

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.219 of 2019
In
Civil Writ Jurisdiction Case No.15818 of 2014

1. The State of Bihar
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. The District Magistrate, Purnea.
4. The Secretary to the Commissioner, Purnea Division, Purnea.
5. The District Supply Officer, Purnea.
6. The Officer on Special Duty, Food and Consumer Protection Department, Government of Bihar, Patna.
7. The Sub-Divisional Officer, Dhamdaha Sub Division, Purnea.

... .. Appellant/s

Versus

Ashok Kumar Roy Son of Late Ram Prasad Roy, Resident of Village- Parwatti, P.O. Bhagalpur City, P.S. University thana, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amit Prakash, GA 13 Mr. Amrit Anand, AC to GA 13
For the Respondent/s	:	Mr. Brisketu Sharan Pandey, Advocate Mr. Abhishek Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

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

Date : 13-05-2024

Re: I.A. No. 03 of 2024

Heard I.A. No. 03 of 2024 filed on behalf of the Respondent - *Ashok Kumar Roy* insofar as recalling the order dated 22.04.2024. He has assigned dates and events read with the Hon'ble Supreme Court decision insofar as condonation of delay



in filing appeal to the extent that State Appeal is not maintainable on the ground of delay.

2. No doubt, it is true that there is a delay of about 271 days. Normally it cannot be condoned, however, having regard to the fact that Respondent was involved in Prevention of Corruption Act, 1988, therefore, delay is condoned. Hon'ble Supreme 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 and ***State of Uttar Pradesh & Ors. vs. Prabhat Kumar*** reported in 2022 Live Law SC 736. In the ***Chairman-cum-Managing Director, Coal India Limited & Ors.*** (cited *supra*) in paragraph Nos. 47 to 50, it is held 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 SC 633] , 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. v. Durgapur Projects Ltd. [(1999) 7 SCC 645].

48. In ECIL v. B. Karunakar [(1993) 4 SCC 727 : 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 : AIR 2009 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 SC 3018] , 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."*

In other words, if the penalty order is set aside on technicality, in that event, matter is required to be remanded.



In the present LPA limited issue is whether matter is required to be remanded to the disciplinary authority to commence afresh inquiry from the defective stage or not. Therefore, condonation of delay of about 271 days in filing LPA is warranted. Hence, I.A. No. 03 of 2024 to recall the order dated 22.04.2024 stands rejected.

3. In the instant LPA, the appellants have assailed the order of the learned Single Judge dated 04.04.2018 passed in CWJC No. 15818 of 2014. Respondent – *Ashok Kumar Roy* was involved for the offences under Prevention of Corruption Act, 1988. The alleged allegation is that respondent – *Ashok Kumar Roy* is stated to have demanded and accepted illegal gratification from one *Anil Paswan* for issuance of SIO in favour of *Anil Paswan*. Based on such allegation, parallel proceedings have been launched by the State like departmental and criminal proceedings. Insofar as criminal proceedings is concerned, it is still pending consideration before the jurisdictional forum, on the other hand, departmental inquiry has been concluded. In the departmental inquiry the inquiring officer had exonerated the respondent. On receipt of inquiring officer's report, disciplinary authority proceeded to pass penalty order of withholding of 100 % pension in view of the fact that respondent – *Ashok Kumar Roy* has



attained age of superannuation and retired from service on 31.07.2009.

4. Respondent – *Ashok Kumar Roy* questioned the validity of the imposition of penalty in writ petition CWJC No. 15818 of 2014. Learned Single Judge has allowed the writ petition. It is relevant to reproduce paragraph Nos. 12 and 13. Paragraph Nos. 12 and 13 read as under:

“12. In a departmental proceeding, charges has to be proved by the department and delinquent is not required to prove his innocence, as such on the basis of such enquiry report no punishment could have been imposed on the delinquent. Secondly, it has been emphatically denied by the petitioner that enquiry report was served upon him along with second show cause as such he had no opportunity to go through the enquiry report and finding recorded by the Enquiry Officer with respect to charges framed against him as such there was no occasion for him to file his reply to the second show cause. At the time of issuance of second show cause, the disciplinary authority is not expected to form any opinion with respect to guilt of petitioner. The punishing authority has to form a final opinion after considering the reply of petitioner against the finding of Enquiry Officer. In the present case, the Enquiry Officer has not found charges to be proved against the petitioner and moreover the same enquiry report was not served upon the petitioner.



