

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15033 of 2016

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Mohd. Ali Jinnah Son of Md. Jakir, Resident of Village- Churumba, P.S.-
Kotwali, District- Munger.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chairman, Central Selection Board of Constable, Shri Sai Tara Complex, I.A.S. Colony, Jawaharla
3. Commandant-cum- Disciplinary Authority, Bihar Military Police-10, Patna
4. Deputy Superintendent of Bihar-cum-Enquiry Officer, Bihar Military Police-10, Patna
5. The Special Executive Officer, Central Selection Board, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Niranjan Kumar, Advocate Mr. Kumar Kishan, Advocate
For the CSBC	:	Mr. Sanjay Pandey, Advocate Mr. Binod Kr. Mishra, Advocate Mr. Vivek Anand Amritesh, Advocate
For the State	:	Mr. Prabhat Kr. Verma- Aag3 Mr. Sanjay Kumar Ghorsarvey, AC to AAG-3

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

Date : 20-12-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:

“(i). For issuance of writ in the nature of certiorari for quashing of the memo no. 1367 dated 04.07.2016 passed by Commandant, Bihar Military Police-10, Patna-cum-Disciplinary Authority (Respondent No. 3) whereby and whereunder he has dismissed the petitioner from service which is arbitrary, malafide and without jurisdiction.

(ii). For issuance of a writ in the nature of mandamus directing the respondents to reinstate the petitioner in service with immediate effect.



iii. For any other relief/reliefs as this Hon'ble Court deem fit and proper in the facts and circumstances of case.”

3. On 06.12.2021 following order was passed:

“Heard learned counsel for the parties.

Learned State counsel is hereby directed to apprise this Court on the next date of hearing whether the legal contentions raised by the petitioner in the rejoinder affidavit is true or not? He has to verify from the original records relating to enquiry. He is also hereby directed to get instruction from the disciplinary authority whether is there any violation of statutory Rule as contended by the petitioner in the rejoinder or not?

Re-list this matter on 13.12.2021, failing which, disciplinary authority is liable to pay cost of Rs. 5,000/- from his pocket to the Bihar State Legal Services Authority, Patna High Court.

Copy of this order shall be given to the State counsel so as to enable the concerned authority to counter in the form of answer to the aforesaid order.”

4. State respondent has filed counter statement in which they have admitted that in the disciplinary proceedings Presenting Officer has not been appointed to present the case on behalf of the Department in terms of Rule 17 (5)(c) read with Sub-rule 14 of Rule 17 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. On this count, the impugned order dated 04.07.2016 is set aside. The matter is remanded to the disciplinary authority to proceed from the



defective stage and complete the enquiry proceedings within a period of four months from the date of receipt of this order. The intervening period from the date of dismissal till final order to be passed in the disciplinary proceedings shall be taken into consideration and shall be decided in the light of Apex Court decision rendered in the case of *Managing Director, ECIL V. B. Karunakar* reported in (1993) 4 SCC 727 read with *Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.* reported in (2011) 5 SCC 142 para 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 or arrears of salary till date. Shri Bandhopadhyay, 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 and Union of India V. Y.S. Sadhu, 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. With the above observations, the instant petition stands disposed of.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2021
Transmission Date	

