

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7151 of 2015

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Srikant Singh son of Late Yamuna Singh resident of village and P.O. -
Dhanadihri, P.S. - Parasbigaha, District - Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Principal Secretary cum Commissioner Rural Works Department Govt. of Bihar, Patna.
4. The Chief Engineer, Rural Works Department, Govt. of Bihar, Patna.
5. The Special Duty Officer, Rural Works Department, Patna.
6. The Joint Secretary, Rural Works Department, Patna.
7. The Chief Engineer - 4 The Conducting Officer Rural Works Department, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vishwanath Prasad, Advocate Mr. Ayush Kumar, Advocate Mr. Kanishk Kaustubh, Advocate Mr. Shikhar Mani, Advocate
For the Respondent/s	:	Ms. Kumari Amrita, GP 13

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

Date : 05-01-2024

In the instant petition, petitioner has prayed for the following relief(s):-

"For quashing the notification dated 16.12.2014 contained in Annexure-13 whereby and whereunder the petitioner has been dismissed from his service while he was posted as Assistant Engineer in Rural works Department sub Division Matihani division Begusarai on the basis of enquiry report submitted by the conducting officer vide his letter dated 05.03.2014 in connection with Vigilance P.S. Case no. 64/09 instituted on 05.06.09 under section 201 I.P.C. and



7/13 (C) read with section 13(1)(d) of Vigilance act against 2 persons including the petitioner."

2. The petitioner while working as an Assistant Engineer he had demanded and accepted illegal gratification of a sum of Rs. 20,000/- (Twenty Thousand) in order to render official favour to the contractor. Arising out of the aforementioned allegation parallel proceedings were initiated like criminal proceeding and departmental proceeding. Departmental proceeding was concluded in imposition of penalty of dismissal from service on 16.12.2014, whereas Vigilance P.S. Case No. 64 of 2019 initiated on 05.06.2009 under Section 201 IPC and Section 7/13 read with section 13(1)(d) of Prevention of Corruption Act, 1988 is pending consideration before the jurisdictional forum. Disciplinary Proceeding was concluded before conclusion of the criminal proceedings.

3. Learned counsel for the petitioner submitted that charge memo is not in terms of the relevant statutory provision since no witnesses have been cited including the complainant/ contractor who is prime witness to the alleged allegation relating to demand and acceptance of illegal gratification of a sum of Rs. 20,000/-. It is a case of no evidence since complainant has not been cited as witness and adduced evidence in respect of alleged



demand and acceptance of illegal gratification of a sum of Rs. 20,000/- (Twenty Thousand). The same has not been disputed by the learned counsel for the State. He has made such submission with reference to relevant records.

4. Taking note of these dates and events, the petitioner has made out a *prima facie* case for grant of relief insofar as quashing of dismissal order dated 16.12.2014 (Annexure-13). Accordingly, impugned order dated 16.12.2014 (Annexure 13) stands set aside. The matter is referred back to Disciplinary authority/State Government with liberty to initiate fresh inquiry with reference to Rule 43 (b) Bihar Pension Rules, 1950 for the reasons that as on this day the petitioner has already attained the age of superannuation and retired from service. The fresh inquiry shall be initiated and completed in accordance with relevant provision of law within a period of six months from the date of receipt of this order. The petitioner shall co-operate in departmental inquiry. The aforementioned finding of this Court is supported by 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.”

5. The aforementioned principle has been reiterated by the Hon'ble Apex Court in the case of **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in **2022 Live Law SC 736** Question of reinstatement is not warranted since petitioner has already attained his age of superannuation and retired from service, therefore, the intervening period from the date of dismissal, i.e., 16.12.2014 till date of his retirement is required to be regulated only on outcome of the fresh departmental inquiry proceeding to be completed. In this regard, a separate order shall be passed by the State Government under Rule 97 of Bihar Service Code to the extent whether is it duty period or leave period or dies non. Such order shall be passed within a period of two months from the date of passing final order in the fresh departmental inquiry.

6. In the meanwhile, petitioner is entitled to provisional pension under the Bihar Pension Rules, 1950. The same shall be calculated from the date of his retirement and disburse the same within a period of three months from the date of receipt of this order. Thereafter, regulate the pension depending upon the outcome of the departmental inquiry afresh.



7. With the above observations, the present writ petition stands allowed in part.

(P. B. Bajanthri, J)

jyoti/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