Disciplinary authority without finding the charge to be proved and without giving any tentative reasons from differing with the findings of Enquiry Officer has imposed punishment of 100 per cent forfeiture of pension, which is not sustainable in the eye of law and is accordingly set aside. As the charges in criminal proceeding and departmental proceeding are identical and same are required to be proved by same set of evidence, this Court is not inclined to grant liberty to respondent-authorities to initiate fresh proceeding from the stage it stood vitiated and they can await the outcome of vigilance case for imposing any punishment on the petitioner as opined by the Enquiry Officer as well the Presenting Officer. The order passed by the Disciplinary Authority dated 15.05.2014 is set aside. Since petitioner has retired during the pendency of proceeding he is entitled for all retirement benefits, which has been illegally withheld by the department and same to be paid within three months from the date of receipt/production of a copy of this order.

13. However, it is made clear that since vigilance case is pending against the petitioner, he is entitled for 90 per cent provisional pension and provisional gratuity and if the petitioner is held guilty by vigilance court, the respondents are at liberty for imposing punishment of forfeiture of part pension or gratuity or full pension and gratuity depending upon the nature of charges proved against the petitioner.”



5. Feeling aggrieved and dissatisfied with the order of the learned Single Judge dated 04.04.2018 passed in CWJC No. 15818 of 2014, the present LPA is presented by the State. In the LPA, they have contended that the alleged charge is relating to demand and acceptance of illegal gratification of Rs. 4,000/- from one *Anil Paswan* for issuance of SIO in favour of him and it is a serious charge. Simultaneously, criminal proceedings are pending consideration. It is submitted that the learned Single Judge has recorded that it is not a case of remand. On the other hand, specific contention has been urged in the LPA to the extent that if the penalty order is set aside on technicality, in such circumstances, it is a case of remand to the disciplinary authority to continue the proceedings from the defective stage.

6. On the other hand, learned counsel for the respondent resisted the aforementioned contentions and supported the order of the learned Single Judge dated 04.04.2018 to the extent that there is no infirmity in allowing and in not remanding the matter. It is submitted that the initiation of departmental inquiry to the extent of framing of article of charge is contrary to Bihar CCA Rules, 2005 to the extent that the competent authority is Government, which is with reference to the fact that respondent has attained age of superannuation and retired from service on 31.07.2009 whereas



the charge memo was issued on 09.11.2009. Secondly, it is submitted that the charges are very grave in nature. Disciplinary proceedings should have been stayed due to pendency of criminal proceedings. On this issue, learned counsel for the respondent cited two decisions namely, *Stanzen Toyotetsu India Private Limited vs. Girish V. and others* reported in 2014 3 SCC 636, Paragraph Nos. 8 and 11 and *Kapil Muni Rai S/o late Ram Keshwar Rai, R/o 268 Krishi Nagar (A.G. Colony), P.S.-Shastri Nagar, Distt.-Patna vs. The State of Bihar and Others* reported in (2011) 1 PLJR 123 on the principle that if the charges in departmental and criminal proceedings are identical, in such circumstances, departmental proceedings were required to be stayed. It is further submitted that the learned Single Judge has recorded that it is not a case for remand, therefore, no interference is called for.

