

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12486 of 2012

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Amit Kumar Son Of Shri Premchand Sharma Resident Of Village - Tendua,
P.S. - Nokha, District - Rohtas

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary Home, Old Sachiwalya, Patna
2. The Director General of Police, Government Of Bihar, Patna, Old Sachiwalya, Patna
3. The Additional General of Bihar Military Police, Government of Bihar, Patna
4. The Deputy Inspector General Of B.M.P. , North Zone, Muzaffarpur, Distt - Muzaffarpur
5. The Commandant, B.M.P. 7, Katihar, Distt.- Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Advocate
		Mr. Maruti Kumar, Advocate
For the Respondent/s	:	Mr. Subhash Pd. Singh, Advocate

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

Date : 19-04-2023

Heard learned counsel for respective parties.

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

"(i) For issuance of an appropriate writ/writs, order/orders, direction/directions for commanding the respondents to quash the order passed by the Commandant, B.M.P. dated 30.04.2010/05.05.2010 by which the service of the petitioner has been terminated.

(ii) For quashing the order passed by the D.I.G. B.M.P. which contains in Memo No. 67 dated 19.01.2011 by which the appeal filed by the petitioner has been rejected.

(iii) For quashing the order which contains in Memo No. 472 dated 10.02.2012



passed by D.G. of Police by which Appeal Memorial filed by the petitioner.

(iv) For reinstatement of the service of the petitioner after setting aside the all orders passed by the Commandant, D.I.G. and D.G. and for any other relief/reliefs for which the Petitioner may be found entitled."

3. Petitioner was subjected to disciplinary proceedings in framing of charges on 18.07.2008. Inquiring Officer submitted his report on 22.07.2009. Disciplinary authority issued second show cause notice on 22.07.2009 and proceeded to impose penalty of dismissal from service on 05.05.2010. Thereafter, petitioner has exhausted further remedies like appeal and memorial. In both the proceedings, petitioner suffered orders hence the present writ petition.

4. One of the contention raised by the petitioner is that in the present matter Presenting Officer was not appointed to present the departmental case and it is submitted that Inquiring Officer has played dual role of presenting officer to present the departmental case and so also as an inquiring officer. On this count, further proceedings are vitiated.

5. *Per contra*, learned counsel for the respondents could not apprise this Court that Presenting Officer was appointed and fairly submitted that Inquiring Officer has played dual role of Presenting Officer as well as Inquiring Officer. On this legal defect,



petitioner has made out *prima facie* case so as to interfere with the impugned orders dated 30.04.2010/05.05.2010 (Annexure-1), 19.01.2011 (Annexure-2), 10.02.2012 (Annexure-3) and they are set aside.

6. Reserving liberty to the disciplinary authority to commence the inquiry from the defective stage and conclude the inquiry within a period of six months from the date of receipt of this order. Since impugned orders are set aside on technical ground therefore the disciplinary authority is hereby directed to examine as to whether the petitioner is required to be reinstated or placed under suspension in the light of Hon'ble Apex Court decision 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. It is to be noted that Hon'ble Apex Court reiterated the principle laid down in the case of MD ECIL in the later case in the case of **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in **2022 Live Law SC 736**. Insofar as whether petitioner is required to be reinstated or placed under suspension is concerned, in this regard, the disciplinary authority is hereby directed to take a decision within a period of one month from the date of receipt of



this order. Further, disciplinary authority is hereby directed to regulate the intervening period from the date of dismissal till reinstatement or suspension and further period from the date of commencement of defective inquiry stage till passing of final order is required to be regulated in accordance with law. Such speaking order shall be passed in regulating the intervening period within a period of two months from the date of passing final order in disciplinary proceedings. If the disciplinary authority feels that petitioner shall be placed under suspension during the intervening period of second stage of inquiry, in that regard, subsistence allowances be paid. If he is reinstated, salary attached to the post is to be paid till passing of final order in departmental inquiry.

8. With the above 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

