NA

