

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1393 of 2018

In

Civil Writ Jurisdiction Case No.14095 of 2005

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1. Bihar State Food And Civil Supplies Corporation Limited
 2. The Chairman Cum Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone B
 3. The Chief Administration, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir
 4. The Chif of Finance Cum Conduction Officer, Bihar State Food and Civil Supplies Corporation Limited
 5. The Deputy Chief of Procurement Cum Presenting Officer, Bihar State Food and Civil Supplies Corpora
 6. Shree Nirmal Kumar Rai, the then District Manager In-Charge, Bihar State Food and Civil Supplies Co

... .. Appellant/s

Versus

Amardev Hazra Son of late Bhikhan Hazra, Resident of Mohalla- Krishna Nagar In front of Ram Lakhan College, Bettiah, Police Station- Bettiah Town, District-West Champaran, Bettiah.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shailendra Kumar Singh, Advocate

For the Respondent/s : Mr. Gajendra Kumar Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 26-07-2023

The 1st appellant is the employer and the sole respondent, the delinquent employee, who was dismissed from his service, the latter of whom was the petitioner before the learned Single Judge. The writ petition was filed against the order of dismissal, Annexure-12 passed by the Chairman-cum-Managing Director of the first appellant herein. A review was filed, which was rejected by order dated 02.05.2005, by the Reviewing Authority.

2. The brief facts to be noticed are that the respondent while posted at the District Office, Bettiah was also entrusted with the work of preparing bills. On 25.08.2004, he was served with a memo by the Chief Administrative Officer, placing him under suspension on allegation regarding wrong preparation of bills with respect to arrears of salary paid to Class-IV employees of Bettiah District. The allegations span over a period between 1996-1997, 1997-1998 and 2001-2002. The departmental proceedings were initiated against the respondent by order dated 14.09.2004 and the Inquiry Officer and Presenting Officer were appointed. The memo of charges dated 20.09.2004 was served with a further stipulation to show cause within 15 days, within which time he submitted his written explanations. The



explanations having been found to be unsatisfactory, the respondent was required to appear before the Inquiry Officer at Patna. The respondent was permitted perusal of the papers from the District Office of the Corporation at Bettiah and final written defence was required to be made before 16.11.2004. A writ petition against the order of suspension and the departmental proceeding stood disposed of directing conclusion of the departmental proceedings within three months.

3. A supplementary written statement of defence was filed by the respondent and the inquiry was proceeded with. The inquiry report was supplied to the respondent by the Chief Administrative Officer vide letter dated 06.12.2004, served on 09.12.2004. The inquiry report itself was dated 01.12.2004, but before the expiry of the period for showing cause against the inquiry report, a subsequent order dated 06.12. 2004, proposing punishment of dismissal was served on the respondent. The learned Single Judge found that, in the inquiry, the respondent was not given a fair opportunity to cross-examine the witnesses; one of whom did not make any oral deposition and the other was examined in the absence of the delinquent employee.

4. The original files of the departmental proceedings were called for by the learned Single Judge. The learned Single



Judge also noticed an identical inquiry with respect to identical charges levelled against another person, subject matter of C.W.J.C. No. 23405 of 2012. Therein also the inquiry suffered from almost identical defects. Finding the entire proceedings to be vitiated and the inquiry report to be perfunctory, without any basis and bereft of any evidence, C.W.J.C. No. 23405 of 2012 was allowed. The instant proceedings was also found to be vitiated by an identically perverse and perfunctory inquiry. The dismissal of the respondent was set aside. The respondent was directed to be reinstated in service with consequential benefits and full salary from the date of dismissal till the date of reinstatement.

