

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8536 of 2018

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Anupam Kumar Tiwary Son of Late Krishna Murari Tiwari, Resident of
Village P.O.- Murika, P.S.- Sigori, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Home Department, Govt. of Bihar, Old Secretariat, Patna.
4. Director General of Police, Old Secretariat, Patna.
5. Additional Director General of Police, Old Secretariat, Patna.
6. Deputy Inspector General of Police Human Rights, Patna, Bihar.
7. Assistant Inspector General of Police Inspector, Old Secretariat, Patna.
8. Senior Superintendent of Police, Patna.
9. Deputy Inspector General of Military Police, Central Zone, Patna.
10. Deputy Secretary of Finance, Old Secretariat, Patna.
11. Under Secretary General Administration Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Pandey, Adv.
For the State	:	Mr. Manish Kumar (GP-4)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 24-09-2024

Heard Learned Counsel for the petitioner and
Learned Counsel for the State.

2. The present writ petition has been filed for the
following relief/s:-

*(i). For issuance of an
appropriate writ, order or direction*



for quashing impugned order contained in Letter no. 1909/L-1/43-04-19-2014 dated 15.02.2017 issued by the DGP, Bihar, Patna denying balance unpaid 50% salary to the petitioner for the period of termination to the date of reinstatement and letter no. 624 dated 03.03.2017 issued by Superintendent of Police, C.I.D., Patna through which it has been ordered for payment of only 50% salary to the Petitioner in place of 100% salary as per letter no. 909/L-1 dated 15.02.2017 issued by D.G.P., Police Headquarter.

(ii). For issuance of an appropriate writ, order or direction for making 100% payment of salary to the Petitioner for total termination period from 11.06.2014 to the date of his reinstatement dated 17.06.2016 after adjustment of 50% of salary already paid.

(iii) For grant of other appropriate reliefs for which the Petitioner will be found eligible.

3. Learned Counsel for the petitioner submits that he had joined the service on 31.08.1984 in Bihar Police on the post of Constable and with the span of time, he was promoted to



the post of Assistant Sub-Inspector of Police, C.I.D., (Crime Branch). Counsel submits that under a scheme, the petitioner has obtained loan of Rupees Two lakhs as House Building Advance. In first installment, he has taken Rs. 1,50,000/- and after using of the first installment he has obtained the second installment for construction of a House of Rs. 50,000/-. In this way, he had taken Rupees 2 Lakhs advance loan. Counsel submits that till July 2014, he has paid total 141 installments out of total 160 installments at the rate of Rs. 1250/- per installment and as such, the petitioner has paid Rs. 1,76,250/- out of total loan amount of Rupees Two Lakhs. Counsel Submits that at the time of total installment 138 installments had been paid and the certificate to this effect has been obtained.

4. Thereafter, he was transferred from Shekhpura to the Office of S.P., C.I.D., (Crime Branch), Patna where he had paid three installments as such, he had totally paid 141 installments but the petitioner has received a show cause notice from the Director General of Police under Rule 853 A (a) vide letter No. 1821 dated 06.07.2001 about false receiving of installments. It has been alleged that in form 17, on the ground of submissions of false bond paper, a Gandhi Maidan P.S. Case No. 147 of 2003 under Sections 420 and 409 of the Indian Penal



Code was registered on 20.05.2003. The petitioner subsequently received information about lodging of the aforesaid FIR. Thereafter, he received information that a proceeding has been initiated against him. The petitioner appeared and filed his reply in the said proceeding. Counsel further submits that the Departmental Proceeding No. 137 of 2003 was initiated against him in which punishment of one “Black Mark” in service record and none payment of any other allowance except suspension allowance is imposed. Counsel submits that the said punishment of one “Black Mark” in service record and none payment of any other allowance except suspension allowance was accepted by the petitioner but after lapse of nine years, the Director General of Police while exercising his power under Rule 853 A (a) had asked an explanation from the petitioner as to why he may not be terminated from the services since earlier imposed punishment is lesser. Counsel submits that the petitioner has responded but final order of termination was passed by the Director General of Police, Bihar, Patna vide letter No. 3086 dated 11.06.2014 against the petitioner. Counsel further submits that he had challenged the said order in CWJC No. 10168 of 2014 before this Hon’ble Court. Vide order dated 29.01.2016 passed in CWJC No. 10168 of 2014 the order of termination



contained in letter No. 3086 dated 11.06.2014 issued by the Director General of Police, Bihar, Patna had been set aside. The petitioner, thereafter, filed his representation in the office of Director General of Police, Bihar, Patna for his reinstatement and also to make the period of his termination together. Counsel submits that on his representation, the order had been passed which is impugned here in which his joining has been accepted but decision has been made that during the termination period, he shall be granted only 50% of the salary.

5. Learned Counsel for the petitioner submits that in the present writ petition he has challenged the said portion of the order and submits that his termination was set aside by this Hon'ble Court and in the light of the Rule 13 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as CCA Rules, 2005), the petitioner is entitled for entire salary and deduction of the 50% is absolutely illegal and not sustainable in the eyes of law. Counsel further submits that the department itself has taken opinion from the Law Department, Bihar and the extract of the opinion he has annexed in the present writ petition as Annexure- P/19 in which it has been opined by the Law Department that in the light of Rule 13(3) CCA Rules, 2005, after reinstatement, the petitioner



shall be treated to be in duty during the termination period and, therefore, decision may be taken in the light of the same. In this background, counsel submits that the impugned order be set aside up to that extent that the petitioner is entitled for 50% salary. Counsel submits that specific direction may be given to the respondent authorities to make payment of 100% of his salary during the period he was terminated but subsequently, his termination order was set aside by this Hon'ble Court.

