

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5138 of 2023

Manish Sharma @ Mritunjay Kumar (Constable No. 79) S/o Kamleshwari Sharma, Resident of Village Bhan Tekahi, P.S. Madhepura, District-Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Affairs, Government of Bihar Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Inspector General of Police, Kosi Division, Purnia.
4. The Deputy Inspector General of Police, Kosi Division, Saharsa.
5. The Superintendent of Police, District- Purnia.
6. The Inquiry Officer Circle Inspector, P.S. Sadar-B, District- Purnia.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. A.K. Singh, Advocate Mr. Chandan Kumar, Advocate
For the Respondent/s	:	Mr. M. Nasrul Huda Khan, SC-1 Mr. Harun Quareshi, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

6 19-12-2024 Heard Mr. A.K. Singh, learned counsel along with Mr. Chandan Kumar, learned counsel appearing on behalf of the petitioner and Mr. M. Nasrul Huda Khan, learned SC-1 appearing on behalf of the respondents.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

"That this is the writ petition being filed before this Hon'ble High Court on behalf of the aforesaid petitioner for issuance of a writ in the nature of 'Certiorari' whereby and whereunder setting aside the Purnia Regional Order No. 244/2022 as contains in Memo No. 1685, dated 14.11.2022 issued and signed under the signature of Inspector General of



Police Purnia Region, District - Purnia and the consequential order passed by Superintendent of Police Purnia in Purnia District order No. 2105/2022 as contains in Memo No. 4955 dated 19.11.2022, whereby and whereunder the appeal filed by the petitioner hereinabove has been rejected by the Inspector General of Police Purnia Region, District Purnia and as such, the dismissal order passed against the petitioner has been confirmed; and further prayer of the petitioner herein is for issuance of the writ in the nature of 'mandamus' whereby and whereunder commanding and directing the state respondents to reinstate the petitioner for the post of constable after setting aside the impugned order by this Hon'ble Court and accordingly all the consequential benefits with regard to monetary ones be given to the petitioner without considering the breakage of service."

3. The brief facts of the case are that the petitioner was appointed as constable in Bihar Police Force in the year 2011. Petitioner went on leave on 22.10.2019 authorized by the competent authority and he had to assume his duty on 24.10.2019 but he could not joined his duty within time and for the said reason, he was subjected to departmental proceeding. In this regard, a report was called for by the Superintendent of Police, Purnia from his counterpart Superintendent of Police, Madhepura and in response to that Superintendent of Police, Madhepura reported that petitioner had been convicted in connection with Madhepura P.S. case no.244 of 2006 registered for offence under section 302/34 1.P.C. and in consequence thereof, he was in judicial custody. On 10.01.2020, petitioner was put under suspension and departmental proceeding was ordered to be initiated against the petitioner vide order dated 21.01.2020. On 09.02.2020, departmental



proceeding was initiated against the petitioner. On 07.12.2020, while the petitioner was in jail custody, departmental proceeding was concluded without giving any proper opportunity to the petitioner and major punishment of dismissal from service was passed as contained in Memo No. 3854. Petitioner was released on bail vide order dated 06.07.2021 passed in Cr. Appeal (DB) No. 31 of 2020. Thereafter, the petitioner had preferred appeal against the order of dismissal, which was rejected by Inspector General of Police Purnia on 14.11.2022. Aggrieved by the dismissal order, the petitioner has filed the present writ petition.

4. This Court has recorded in view of the submission made on behalf of the respondent, as to whether, the petitioner, who was absent from duty for nearly two years after he having been convicted, will constitute misconduct?

5. In this regard, learned counsel appearing on behalf of the petitioner has relied on a co-ordinate Bench judgment dated 06.04.2022 passed in ***CWJC No. 17881 of 2016 (Shravan Kumar vs. the State of Bihar & Ors.)***.

6. I find that though the issue was not framed by the co-ordinate Bench in the said case, however, from the perusal of the facts as recorded in paragraph no. 4, it is evident that the petitioner of the said case was also in jail custody. The co-



ordinate Bench relying on the law laid down by the Apex Court in case of ***Managing Director, ECIL Vs. B. Karunakar*** reported in ***(1993) 4 SCC 272*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Ors.*** reported in ***(2011) 5 SCC 142*** by taking note of paragraphs no. 46 to 50, has concluded as under:

"7. Insofar as reinstatement or placing the petitioner under suspension decision shall be taken within a period of two months from the date of receipt of this order."

7. Further in Paragraphs no. 46 to 50 of the Managing Director, EICL (Supra) it observed *inter alia* hereinafter:

"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 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."

8. I hardly find any difference from the pleading, as well as, the facts of the present case and, as such, I direct the Disciplinary Authority, if at all, it want to take Disciplinary action, in light of law laid down by the Apex Court in case of ***B.C. Chaturvedi vs. Union of India & Ors.*** reported in (1995) 6 SCC 749, the petitioner is required to be reinstated or by placing



the petitioner under suspension, the decision is required to be taken by the Disciplinary Authority well within a period of two months.

9. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

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