

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7228 of 2016

Shambhu Prasad Sahu Son of Sri Ram Lakhan Sahu At and P.O. Manik Chowk, P.S. Runni Saidpur, District - Sitamarhi Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Biha, Old Secretariat, Patna.
2. The Principal Secretary, Department of Mines, Government of Bihar, Vikas Bhawan, Patna
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Old Se
4. Commissioner, Magadh Division, Gaya
5. Additional Secretary, Department of Mines and Geology, Govt. of Bihar, Patna
6. Officer of Special Duty, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna
7. District Magistrate, Gaya
8. Deputy Secretary, the Department of Mines and Geology, New Secretariat, Patna
9. Joint Secretary - Cum - Conduction officer, Department of Mines, New Sec-retariat, Patna
10. Mineral Development officer - Cum - Presenting officer, Headquarters, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Prince Kumar Mishra, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13 Mr. Tej Pratap Singh, AC to AAG-13
For the Mines Dept	:	Mr. Naresh Dikshit, Advocate Mr. Brij Bihari Tiwary, Advocate

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

Date : 19-04-2023

In the instant petition, petitioner has prayed for the fol-
lowing reliefs:-

*" (i) For issuance of order, direction
or writ of certiorari or any other appropriate*



writ for setting aside/quashing the resolution contained in Memo No. 4083 dated 13.11.2014 passed by the Government of Bihar issued under the signature of Respondent No. 5 whereby and whereunder the petitioner has been imposed with the punishment of dismissal from service under rule of 14 (ix) of the Bihar Government Servant (Classification Control and Appeal) (Amendment) Rules, 2007.

(ii) For issuance of order, direction or writ of mandamus or any other appropriate writ for directing the respondent authorities to reinstate the petitioner on the post of District Mining Officer/In-charge Assistant Director with all consequential benefit including arrears of salary since the petitioner was prevented from carrying out his duty during the intervening period for no fault of his.

(iii) For issuance of order, direction or writ of mandamus or any other appropriate writ for directing the respondent authorities to pay the full salary to the petitioner for the period of suspension after setting aside the impugned order contained in Memo No. 4083 dated 10.11.2014.

(iv) For any other orders or direction which your Lordship may deem fit in the interest of equity, justice and good conscience"

2. Petitioner was subjected to parallel proceedings like criminal proceedings for the offences under the Prevention of Corruption Act, 1988 and departmental inquiry for misconduct. Departmental inquiry was concluded in imposition of penalty of dismissal from service. Feeling aggrieved by the dismissal order petitioner has presented this petition.

3. Learned counsel for the petitioner submitted that charge memo dated 16.01.2012 is not in accordance with the Bihar



Government Servant (Classification, Control and Appeal) Rules, 2005 (for short "Rules, 2005"). In other words, it is submitted that charge memo is not consisting of statement of imputation, list of documents and list of witnesses in support of the charge. On this count itself, entire departmental proceedings are liable to be set aside.

4. *Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that the petitioner failed to submit his reply to second show cause notice along with the Inquiring Officer's report. On the other hand, learned counsel for the petitioner submitted his reply to the show cause notice dated 15.05.2014 was submitted it was not not considered by the disciplinary authority while passing the dismissal order.

5. Heard learned counsel for the respective parties.

6. In view of legal defect in initiation of inquiry itself to the extent that there is non-compliance to the provision of Rules, 2005 to the extent that the charge memo is not accompanied by statement of imputation, list of documents and list of witnesses. On this count, the petitioner has made out *prima facie* case. Accordingly, the impugned order dated 13.11.2014 (Annexure-1) is set aside.



7. 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.”

8. 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.

9. 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

