IN THE HIGH COURT OF JUDICATURE AT PATNA

Mahendra Prasad Chauhan

versus

The State of Bihar & Ors.

(Civil Writ Jurisdiction Case No. 16967 of 2012)

20 August 2024

(Hon'ble Mr. Justice Purnendu Singh)

Issue for Consideration

Whether the denial of back wages for 18 years to the petitioner, whose dismissal from service was held illegal and disproportionate, is sustainable in law based on the principle of "no work no pay," despite his reinstatement by judicial order.

Headnotes

Service Law – Reinstatement after illegal dismissal – Entitlement to back wages – Principle of "no work no pay" not applicable –

Held, once the order of dismissal has been set aside for being disproportionate and discriminatory, and the petitioner was reinstated, denial of back wages for the entire 18-year period amounts to an additional penalty. The Court directed reconsideration of the claim for salary on the principle that reinstatement dates back to the date of dismissal.

[Paras 6, 8, 10, 13, 14]

Administrative Law – Disproportionate punishment – Violation of equality in penalty – Arbitrary exercise of disciplinary power –

Held, the petitioner and another delinquent (Binod Gond) were charged for the same misconduct, but the latter was awarded a minor penalty while the petitioner was dismissed. The Court held such differential treatment to be arbitrary, and quashed the dismissal order earlier in CWJC No. 9266 of 1997. Denial of pay based on "no work no pay" after such findings is unjust.

[Paras 4, 6, 7, 10]

Labour and Employment – Back wages – No burden to prove gainful employment on reinstated employee – Burden on employer –

Held, when reinstatement is ordered after quashing of dismissal, the presumption is that the employee suffered financial and emotional hardship. If the employer seeks to deny back wages, the burden is on it to prove gainful employment or other valid grounds.

[Refer to: *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324]

[Paras 11, 13]

Constitution of India – Article 14 – Equal treatment in service jurisprudence – Arbitrary denial of benefits to reinstated employee –

Held, discrimination between similarly situated employees with identical charges is violative of Article 14. Once reinstatement is ordered, denial of consequential benefits without reason violates the principle of equal protection.

[Paras 6, 7, 10]

Judicial Review – Scope under Article 226 – Interference with administrative denial of salary – Permissible –

Held, the Court, in exercise of writ jurisdiction, can interfere where legal entitlement is defeated by arbitrary and mechanical application of "no work no pay," especially after judicial reinstatement.

[Paras 6, 13]

Case Law Cited

Pradeep v. Manganese Ore (India) Ltd., (2022) 3 SCC 683 – relied on**; Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya**, (2013) 10 SCC 324 – applied; **Krishna Murari Lal Sehgal v. State of Punjab**, AIR 1977 SC 1233 – followed; **Managing Director, ECIL v. B. Karunakar**, (1993) 4 SCC 727 – applied; **J.K. Synthetics Ltd. v. K.P. Agrawal**, Civil Appeal No. 7657 of 2004 – distinguished

List of Acts

Constitution of India; Bihar Government Servants (Classification, Control

and Appeal) Rules, 2005

List of Keywords

Reinstatement; Back wages; No work no pay; Disproportionate punishment; Article 14; Gainful employment; Arbitrary denial; Parity in penalty; Illegal dismissal; Judicial reinstatement.

Case Arising From

Memo No. 4907/R dated 08.11.2011 issued by the Commandant, Bihar Military Police-2, Dehri, rejecting pay and benefits for the period of 18.04.1993 to 16.03.2012 based on the principle of “no work no pay”

Appearances for Parties

For the Petitioner: Mr. Satya Ranjan Sinha, Advocate; Ms. Seema Kumari, Advocate; Mr. Dhananjay Kumar, Advocate

For the Respondents**:** Mr. Mithlesh Kumar Singh, Advocate

Headnote prepared By:- Ms. Akanksha Malviya, advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16967 of 2012

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Mahendra Prasad Chauhan, son of Shankar Prasad Chauhan, resident of Vilalge - Chatarpur P.O. Bari Mallama, P.S. Bind District- Nalanda

... ... Petitioner/s

Versus

1. The State Of Bihar through the Director General of Police, Old Secretariate, Bihar, Patna
2. The Commandant, Bihar Military Police-2, Dehri, Bihar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Satya Ranjan Sinha, Advocate
Ms. Seema Kumari, Advocate
Mr. Dhananjay Kumar, Advocate
For the Respondent/s : Mr. Mithlesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 20-08-2024

Heard Mr. Satya Ranjan Sinha, along with Ms. Seema Kumari and Mr. Dhananjay Kumar, learned counsels appearing on behalf of the petitioner and Mr. Mithlesh Kumar Singh, learned counsel for the respondents.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

