

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1046 of 2018

In
Civil Writ Jurisdiction Case No.22005 of 2014

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1. The State Of Bihar.
 2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
 3. The Joint Secretary, Building Construction Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

1. Bibhuti Nath Jha and Ors Son of Late Baidya Nath Jha, Resident of Mohalla - Kadamkuan, P.S. - Kadamkuan, District - Patna.
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief-Cum-Additional Commissioner-cum Special Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Chief Engineer, National Highway Wing, Road Construction Department, Govt. of Bihar, Patna.
5. The Joint Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. The Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna.
7. The Executive Engineer, National Highway Division, Road Construction Department, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amit Prakash, GA-13 Mr. Amrit Anand, AC to GA-13
For the Respondent/s	:	Mr. Suresh Pd Singh No.1, Advocate Ms. Kumari Rashmi, 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 : 08-08-2024

Ref: I.A. No.5657 of 2018 & I.A. No. 5656 of 2018

The present L.P.A. is filed by the State in assailing



the order of the learned Single Judge dated 21.02.2018 passed in C.W.J.C. No. 22005 of 2014.

2. Heard I.A. No. 5657 of 2018 for condonation of delay. There is a delay of about 124 days in filing L.P.A. No. 1046 of 2018. For the reasons stated in the application read with the affidavit, delay of about 124 days in filing L.P.A. No. 1046 of 2018 stands condoned.

3. Accordingly, I.A. No. 5657 of 2018 stands allowed.

4. I.A. No. 5656 of 2018 for impleading newly carved out department namely Building Construction Department from the original Road Construction Department was constituted on 29.07.2013. Moreover, the Respondent - Bibhuti Nath Jha retiral benefits have been settled by the Building Construction Department. Therefore, Building Construction Department has been arrayed as necessary and proper party in the present L.P.A.

5. Accordingly, I.A. No. 5656 of 2018 stands allowed insofar as impleading Building Construction Department (BCD). Appellant is hereby directed to carry out necessary amendment in the cause title during the course of the day.



6. With the consent of the learned counsels for the respective parties, L.P.A. is taken up for final disposal.

7. Learned State counsel restricted his contention only to the extent of remanding the matter to the disciplinary authority to continue the inquiry proceedings from the defective stage and conclude the same in view of the fact that alleged charge is relating to certain financial irregularities. In this regard, learned counsel for the Appellant cited decision in the case of *The State of Bihar and Ors. vs. Binod Kumar Jha* (L.P.A. No. 614 of 2021).

8. Per contra, learned counsel for the Respondent resisted the aforementioned contention and submitted that there are no financial irregularities so as to matter is required to be remanded. In support of the same, learned counsel for the Respondent could not appraise from the charge memo to the extent that the charges are not relating to any financial irregularities. On the other hand, learned counsel for the appellant has pointed out from the order of the learned Single Judge in para-6 gist of the charge has been analysed.

9. Taking note of the aforementioned contention and the fact that in a departmental inquiry, if Courts are setting aside the penalty order on technicality and if the charges are



relating to financial irregularities in such circumstances, matters are required to be remanded to the disciplinary authority to continue the disciplinary proceedings from the defective stage. Similarly, if he is in service, in that event, disciplinary authority is empowered to take a decision whether to keep an official / employee, under suspension, or not. The aforementioned principle has been held by the Hon'ble Supreme Court in the case of *ECIL vs. B. Karunakaran* reported in (1993) 4 SCC 727, *Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors.* reported in (2011) 5 SCC 142 and *State of Uttar Pradesh & Ors. vs. Prabhat Kumar* reported in 2022 Live Law SC 736. In para 46 to 50 in Coal India case, it is held 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.”

10. In the light of the aforementioned facts and circumstances, we are modifying the order of the learned Single Judge dated 21.02.2018 passed in C.W.J.C. No. 22005 of 2014 only to the extent of remanding the matter to the disciplinary authority to continue the disciplinary proceedings from the defective stage. If the disciplinary authority is not State Government, in that event, the State Government has to take



over the file in the light of Rule 43(b) of Bihar Pension Rules and conclude the disciplinary proceedings from the defective stage within a period of 04 months from the date of receipt of this order. The Respondent is hereby directed to co-operate in the departmental inquiry. If the disciplinary authority/State Government failed to complete the enquiry proceedings within the time limit stipulated supra, in that event, enquiry proceedings stands vitiated. In the light of prolonged disciplinary proceedings and its conclusion read with the fact that litigation was pending consideration for more than decade.

11. With the above observation, L.P.A. No. 1046 of 2018 stands allowed in part.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