6. Learned Counsel for respondent, on the other hand, submits that the order passed by this Hon'ble Court has been made only on the ground that the decision taken by the Director General of Police after lapse of nine years. Counsel submits that on merit, this Hon'ble Court has not whisper any thing rather on the ground of delay, the writ petition was allowed in favour of the petitioner. Counsel further submits that the Director General of Police had taken right decision as during the termination period he had not worked, therefore, on the principles of "No Work No Pay" he had taken the said decision.

7. Learned Counsel for the State submits that the said decision is completely in accordance with law.

8. In the light of the submissions made, this Court hereby once scrutinize the order passed by this Hon'ble Court



by which the order of punishment has been terminated vide order dated 29.01.2016 passed in CWJC No. 10168 of 2014 the relevant portion of the order is as follows:-

The relief is founded on the premise that power under rule 853A has been exercised after undue time span of nine years which is not permissible in law in view of the decision of this Court in the case of Anjan Kumar Singh Vrs. State of Bihar & Ors., reported in 2001 (4) PLJR, 177. In the case, this court has observed that power under Rule 853A can be exercised by the Inspector General of Police, but it has to be undertaken within a reasonable time. The delay of three years in exercising the power was held to be fatal in the case.

The facts of the case in hand is that the petitioner was appointed as constable on 31.08.1984. He was subsequently promoted to the post of ASI of Police. He was departmentally proceeded on the charge of securing loan on forged documents. The Inquiring Officer found the charge to be true and he was inflicted a punishment of



one black mark in service record by the disciplinary authority. The matter rested and remained settled so. However, after lapse more than 9 years, the DGP in exercise of its power under rule 853A has reviewed the order of punishment of one black mark into one of dismissal from service.

Learned counsel for the State submits that the impugned order of dismissal was passed by the DGP in light of power conferred under rule 853A, after issuing due notice to the petitioner. The petitioner further committed misconduct by not submitting his reply to the show-cause sought by the DGP. He submits that a vigilance case is also pending against the petitioner.

I have heard learned counsel for the parties. The nature of allegations levelled against the petitioner was serious. The learned DGP may not be wrong in observing that the punishment of one black mark would be on a lenient side. The power of review was there. But such power ought to have been exercised within a reasonable period. Exercise



of such powers after lapse more than nine year cannot be said to be reasonable and is accordingly, set aside.

However, it goes without saying that the disciplinary authorities can take steps in accordance with law if the petitioner has committed an act of insubordination by not replying to the letter of DGP Police.

With the liberty aforesaid, the writ application is allowed to the extent mentioned above.

9. From the said order, it transpires to this Court that this Hon'ble Court had granted liberty to the disciplinary authority that they can take steps in accordance with law if the petitioner has committed an act of insubordination by not replying the letter of D.G.P.

10. From the record of the case, it transpires to this Court that no such decision for the act alleged insubordination has been acknowledged by the authorities and his removal has been set aside completely in compliance of the order passed by this Hon'ble Court.

11. It also transpires to this Court that the



punishment order passed by the disciplinary authority was accepted by the petitioner and he has not opted to prefer appeal but the highest authority was dissatisfied with the said order after lapse of nine years and on the same disciplinary proceeding whose punishment was already accepted by the petitioner has issued show-cause for termination and had terminated him. Therefore, there is no question of deciding this case on merit or demerit rather in view of this Court that deciding this case on the ground that steps have been taken after nine years is basically a decision on merit itself.

12. This Court upon perusal of Rule 13 (3) of the CCA Rules, 2005 which states as follows:-

Where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a court on the merit of the case, or where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a court solely on the ground of non-compliance with the requirements of these Rules and no further inquiry is proposed to be held, the period intervening between the date of dismissal, removal or compulsory retirement as the case may be, and



the date of reinstatement shall be treated as on duty for all purposes. As a result the Government Servant shall be paid full pay and allowances for the period to which he would have been entitled, had he or she not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

13. Upon perusal of the above said Rule 13 (3) of the CCA Rules 2005, it become crystal clear that it has been categorically mentioned that the dismissal, removal, compulsory retirement of the Government servants is set aside by the Court on merit of this case. The employee upon reinstatement shall be treated as on duty for all purposes. This Court upon perusal of the order passed by this Court in CWJC No. 10168 of 2014 is of the firm view that the said order was passed on merit of the case because the merit of the case is that the D.G.P. has taken action after lapse of nine years when period of punishment has already been lapsed. Therefore, in the present case, Rule 13 (3) of the CCA Rules, 2005 is completely applicable and it clearly says that in case of reinstatement, the period of dismissal shall be treated in the services for all purpose. Hence, the petitioner shall



be entitled for 100% of the salary.

14. In this background, the orders impugned dated 15.02.2017 contained in Letter no. 1909/L-1/43-04-19-2014 issued by Respondent No. 4, namely, the Director General of Police, Bihar (Annexure- P/20) and order dated 03.03.2017 contained in Letter No. 624 issued by the Superintendent of Police, C.I.D., Patna (Annexure- P/21) are hereby set aside. The State is directed to make 100% payment to the petitioner to the petitioner within 90 days from the date of communication of this order.

15. Accordingly, the writ petition stands allowed.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.10.2024
Transmission Date	NA