> *I. To issue Rule of Certiorari for quashing the illegal order so far as against the petitioner of commandant, Bihar Military Police-2, Dehri vide Memo no.4907/R,ka. Dated 8.11.2011 contained in Annexure -3.*
>
> *II. To grant all the reliefs which was granted to Binod Gond.*
>
> *III. To grant all benefit such as promotion, salary and other allowances etc. in view of the fact that by the judgment of Hon'ble High Court setting aside dismissal of the petitioner.*
>
> *IV. To grant any other relief/reliefs which the petitioner found entitled in the facts and circumstances of the case."*

3. The petitioner has claimed that he was appointed on 27.01.1991, but, the same has been denied by the respondents in their counter affidavit stating therein that date of appointment of the petitioner on the post of Constable in B.M.P.-9, Jamalpur is 18.01.1991 and thereafter the petitioner was posted at different places. The petitioner was dismissed from service during training period with effect from 18.04.1993 after holding departmental proceeding against him. Against the dismissal order, the petitioner had preferred CWJC No.9266 of 1997 before this Court. This Court vide order dated 12.08.2010 quashed the dismissal order and as a consequence of that, the petitioner was reinstated in service on 16.03.2012 on the post of constable. The petitioner has claimed that petitioner is entitled for salary from 18.04.1993 till the date of his reinstatement on 16.03.2012. In other words, he is claiming salary for total period of 18 years. The case of the petitioner for claim of salary has been rejected on the principle of no work no pay.

SUBMISSIONS:

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has not been dismissed from service for his own fault and this Court in CWJC No.9266 of 1997 has held that there was no evidence against the

petitioner of having broken/opened the locks of the boxes of other constables and stealing money, nor it was clearly established that he was illegally or unauthorizedly staying in the barrack and was part of merry making. This Court had taken into consideration that two kind of punishment came to be imposed in an identical situation in respect of Binod Gond and in whose case, the authority has imposed lesser punishment of withholding increment with cumulative effect for two years amounting to three black marks. The writ petition was allowed directing the respondents to pass any order of punishment keeping in mind the kind of punishment which has been imposed on Binod Gond, holding that the punishment of dismissal to be disproportionate to the misconduct alleged. Learned counsel submitted that in compliance of order dated 12.08.2010 passed in CWJC No.9266 of 1997, the petitioner was reinstated in service and thereafter his salary was fixed with effect from 01.01.1996 and the same was also revised from time to time. The grievance of the petitioner is that he is entitled for salary from the date he was illegally dismissed from service till the date of his reinstatement in service. He further submitted that the denial of any pay for a period of 18 years is itself penal in nature and the petitioner being innocent deserves to be paid

salary for the aforesaid period. In this regard, learned counsel has relied upon a judgment of the Apex Court in the case of **Pradeep, S/o Rajkumar Jain Vs. Manganese Ore(India) Limited & others**, reported in **2022(3) SCC 683,** specially paragraphs no.14, 15 and 16 thereof.

5. Per contra, Mr. Mithilesh Kumar Singh, learned counsel appearing on behalf of the respondents submitted that it is admitted that the petitioner was dismissed from service and he is claiming salary from 18.04.1993 to 16.03.2012, the date he was reinstated in service and the authority has rightly taken decision to fix his pay with effect from 16.03.2012, since the petitioner has not worked during the period of his dismissal. Learned counsel further submitted that arrears of fixed pay along with admissible dearness allowances with effect from the date of his reinstatement, i.e., 16.03.2012 is being paid to the petitioner. Learned counsel further submitted that the pay scale of the petitioner has revised from time to time and the claim of the petitioner for payment of salary during the dismissal period on the principle of no work no pay is not sustainable. Learned counsel further submitted that the petitioner is not even entitled for any percentage to be paid during the period of dismissal and in this regard, he has relied upon a judgment dated 01.02.2007

of the Apex Court in the case of **J. K. Synthetics Ltd. Vs. K.P. Agrawal and Ors. (Civil Appeal No.7657 of 2004),** specially paragraphs no.18 and 19 thereof.

CONSIDERATION, ANALYSIS AND CONCLUSION:

6. Heard the parties.

7. The main question involves in the present writ petition is, as to whether, the petitioner is entitled for the arrears of pay during the period of his dismissal from service, i.e, from 18.04.1993 to 16.03.2012 and whether the principle of no work no pay will be applicable in such situation, where upon interference of this Court with the dismissal order holding that the authorities cannot pass two orders of penalty imposing lesser penalty to one delinquent employee and more severe penalty of dismissal which the petitioner has suffered having been quashed and similar punishment has been awarded to the petitioner. Thirdly, whether this Court in exercise of extra ordinary jurisdiction can interfere with the administrative action of the State insofar as legal right of the petitioner has been defeated. It is admitted fact that the dismissal order of the petitioner was quashed by this Court *vide* order dated 12.08.2010 passed in CWJC No.9266 of 1997, after holding that the authority cannot apply two yard sticks in the matter of imposition of punishment

when for the similar charge of having broken/opened the locks of the boxes of other constables and stealing money was also levelled against one delinquent employee Binod Gond against whom penalty of withholding increment with cumulative effect for two years amounting to three black marks was imposed. This Court, after considering the fact and evidence which has been brought on record, held the punishment imposed upon the petitioner to be disproportionate to the misconduct alleged and had quashed the punishment order, directing the authorities to pass any other order of punishment keeping in mind the kind of punishment which has been imposed on Binod Gond. I find it apt to reproduce the observation of the Court, while passing the order dated 12.08.2010 in CWJC No.9266 of 1997.

