

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1941 of 2018

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Suresh Prasad Verma, Son of Late Shiv Dayal Mahto, Resident of Village,
P.O.- Dipawa, P.S.- Nawa Jaipur Patan, District- Palamu now residing behind
Petrol Pump, Nimia, P.O.- Sudna, P.S.- Medininagar, District- Palamu.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. Director General of Police, Bihar, Old Secretariat, Patna.
3. D.I.G. of Police, Dehri-on-Sone.
4. S.P. Rohtas.
5. Commandant, B.M.P.-2, Dehri.
6. Dy. S.P. Headquarter, Dehri.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Advocate
For the Respondent/s	:	Mr. Md. N.H. Khan -SC 1
		Ms. Babita Kumari, AC to SC-1

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

Date : 10-05-2024

Heard learned counsel for the respective parties.

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

"For issuance of appropriate writ, order or direction to set aside the order of dismissal dated 26.09.2016 (Annexure-5) passed by the S.P., Rohtas and order of D.I.G. of Police Sahabad Range, Dehri-on-Son conveyed by order of S.P. Rohtas by order dated 14.02.2017 (Annexure-7) by which appeal of the petitioner was rejected and order of Director General of Police dated 14.11.2017 (Annexure-9) by which memorial of the petitioner has been rejected and for grant of all consequential benefits."



3. Petitioner while working as Hawaldar he was placed under suspension in alleged serious charge relating to conspiracy for escaping the accused while snatching a Government Rifle and passing the information to the extremist. On this issue, he was subjected to parallel proceedings namely disciplinary and criminal proceedings. In criminal proceedings in Sasaram Moffasil P.S. Case No. 972 of 2014 dated 10.10.2014 under Section 225/323/120(B)/379/414/37/511 IPC petitioner is stated to have been acquitted.

4. Charge-memo was issued on 27.10.2014 and petitioner had submitted his explanation on 29.07.2015 and it was not satisfied by the disciplinary authority, resulted in commencing and conclusion of departmental inquiry. Thereafter, second show cause notice was issued on 22.08.2016. Disciplinary authority proceeded to impose penalty of dismissal from service on 26.09.2016. Petitioner feeling aggrieved and dissatisfied with the dismissal order invoked the remedy of appeal and memorial both were rejected on 14.02.2017 and 14.11.2017 respectively. Hence, the present petition.

5. Learned counsel for the petitioner pointed out that presenting officer has not been appointed in the present case on behalf of the Department in support of the alleged charges levelled



against the petitioner which is one of the lacuna and it is in violation of disciplinary rules/regulation governing the post of Hawaldar. On this short point, petitioner has made out a case. Accordingly, the impugned orders dated 26.09.2016 (Annexure-5), 14.02.2017 (Annexure-7) and 14.11.2017 (Annexure-9) stands set aside. Matter is remanded to the disciplinary authority for a fresh inquiry from the date of appointing presenting officer and also to take note of that each and every regulation/rule governing the disciplinary proceedings against Hawaldar is being followed strictly and inquiry shall be concluded within a period of six months from the date of receipt of this order.

6. The intervening period from the date of dismissal till passing of fresh order the disciplinary authority is hereby directed to pass fresh order after outcome of the fresh disciplinary proceedings and its conclusion. In the meanwhile, petitioner shall be deemed to be under suspension from 26.09.2016 till conclusion of the departmental inquiry. In this regard, disciplinary authority is hereby directed to calculate subsistence allowance and pay the subsistence allowance from 06.03.2016 till passing of the order in the departmental inquiry.

7. The aforementioned finding is in terms of the principle laid down by Hon'ble Surpeme 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 and also in **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in 2022 Live Law SC 736. 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. ”

8. With the above observations impugned orders are set aside, the present writ petition stands allowed in part.

9. At this stage, learned counsel for the petitioner submitted that petitioner had been superannuated on 28/29.02.2020. Had he been attained the age of superannuation and retired from service question of deemed suspension from 26.09.2016, this date is not relevant. The relevant period would be from 26.09.2016 till 28/29.02.2020. For this period, subsistence allowance should be calculated and disbursed. The disciplinary authority is hereby directed to take note of in the event of proving charges, if penalty is



required to be imposed under the Bihar Pension Rules, 1950 in
such an event competent authority may be State Government this
may be verified and proceed accordingly.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