5. The learned Additional Advocate General (AAG), Sri Anjani Kumar, pointed out that the learned Single Judge merely reinstated the respondent, without permitting the inquiry proceedings to be commenced from the stage at which the defect occurred. Learned AAG specifically referred to the decision in ***Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors.*** reported in (1993) 4 SCC 727. It is urged that the reinstatement of an employee with back wages cannot be the rule in all cases, where there is a technical defect noticed in the inquiry. It is also pointed out that the Constitution



Bench decision has further cautioned the Courts from directing entitlement to back wages of a delinquent employee, whose inquiry is set aside merely on a technical defect and the same remanded for resumption from the stage of the defect. It has been categorically declared that such consideration has to be left to the Disciplinary Authority which power also has to be exercised after the culmination of the proceedings and depending upon the final outcome. The learned AAG also pointed out a similar direction to resume the inquiry from the stage at which the defect was noticed, passed in an identical case, on the very same allegations against another person in C.W.J.C. No. 9173 of 2005, wherein no such direction for payment of back wages was made. It was clearly directed that after conclusion of the proceedings, the monetary benefits due to the delinquent employee shall be disbursed, on final orders to be passed by the Disciplinary Authority.

6. We have looked at the decision of the Constitution Bench in **B. Karunakar** (*supra*); which considered the effect of the 42nd amendment of the Constitution of India. The Constitution Bench while affirming the decision in **Union of India v. Mohd. Ramzan Khan**, reported in (1991) 1 SCC 588 reiterated that the supply of the inquiry report before the



Disciplinary Authority takes decision on the question of guilt of the delinquent employee is a facet of the right to reasonable opportunity, available to the delinquent to argue against the findings of the Inquiry Officer. It was held that this pertains to the first stage of the inquiry, wherein the Disciplinary Authority takes a decision on the basis of the inquiry report along with the delinquent employee's reply and other evidence, which constitute an integral part of the inquiry. The right to show cause against penalty, as it was stipulated earlier, was taken away by the 42nd amendment.

7. There is no dispute that the Hon'ble Supreme Court found that, if the inquiry report has not been supplied to the delinquent employee, then any prejudicial orders passed against the delinquent employee, on the basis of the inquiry report would be vitiated. In such circumstance, it was also directed that there is no question of mere setting aside of the prejudicial order, but the matter should be remanded, so as to provide the employer with an opportunity to resume the proceedings, from the stage at which the technical defect was noticed, based on which the final order was interfered with. In fact, it is in that context that the Hon'ble Supreme Court held that there cannot be a mechanical reinstatement of the employee



with back wages in all cases and that the decision as to the entitlement of the back wages should be left to the Disciplinary Authority, to be decided after the conclusion of the proceedings and depending on the final outcome. The caution expressed is that the reinstatement with back wages, without any application of mind would 'reduce the rules of justice to a mechanical ritual' (sic) . It can be easily deduced from the observations pointed out by the learned AAG that there could be cases in which reinstatement with back wages can be ordered.

8. Referring to the facts of the case, it cannot be, but observed that identical charges, of wrong generation of payment bills, was raised against four people, Mahmudul Haque, Jageshwar Choudhary, Amardev Hazra the respondent herein and one Rakesh, the last of whom did not challenge the disciplinary proceedings. Mahmudul Haque challenged the order of dismissal by C.W.J.C. No. 9173 of 2005, in which it was found that there was no oral evidence or documentary evidence adduced before the Inquiry Officer and the Disciplinary Authority did not consider any of the grounds raised by the delinquent against the inquiry report. Therein also the second show cause notice, as against penalty, was issued with proposed punishment of dismissal from service, even before the reply



against the inquiry report of the delinquent was received by the Disciplinary Authority.

