

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1443 of 2018

In
Civil Writ Jurisdiction Case No.17665 of 2015

-
-
1. The State Of Bihar through Secretary, Water Resources Department, Bihar, Patna.
 2. The Secretary, Water Resources Department, Bihar Patna.
 3. The Additional Secretary, Water Resources Department, Bihar Patna.
 4. The Under Secretary, Water Resources Department, Bihar Patna.

... .. Appellant/s

Versus

1. Mukesh Kumar Singh, Son of Ramji Prasad Singh, Resident of Village-Jagatpur, P.s Harnaut, District Nalanda.
2. Arun Kumar Verma, then Superintendent Engineer-cum-Department Enquiry officer, Water Resources Department, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shankar Kumar, AC To AAG VII
For the Respondent/s	:	Mr. Chitranjan Sinha, Sr. Adv.
		Mr. Ravi Bhardwaj, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

10 09-05-2023 In the instant L.P.A., appellant has assailed the order of the learned Single Judge dated 08.03.2018 passed in C.W.J.C. No. 17665 of 2015.

2. Respondent- Mukesh Kumar Singh, who was Sub Divisional Officer in the Irrigation Department, he was subjected to parallel proceedings, namely, criminal and departmental inquiry on the allegations of disproportionate to the known source of income. Departmental inquiry concluded in imposition of penalty of dismissal from service which was subject matter of C.W.J.C.



No. 17665 of 2015 decided on 08.03.2018.

3. Perusal of the learned Single Judge order, it is evident that in respect of alleged allegations relating to acquisition of Rs. 98,64,000/- which was disproportionate to his known source of income and it is not supported by the material information, in other words, list of documents and list of witnesses other than FIR. Merely with reference to FIR, one cannot draw inferences that the allegations of acquisition of sum of Rs. 98,64,000/- which was alleged to be disproportionate to his known source of income was there. Therefore, respondents have not made out a *prima facie* case so as to interfere with the order of the learned Single Judge insofar as order of dismissal is concerned.

4. However, in para 25, the learned Single Judge has passed the following order:-

“25. Accordingly, the writ petition is allowed and the impugned order dated 10.07.2015, whereby the petitioner has been dismissed from service, is quashed. As a result of quashing the order of punishment, the petitioner would be entitled to all consequential benefits. However, the respondents would be at liberty to proceed with the enquiry, if so advised in accordance with law.”

5. 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 and Others***, reported in ***(2011) 5 SCC 142***, paragraphs 47 to 50, it is read as under:-



“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 SC633], 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. vs. Durgapur Projects Ltd. [(1999) 7 SCC 645].

48. In ECIL v. B. Karunakar [(1993) 4 SCC727 : 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: AIR2009 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 SC3018], 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. Principle laid down by the Apex Court in the aforementioned decisions is that in the event of quashing of any penalty order on technical ground, in that event matter is to be remanded to the Disciplinary Authority to commence the inquiry from the defective stage. Further, Disciplinary Authority is required to examine as to whether the concerned Government



servant/employee was required to be placed under suspension till a fresh inquiry is concluded or he shall be taken back to duty or not? In this regard, Disciplinary Authority is hereby directed to take decision within a period of two months from the date of receipt of this order. Further, the Inquiry shall be completed within a period of six months from the date of receipt of this order from the defective stage of the inquiry proceedings. For the intervening period from the date of dismissal dated 10.07.2015 to till passing of a fresh order in a departmental inquiry is required to be regulated in accordance with law. Such decision shall be taken by the disciplinary authority after passing of final order in the departmental proceedings within a period of two months.

7. To the above extent, order of the learned Single Judge is modified and L.P.A. stands allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

DKS/
Balmukund/-

U			
---	--	--	--

