

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.864 of 2018

In
Civil Writ Jurisdiction Case No.72 of 2017

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Deputy Development Commissioner Cum Additional District Programme
Coordinator, Madhepura

... .. Appellant/s

Versus

1. Ajay Kumar S/o Ghanshyam Varan Singh, R/o Village and P.O.- Damgarhi,
P.S. Sour Bazar, District- Saharsa.
2. The State of Bihar through the Principal Secretary Rural Development
Department Government of Bihar
3. The Secretary, Rural Development Department Bihar, Patna.
4. District Magistrate cum District Programme Coordinator Madhepura.
5. Executive Engineer Mahatma Gandhi National Rural Development Society,
Madhepura.
6. Assistant Engineer Mahatma Gandhi National Rural Development Society,
Madhepura.
7. Programme Officer Mahatma Gandhi National Rural Development Society
District- Madhepura.
8. Junior Engineer Mahatma Gandhi National Rural Development Society,
District Madhepura.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Ms. Sunita Kumari, Advocate
For the Respondent Nos.2 &3	:	Mr. Deepak Sahay Jamvar, AC to AAG-4
For the Respondent No.1	:	Mr. Diwakar Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-04-2023

The present L.P.A. is filed by the State-Department
against the order of the learned Single Judge dated 07.04.2017
passed in CWJC No. 72 of 2017.

02. Undisputed facts are that the Respondent No.1



was appointed as Panchayat Technical Assistant on 28.08.2010 on contract basis. He is alleged to have been involved in certain misdeeds. In the result, show cause notice was issued and his services were terminated on 20.05.2014. Feeling aggrieved by the termination, Respondent-Ajay Kumar filed CWJC No. 72 of 2017 and it was allowed on 07.04.2017. Feeling aggrieved by the order of the learned Single Judge, the present LPA has been filed on behalf of appellant.

03. Learned counsel for the appellant vehemently contended that the learned Single Judge has committed error in not appreciating the allegations levelled against Respondent No.1 followed by termination.

04. *Per-contra*, learned counsel for the Respondents resisted the aforesaid contention, supported the order of the learned Single Judge and submitted that there is no infirmity in the order of the learned Single Judge.

05. Heard the learned counsels for the respective parties.

06. The respondent was appointed on contract basis to the post of Panchayat Technical Assistant on 28.08.2010, while working as such he is alleged to have committed certain misdeeds and it was subject matter of show-cause notice and



termination order.

07. The learned Single Judge while allowing the writ petition, has not given liberty to the concerned appellant to initiate domestic inquiry. Therefore, we are of the view that even if a temporary employee is terminated on certain allegations, in that event, stigma would attach to him/her, therefore, formal domestic inquiry is warranted in the light of Apex Court's decision in the case of ***Hari Ram Maurya vs. Union of India and Ors.***, reported in ***(2006) 9 SCC 167***.

08. We are interfering with the order of the learned Single Judge dated 07.04.2017 only to the extent that learned Single Judge has committed error in not providing liberty to the concerned appellant to initiate inquiry and conclude the same. In this regard, the concerned appellant is hereby directed to initiate domestic inquiry and conclude the same within a period of four months from the date of receipt of this order. The intervening period from the date of termination i.e. 20.05.2014 till conclusion of the inquiry and passing of speaking order on a domestic inquiry, the Respondent No.1 shall be treated as placed under suspension in the light of the Apex Court's decision in the case of 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,

Paragraph Nos. 46 to 50, of which read 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 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."

09. The concerned-Authority is hereby directed to regulate the intervening period, in accordance with law. In this regard, speaking order shall be passed and communicated to the Respondent No.1 within a period of two months from the date



of final order passed in domestic inquiry. To this effect, the order of the learned Single Judge dated 07.04.2017 passed in CWJC No. 72 of 2017 is hereby modified.

10. Accordingly, the L.P.A. stands allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/Daya/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2023
Transmission Date	NA

