

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13272 of 2013

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Anil Kumar Singh Son Of Late Krishna Deo Singh Resident Of Village-
Barka Dumra, P.S.- Arrah, (Mufassil), District- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Bhagalpur Range, Bhagalpur
4. The Deputy Inspector General of Police, Bihar Military, East Division,
Jamalpur, Munger
5. The Commandant, Bihar Military Police, - 8, Begusarai, District- Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binod Bihari Sinha, Advocate Mr. Ajay Dutt Mishra, Advocate Mr. Amarjeet Choudhary, Advocate
For the Respondent/s	:	Mr. Sunil Kr. Mandal, SC-3 Mr. Bipin Kumar, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V JUDGMENT

Date : 03-11-2025

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant application for
the following relief(s) :-

*“i) That the writ application is being filed for
issuance of a writ in the nature of writ of mandamus
commanding the Respondents to pay the arrears of
salary and allowances with interest further to the
petitioner from the date of his termination i.e.
26.04.1995 till joining i.e. 02.04.2011 on account of
quashing of the order of termination and consequently
quashing of the part order of the commandant, Bihar*



Military Police- 8, Begusarai communicated vide Memo No. 1220/रका- dated 02.04.2011.

ii) "For issuance of a writ of Certiorari for quashing/setting aside the Command order No. 213/2013 dated 26.10.2013 issued by Commandant BMP-8, Begusarai by which it has been decided that for the period of dismissal till the date of reinstatement i.e. from 26.04.1995 to 02.04.2011 only Notional benefit shall be payable to the petitioner on account of quashing /setting aside the order of discharge from service of petitioner vide order dated 03.08.2010 passed in CWJC No. 5177 of 1997 and as such the back wages has been denied on the ground of principal of no work no pay."

iii) For issuance of a writ of Mandamus directing the respondents to take decision under Rule 97 of the Bihar Service Code, treating the period of discharge from service i.e. from 26.04.1995 to 02.04.2011 of the petitioner on duty and to make payment of salary for the said period as the order of Discharge from service dated 26.04.1995 was quashed by this Hon'ble Court vide order dated 03.08.2010 passed in CWJC No.5177 of 1997 and consequent to that petitioner was reinstated in service vide Command Order dated 02.04.2011, therefore it were the respondents themselves who kept away the petitioner from out of service from 26.04.1995 to 02.04.2011 by way of wrong order of Discharge from service.

iv) For issuance of any other writ/writs, order/ orders, direction/directions which the Hon'ble Court may deem fit and proper. "



3. The case of the petitioner is that he was deputed as an Arm Guard in village Paharpur in the District of Aurangabad. On account of the petitioner being unauthorizedly absent, an enquiry was conducted and departmental proceeding no.23 of 1993 was started against him wherein the Enquiry Officer submitted his report on 23.1.1995 finding the petitioner to be guilty of unauthorised absence, however not finding the petitioner to be guilty of having illicit relations with one Pushpa Devi. The Commandant, Bihar Military Police ('B.M.P' in short) disagreed with the finding of the Enquiry Officer and giving his reasons issued show cause notice to the petitioner as to why he be not discharged from service. On receiving the petitioner's show cause, the Commandant, B.M.P issued order of punishment of discharge of the petitioner from service.

4. The petitioner filed an appeal before the D.I.G, B.M.P, which was rejected on 30.12.1995. He filed a memorial followed by another memorial before the Director General of Police, Bihar. Not getting any orders on the memorial filed, the petitioner preferred CWJC no.3796 of 1996, which was disposed of by this Court directing the respondent to decide the memorial of the petitioner. The



memorial of the petitioner was rejected on 27.3.1997.

5. The petitioner thereafter challenged the order of punishment as also the orders rejecting his appeal and memorial by filing CWJC no.5177 of 1997. By order dated 3.8.2010, the impugned orders were quashed and the writ application allowed.

6. On the petitioner filing a representation before the authority followed by a contempt application vide M.J.C no.897 of 2011, the petitioner was reinstated in service, however was not given any financial benefits from the date of order of dismissal till the date of his rejoining.

7. As such the petitioner moved this Court in C.W.J.C no.1334 of 2012, which was disposed of by order dated 8.11.2012 with the direction that the issue relating to back-wages may be decided by the Inspector General of Police, Bhagalpur Range, Bhagalpur within 3 months from the date of receipt of a copy of the order.

8. The petitioner filed a representation before the respondents. By letter dated 27.2.2013 written by the Commandant, B.M.P-8, Begusarai to the Inspector General, B.M.P, Patna, a copy of which was marked to the petitioner, the petitioner was informed that he would not be getting any



financial benefits/arrears from the date of his termination till the date of his reinstatement but will only be getting notional benefit for the same. It is thus that the petitioner has moved this Court for the reliefs prayed for as stated herein above.

9. It is submitted by learned counsel for the petitioner that the order of punishment having been set aside by this Court, not having been found sustainable in law, he is entitled for the arrears of salary for the period that he was kept out of service. Reliance has been placed by learned counsel for the petitioner on paragraph no.38.5 of the judgment of the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Ors.; (2013) 10 SCC 324.**

10. On the other hand, it is submitted by learned counsel appearing for the respondents that the petitioner is not entitled for any arrears of salary for the reason that the writ application (C.W.J.C no.5177 of 1997) of the petitioner was allowed only on a technical ground and thus on the principles of 'no work no pay', the petitioner is not entitled for any salary for the said period.

11. Heard learned counsel for the parties and perused the materials on record.



12. From the records of the case, it transpires that pursuant to the departmental proceeding against the petitioner, the same ended in the order of punishment of discharge from service of the petitioner being passed by the Commandant, B.M.P. The appeal as also memorial filed by the petitioner were rejected vide orders dated 12.1.1996 and 27.3.1997 respectively.

13. All the three orders ie the order of punishment of discharge from service as also the order rejecting the appeal and memorial were the subject matter of challenge in C.W.J.C no.5177 of 1997 filed by the petitioner. The writ application was allowed by order dated 3.8.2010 setting aside the three impugned orders. So far as the back-wages, arrears for the period that the petitioner was not in service on account of the order of discharge, the petitioner moved this Court in C.W.J.C no.1334 of 2012, which was disposed of vide order dated 8.11.2012 directing the respondents to decide the issue of payment of back-wages. The same has been rejected by the order impugned.

14. In the case of **Deepali Gundu Surwase** (*supra*) the Hon'ble Supreme Court held as follows :-

“38.5. The cases in which the competent court or tribunal finds that the employer has acted in



gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages ”

15. In the opinion of the Court, the case of the petitioner having been allowed and the orders of punishment having been set aside on account of violation of the law settled by the Apex Court in the case of **Punjab National Bank & Ors. vs. Kunj Bihari Mishra; (1998) 7 SCC 84** as also **Yoginath Bagde vs. State of Maharashtra & Anr.; (1999) 7 SCC 739**, so far as the payment of back-wages for the period that the petitioner was prevented from working, in



the opinion of the Court, the case of the petitioner is fully covered by the judgment in the case of **Deepali Gundu Surwase** (*supra*) quoted herein above and the same is fit to be allowed.

16. The writ application is allowed and the petitioner is held entitled for full back-wages for the period from 26.4.1995 till 2.4.2011. The arrears of salary for the said period shall be paid by the respondents to the petitioner within a period of 3 months from the date of receipt of a copy of this order.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	13.10.2025
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Transmission Date	