9. The learned Single Judge has in the present case followed the judgment in C.W.J.C. No. 23405 of 2012; which was filed by Jageshwar Choudhary, which was allowed by order dated 11.02.2014, finding the inquiry to be vitiated and the report to be perfunctory and without any basis or evidence. The impugned order was quashed and the petitioner-respondent was directed to be reinstated forthwith, with entitlement to all the back wages from the date of dismissal till the date of reinstatement. The back wages were directed to be paid within six months from the date of reinstatement and the respondents-appellants were left liberty to resume the disciplinary proceedings from the stage of inquiry. The same was unsuccessfully challenged in L.P.A number 1096 of 2014 and also in a Special Leave Petition (C) No. 3394 of 2018. Therein, on 05.12.2018, since the challenge by the State was confined to the grant of back wages, as a condition for condonation of delay and issuance of notice, the State was directed to deposit an amount of Rs. 9,00,000/- (Nine Lakhs); being half of the total back wages payable. Later, by order dated 15.02.2019 half of the amounts were directed to be released in favour of the delinquent



employee and the balance kept in a fixed deposit till disposal. The S.L.P. was converted into Civil Appeal No. 5815 of 2019, which was disposed of, by order dated 22.07.2019. It was found that considering the rules relating to service conditions, binding both the parties and having regard to the totality of the facts and circumstances, the respondent was entitled to subsistence allowance, as per the Rules. Finding that the respondent therein had already retired, it was also directed that the retiral benefits shall be given to the respondent, after adjusting the amounts already remitted and kept in deposit, which deposit was directed to be released in favour of the respondent.

10. In the present case also the dismissal order was set aside, not merely on the finding that the Disciplinary Authority had prejudged the penalty of dismissal. It cannot at all be disputed that, even before the inquiry report was received by the delinquent, which is said to be on 09.12.2004; the Disciplinary Authority followed up the communication dated 06.12.2004 supplying the inquiry report dated 01.12.2004, with a proposal of penalty of dismissal, also dated 06.12.2004. It also has to be noticed that in addition to this the learned Single Judge found that the extreme punishment of dismissal imposed was perverse, especially since the inquiry was perfunctory. It is to be



noticed that the District Manager, Bettiah, who was to depose on behalf of the management merely gave a written statement without the delinquent employee being permitted cross-examination. The statement of the Assistant Accounts Officer was also in the absence of the delinquent employee and there was no opportunity afforded for cross-examination. Those factors seriously vitiate the inquiry.

11. We cannot but observe that the entire inquiry was perfunctory and a sham, coupled with the fact that the delinquent employee was not given a proper opportunity to put forth his objection regarding the inquiry report, which too assumes significance and vitiate the order passed.

12. The learned AAG submitted that the order of dismissal was set aside on the mere technical defect of a penalty proposal having been issued; which in fact was not necessary in view of the authoritative declaration in **B. Karunakar** (*supra*). As we observed earlier, the fact of the proposal having been issued even before the reply was received, clearly indicate the mind of the Disciplinary Authority; which was prejudged and had concluded the guilt of the delinquent employee without hearing him. The inquiry was also perfunctory and there was no opportunity to defend. Hence, as has been done in C.W.J.C. No.



23405 of 2012, the matter has to be referred back to the Disciplinary Authority, to resume the proceedings from the stage of inquiry. An Inquiry Officer and a Presenting Officer will have to be appointed and the proceedings continued from that stage.

13. We are of the opinion that this is a fit case, especially considering the fact that the inquiry itself was a sham, that the respondent be reinstated immediately, at any rate within one month from the date of this judgment and the entire subsistence allowance due to him from the date of dismissal till the date of reinstatement be paid within another 30 days from the date of his reinstatement. The employer would be entitled to consider whether the delinquent employee should be placed under suspension, but, however, the Inquiry Officer and the Presenting Officer shall be appointed within the 30 days and the inquiry proceeded with after paying the entire subsistence allowance. If the subsistence allowance due from the date of dismissal to the date of reinstatement is not paid by the State, the State would be precluded from suspending the employee. If the respondent is suspended, he shall be entitled to the subsistence allowance as per the Rules. The inquiry at any rate shall be concluded within three months from the date of appointment of Inquiry Officer and Presenting Officer. The back wages shall be



at the discretion of the Disciplinary Authority, after conclusion of the inquiry and its final outcome.

14. The LPA stands partly allowed with the above directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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