

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9327 of 2017

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Anil Kumar Singh, Son of Sri Parmanand Singh, Resident of Village- Sahjadpur, Police Station- Udakishunganj, District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Divisional Commissioner, Purnea.
3. The District Magistrate, Araria.
4. The Deputy Development Commissioners, Purnea-cum- Conducting Officer.
5. The Circle Officer, Raniganj in the District of Araria-cum- Presenting Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sia Ram Sahi, Advocate
		Mr. Ranjan Kumar Singh, Advocate
For the State/s	:	Mr. Mukesh Prasad, AC to G.P.-18

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

Date : 26-04-2023

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

"For issuance of an appropriate writ in the nature of certiorari for quashing the 12.05.2016 under Memo No. 1155, issued under the signature of Collector, Araria by which petitioner has been dismissed from service with effect from the date of issuance of order and also for a direction in the nature of mandamus commanding the respondent to conclude the Service Appeal bearing Appeal No.12 of 2016 as earliest and also for a direction to grant all other consequential benefits in terms thereof for which petitioner is entitled for."



2. Petitioner while working as a Revenue Karamchari he was involved in an alleged demand and acceptance of illegal gratification from the complainant-Surendra Kumar Yadav. On this issue, criminal proceedings were launched against him and it is pending consideration. At the same time, departmental inquiry was initiated on 26.06.2015. In the meanwhile, he was placed under suspension on 24.04.2015 and, thereafter, it was revoked on 14.09.2015. The petitioner has submitted his explanation to the charge memo on 19.11.2015. The Inquiring Officer submitted his report on 22.01.2016. On receipt of Inquiring Officer's Report, the disciplinary authority proceeded to issue show cause notice on 08.02.2016. Petitioner had submitted his reply on 29.02.2016. Thereafter, the disciplinary authority proceeded to pass an order of dismissal on 12.05.2016. Petitioner feeling aggrieved and dissatisfied with the order of dismissal preferred appeal before the appellate authority which was rejected on 26.05.2018, hence, the present petition.

3. Learned counsel for the petitioner submitted that there are non-compliance of various provisions of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (for short "CCA Rules, 2005"). It is submitted that the alleged charge was not proved in the manner known to the law. It is submitted that



complainant has not been cited as witness and he has not been examined and cross-examined to prove the charge levelled against the petitioner. It is also submitted that charge memo was not accompanied by the statement of imputation, list of documents and list of witnesses, therefore, entire proceedings are liable to be set aside.

4. *Per contra*, learned counsel for the respondent-State resisted the aforementioned contention and submitted that having regard to the serious alleged allegations relating to demand and acceptance of illegal gratification no inference is called for. However, it is submitted on behalf of State that there are non-compliance of various provisions of CCA Rules, 2005 like in not furnishing statement of imputation, list of documents and list of witnesses the complainant has not been examined and cross-examined.

5. Heard learned counsels for the respective parties.

6. Undisputed facts are that the petitioner was subjected to parallel proceedings on the alleged allegations relating to demand and acceptance of illegal gratification to the criminal proceedings are concerned, it is yet to attain finality. On the other hand, departmental inquiry has been concluded in imposition of penalty of dismissal from service. The petitioner suffered order



before the appellate authority. In this backdrop, it is to be noted that from the inception of initiation of department inquiry the disciplinary authority has committed glaring error in not furnishing the statement of imputation, list of documents and list of witnesses. In fact, prime witness, namely, complainant-Surendra Kumar Yadav has not been cited as witness. In view of these facts and circumstances, the petitioner has made out a *prima facie* case so as to interfere with the order of disciplinary and appellate authorities orders dated 12.05.2016 and 26.05.2018 and they are set aside. Reserving liberty to the concerned respondent to initiate inquiry afresh and conclude the department inquiry in terms of CCA Rules, 2005 within a period of six months from the date of receipt of this order. The disciplinary authority is hereby directed to take note of the fact that the petitioner is aged about 60 years, therefore, in the event of proving the charges Disciplinary Authority/Government/Competent Authority was required to invoke Bihar Pension Rules, 1950. For time being, petitioner is not entitled to any monetary benefits unless and until fresh order is passed in departmental proceedings 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. Once the disciplinary authority passes a fresh order in a departmental inquiry and, thereafter, within a period of two months consequential order shall be passed to regulate the intervening period from the date of dismissal dated 12.05.2016 till passing of fresh order or date of his retirement whichever is earlier. In this regard, speaking order shall be passed and communicated to the petitioner.

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