7. Heard learned counsels for the respective parties.

8. Undisputed facts are that the respondent – *Ashok Kumar Roy* was involved in Prevention of Corruption Act, 1988 to the extent of demand and acceptance of illegal gratification of Rs. 4,000/- from one *Anil Paswan* for issuance of SIO in favour of *Anil Paswan*. In this regard, State has launched parallel proceedings i.e. departmental and criminal proceedings. Criminal



proceedings is still pending consideration before the jurisdictional forum. Departmental proceedings has attained finality to the extent of withholding of 100 % pension from the respondent – *Ashok Kumar Roy*. It was a subject matter of CWJC No. 15818 of 2014 and it was decided in favour of the respondent – *Ashok Kumar Roy* on 04.04.2018. Perusal of paragraph No. 12 of the order of the learned Single Judge cited *supra*. Merely not giving opportunity in non-furnishing of inquiring officer's report and further there is violation of principle of natural justice by the disciplinary authority, he has given finding that it is not a case of remand. On the other hand, Hon'ble Supreme Court in the case of ***Chairman-cum-Managing Director, Coal India Limited & Ors.*** (cited *supra*) in paragraph Nos. 47 to 50 cited in paragraph No. 2 of this order.

9. In fact, State – appellants have specifically contended that it is a case of remand in the present LPA in Paragraph No. 13 and Ground Number XV. Learned counsel for the respondent contended that initiation of inquiry itself is bad for want of jurisdiction. It is to be noted that respondent has surrendered his right before the disciplinary authority/inquiring officer. Further, he has not assailed the initiation of inquiry *namely* article of charges to the extent that it was issued by an incompetent authority. Even void action of the authority is required to be set aside by the



competent forum unless it is declared as void. The respondent cannot say that it is a void order. In other words, such a void order or action is required to be set aside by the competent forum. In that event, only one can draw inference that void order has been set aside or declared as void action. Therefore, the contention of the respondent to the extent that initiation of inquiry is bad is not appreciable.

10. Respondent further submitted that alleged charge is relating to grave in nature, therefore, departmental inquiry was required to be stayed till disposal of criminal proceedings. In this regard, he has cited the decisions (cited *supra*). Those decisions are over-ruled by the later decisions of the Hon'ble Supreme Court to the extent that parallel proceedings can be initiated. It is also observed by the Hon'ble Supreme Court to the extent that departmental inquiry under Prevention of Corruption Act is for the misdeeds whereas criminal proceedings is for the offences. To that extent, the Hon'ble Supreme Court has distinguished to the extent that both the proceedings are different and they can be proceed with, in other words, earlier decisions have been diluted in the case of *Eastern Coalfields Limited and Ors. vs. Rabindra Kumar Bharti* reported in (2022) 12 SCC 390. Taking note of these facts and circumstances, the learned Single Judge has committed error



in not remanding the matter on account of quashing the penalty order on technicality that copy of the inquiring officer's report has not been made available to the disciplinary authority, disagreeing with the inquiring officer's report and proceed to issue show cause notice, on what point of time disciplinary authority has disagreed with the inquiring officer, on receipt of petitioner's explanation, he has proceeded to impose the penalty. These are all the technical issues which are required to be taken note of for the purpose of remanding the matter in the light of decisions cited *supra* in the case of ***Chairman-cum-Managing Director, Coal India Limited & Ors.***

11. Accordingly, order of the learned Single Judge dated 04.04.2018 insofar as paragraph Nos. 12 is concerned, it is set aside and matter is remanded to the disciplinary authority / Government to proceed from the defective stage *namely* on receipt of inquiring officer's report and the fact that respondent – *Ashok Kumar Roy* has attained age of superannuation and retired from service before framing of charges. In that event, power is vested with the State government, therefore, State government is hereby directed to proceed from the stage of action on inquiry officer's report, if government is disagreeing with the inquiry officer's report. Either remanding the matter to the inquiry officer (if he has



retired), appoint new inquiry officer to commence inquiry from the defective stage or issue show cause notice etc., follow the relevant rule of CCA, and on receipt of respondent explanation, proceed to pass final order. The above exercise shall be undertaken within a period of six months from the date of receipt of this order.

12. With the above observation, order of the learned Single Judge is modified to the above extent. LPA is allowed in part.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

GAURAV S.
Manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2024
Transmission Date	NA

