

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1445 of 2018

In
Civil Writ Jurisdiction Case No.1747 of 2003

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1. The State Of Bihar and Ors
 2. Director General-cum-Inspector General of Police, Bihar, Patna.
 3. Deputy Inspector General of Police, Railway, Patna.
 4. Superintendent of Police Rail, Muzaffarpur.
 5. Sri Bhudeo Tiwari, Rail Deputy Superintendent of Police, Sonepur.

... .. Appellant/s

Versus

Om Prakash Singh S/o Sri Suresh Singh, Resident of Village- Musa Mathawa,
P.S.- Darauli, District- Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Sunil Kumar Ac To Ga 12
For the Respondent/s	:	Mr.Y.V. Giri, Sr. Adv
		Mr. Sumit Kr Jha, Adv
		Ms. Riya Giri
		Mr. Ravi Bhushan Bharah

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

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

Date : 19-03-2024

Matter is of the year 2018 it is a State appeal there is
no assistance from the State counsel.

2. We have perused the records. Petitioner and another
were subjected to disciplinary proceedings for alleged
misbehaviour with female while they are on duty and the same
was noticed by the Officer-In-Charge and he had recovered the
female and recorded her version. Thereafter, respondent Sri Om
Prakash Singh and Jaishankar Prasad Trivedi were subjected to



disciplinary proceedings and it has attained finality in imposition of penalty of removal from service on 04.03.2002. Appeal against removal order was dismissed on 06.05.2002 and memorial was also rejected on 05.10.2002. Thereafter, respondent no. 5, Sri Om Prakash Singh, preferred CWJC No. 1747 of 2003 and it was decided on 22.02.2018. Learned single judge has allowed his writ petition while setting aside the punishment order dated 04.03.2002 and appellate authority's order dated 06.05.2002 on the score that victim was not examined and so also officer-in-charge, Shri Thakur, who had examined the victim and recorded her statement. The same has been narrated in para 4 of the judgment dated 22.02.2018 passed in C.W.J.C. No. 1747 of 2003. In other words, punishment order, appellate authority memorial order are set aside on technicality to the extent that non-examination of prime witness. In such circumstances, 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*** para 48 to 50, it is held as under:

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.

3. The aforementioned principle has been reiterated by the Hon. Supreme Court in the case of ***State of Uttar Pradesh & Ors Vs Prabhat Kumar*** reported in ***2022 Livelaw (SC) 736***. The overall principle is that if a disciplinary proceedings are interfered by the Courts on technicality, in such circumstances, matter is required to be remanded to the disciplinary authority to commence and conclude the disciplinary proceedings from the defective stage, if the charges are serious in nature, in the present case having regard to the alleged charge, It would fall under serious charge category. In the present case, there is non-examination of victim, Officer-in-charge Shri Thakur and others. From that stage, disciplinary authority is hereby directed to commence the enquiry and conclude the same within a period of six months from the date of receipt of this order. Fifth respondent, Om Prakash Singh is



hereby directed to cooperate in the disciplinary proceedings in accordance with relevant disciplinary regulations/rules governing the post held by the 5th Respondent-Om Prakash Singh. Disciplinary authority is hereby directed to conclude the disciplinary proceedings and regulate the intervening period from the date of dismissal, namely, 04.03.2002 till re-statement with reference to order of the learned single Judge dated 22.02.2018. If it is not regulated as on this date. With the above extent order of the learned Single judge is modified and LPA allowed in part.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

vashudha/-

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