> *"Taking the entirety of the charge as well the evidence the punishment seems to be disproportionate to the misconduct alleged. This is yet another ground on which the matter requires interference. The Court has intentionally not gone into or taken note of other objection with regard to the departmental enquiry because the two submissions by themselves are enough for interference with the order of punishment.*
>
> *The punishment order contained in annexure-3, the order of appeal contained in annexure-4 as well as the rejection order of memorial contained in annexure-5 are hereby set aside.*
>
> *The matter is remanded back to the disciplinary authority with a direction that he shall pass*

any other order of punishment keeping in mind the kind of punishment which has been imposed on Binod Gond. The Court expects an order in this regard within a reasonable time frame.

This writ application is allowed with the above direction. However, there will be no order as to costs."

8. In compliance of the order and considering the materials on record, the disciplinary authority had set aside the order of punishment contained in Memo No.1178 dated 19.04.1993 and the petitioner was reinstated on initial pay scale and on the basis of principle of no work no pay, he was denied any pay for the period of 18 years during which he was dismissed from service. The petitioner is aggrieved by the action of the disciplinary authority for having not been paid salary for a total period of 18 years during which he was illegally dismissed from service. I find that in a way, the petitioner has suffered more penal consequences as a result of the decision of the disciplinary authority not to make payment of due for salary for the period of 18 years on the principle of no work no pay. It is not the case of the respondents that as a consequences of quashing of the dismissal order, the petitioner would not be entitled to be reinstated in service from the date he was dismissed. I don't find any pleading in the counter affidavit in that regard. The only reason for not making payment of salary

for the period 18.04.1993 to 16.03.2012, i.e., 18 years is on the principle of no work no pay. Admittedly, in the present case, the petitioner has not deliberately absented from his duty, rather he was dismissed from service and after the dismissal order having been set aside, I don't find that any denial on the basis of principle of no work no pay will affect the petitioner.

9. The reliance made on behalf of the petitioner in the case of **Pradeep, S/o Raj Kumar Jain (Supra)** and the reliance made on behalf of the State in the case of **J. K. Synthetics Ltd. (Supra)** relate to the case instituted under Industrial Dispute Act and, as such, I find that the same would not be relevant in any manner to decide the issues involved in the present case.

10. Undoubtedly, reinstatement in service would be made operative from the date the petitioner was dismissed from service and once the removal is set aside, the liability of the Government to pay the person concern his salary and increment for the period which is covered by the order of dismissal is automatic. The penalty which the petitioner has suffered is similar to that of Binod Gond. Once the relief for setting aside and quashing the dismissal order has been granted and as a consequences of the same, in such cases, as I have observed

would only lead for payment of salary during the said period. The Hon'ble Supreme Court in the case of **Krishna Murari Lal Sehgal Vs. State of Punjab** reported in **AIR 1977 Supreme Court 1233** has held in similar circumstances " the only way in which judgment of this Court can be implemented is to pay the aforesaid amount of salary to the petitioner after discussing the facts of the case and the several judgments of the Apex Court".

11. The Apex Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors.** reported in **(2013) 10 SCC 324**, has held that if any disciplinary authority is satisfied on the misconduct, he is at liberty to impose a penalty of such nature, but having let off the petitioner by a penalty of 'censure', his right to draw salary for the period of suspension cannot be taken away. In this regard, it is apt to reproduce Paragraph Nos. 21 and 22 of the said judgment, which are reproduced hereinafter:

> "21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edn., the word "reinstate" means to

reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word “reinstatement” means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam-Webster Dictionary, the word “reinstate” means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edn., “reinstatement” means:

“To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed.”

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of

education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

12. The Apex Court in the case of **Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Others** reported in **1993 (4) SCC 727** has held as under:-

"*....The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately*

> *ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.*

13. In the facts and circumstances and the discussion made hereinabove and the law laid down by the Apex Court in the cases of **Deepali Gundu Surwase (Supra)** and **Managing Director, ECIL, Hyderabad (Supra),** I am of the opinion that non-payment of salary for the entire period of 18 years for which the petitioner cannot be held responsible in any manner on the principle of no work no pay is required to be reconsidered by the respondents.

14. The order contained in Memo No.4907 dated 18.11.2011 to the extent that the denial of petitioner's due salary

for total period of 18 years on the principle of no work no pay is set aside. The other parts of the said order shall remain intact.

15. The writ petition is allowed to the above extent.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.08.2024
Transmission Date	NA