

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9367 of 2015**

Ashok Kumar Jha S/o Late Sadanand Jha, Ex- Manager, Branch Office-  
Jamui and Resident of Mohalla/Village- Surihari, Post Office- Surihari,  
Amarpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The Chief Manager, Personal Administration Division and Ors
2. The General Manager-cum-Appellate Authority, Personal Administration  
Division, Head Office, Punjab
3. The Assistant General Manager-cum-Disciplinary Authority, Circle Office,  
HRD Section, Punjab Nation
4. The Senior Manager-cum-Enquiry Officer, Circle office, Punjab National  
Bank, Biharsharif.

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                             |
|----------------------|---|---------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Avinash Kumar, Advocate<br>Mr. Ajay Kumar Mehta, Advocate<br>Mr. Kumar Satyam, Advocate |
| For the Respondent/s | : | Mr. Suresh Prasad Singh, Advocate                                                           |

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

**Date : 29-11-2024**

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

*"(i) For issuance of an  
appropriate writ/writs,  
direction/directions in the nature of  
Certiorari or Writs, Order or Orders for  
quashing the Order dated 31.01.2014 by  
which the services of the petitioner have  
been removed and also quashing of  
consequential order vide letter no.-  
PAD/HO/DAC/19876 dated 29.08.14 by  
which the appeal preferred by the  
petitioner against the order of  
termination dated 31.01.2014 has been  
rejected on the ground that both the  
orders have been passed by overlooking  
the procedural infirmity committed by*



*the enquiry officer, being ex facie illegal and arbitrary and same being wholly disproportionate to the alleged acts of omission and commission done by the petitioner.*

*(ii) For further kind indulgence of this Hon'ble court to look into the matter and the concerned respondents may be directed to produce all connected records for perusal for passing an appropriate order.*

*(iii) For any other relief/reliefs which the Hon'ble court may grant in general interest checking these kinds of harassment to the officials that may be deemed appropriate and necessary in this case."*

2. On 11.10.2022, the following order was passed:-

*"Heard the matter for sometime.*

*Prima facie, there is violation of Sub-Regulation 5 of Regulation 6 of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulation, 1977 in not providing list of documents and list of witnesses as is evident from statement made by the presenting officer. Charge-memo is stated to have been issued on 06.12.2013. Inquiring officer and presenting officer were appointed prior to 23.12.2013 whereas the documents were furnished on 23.12.2013. Therefore, prima facie one has to draw inference that as on the date of framing of charges on 06.12.2013, document/ material information were not readily available. On this issue, learned counsel for Respondent-Bank is hereby directed to get instruction. He is also hereby directed to secure original records relating to disciplinary proceedings on the next date of hearing.*



*Re-list this matter on 09.11.2022."*

3. Today, learned counsel for the respondents on instruction submitted that there is a violation of sub-regulation 5 of Regulation 6 of Punjab National Bank of Officer and Employees' (Discipline and Appeal) Regulation, 1977 (for short 'Regulation, 1977) in not providing the list of documents and list of witnesses as is evident from the statement made by the Presenting Officer. In order to overcome this violation, learned counsel for the respondents vehemently contended that gist of the charge itself reveals which are the documents. Therefore, the disciplinary authority need not comply sub-regulation 5 of Regulation 6 of Regulation, 1977. If it is the stand of the respondent-Bank in that event there was no occasion to serve list of documents subsequent to appointment of Presenting Officer on 20.03.2013, therefore, the aforementioned contention of the respondent-Bank is not tenable.

4. Accordingly, the petitioner has made out a case, the impugned order dated 31.01.2024 (Annexure-5) is set aside reserving liberty to the respondent-Bank to proceed afresh from the defective stage in the event of any financial loss caused to the Bank or if the allegations are relating to alleged fraud committed by the petitioner since this Court is quashing the impugned penalty



order and consequential order only on technicality in the light of Hon'ble Supreme 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 procedure laid down in the aforementioned decision have been reiterated in the case of **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in **2022 Live Law SC 736** to the extent that if the Courts are quashing the penalty order on technicality and the alleged charges are of financial irregularities or serious charges in such circumstances matter is required to be remanded to the disciplinary authority concerned to proceed afresh from the defective stage. Therefore, the disciplinary authority is hereby directed to take such necessary steps and complete the inquiry proceedings within a period of six months from the date of receipt of this order. The petitioner is hereby directed to co-operate in the inquiry proceedings. The concerned authority shall pass further orders of consequential benefits, if any,



to the petitioner depending upon outcome of the final orders to be passed in departmental inquiry. Such order shall be passed within a period of three months from the date of final order to be passed. If the Respondents fail to complete disciplinary proceedings within six months from the date of receipt, in that event disciplinary proceedings stands terminated.

6. With the above observations, the present writ petition stands allowed.

**(P. B. Bajanthri, J)**

Vikash/-

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