

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15289 of 2019

1. Chandrawati Devi Wife of Late Deep Narayan Ram Resident of Village- Perjali, P.S.- Barari, P.O.- Simapur, District- Katihar.
2. Sunil Kumar Ram Son of Late Deep Narayan Ram Resident of Village- Perjali, P.S.- Barari, P.O.- Simapur, District- Katihar.
3. Anil Kumar Ram Son of Late Deep Narayan Ram Resident of Village- Perjali, P.S.- Barari, P.O.- Simapur, District- Katihar.
4. Kanhaiya Kumar Ram Son of Late Deep Narayan Ram Resident of Village- Perjali, P.S.- Barari, P.O.- Simapur, District- Katihar.
5. Rameshwar Pd. Singh Son of Sri Gopal Singh Resident of Village- Durgapur, Khushwaha Tola, P.O.- Simapur, P.S.- Barari, District- Katihar.
6. Savita Devi Wife of Late Rama Shankar Mahto Resident of Village- Simapur Bazar, P.O.- Simapur, P.S.- Barari, District- Katihar.
7. Chhedi Mandal Son of Late Biro Mandal Resident of Village- Gurmayla, P.S.- Barari, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. Director General-cum- Inspector General Bihar, Patna.
4. D.I.G. Darbhanga Zone, Darbhanga.
5. Superintendent of Police Katihar.
6. Superintendent of Police (Rail) Katihar.
7. Superintendent of Police Darbhanga.
8. Md. Manjoor Alam Son of Late Baseeruddine Resident of Village- Phensaha, P.S.- Salkhua, District- Saharsa.
9. Ashok Kumar Chaudhary Son of Late Hira Lal Chaudhary Resident of Village- Kumaripur, P.S.- Manihari, District- Katihar.
10. Umesh Kumar Verma Son of Late Binod Verma Resident of Village- Dighwara, P.S.- Dighwara, District- Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Niranjana Kumar, Advocate
Mr. Kumar Kishan, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad (SC 8)
Mr. Anil Kumar, AC to SC 8

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

Date : 22-03-2022



In the instant petition, petitioners have prayed for the following reliefs:-

“(i) For issuance of writ in the nature of certiorari for quashing the Memo No.319 dated 15.04.2019,/whereby and whereunder representation of the petitioners has been rejected in a veryerroneous and mechanical manner by the Inspector General of Police (Budget/Appeal/Welfare), Bihar, Patna by the order of Director General of Police, Bihar, Patna.

(ii) For issuance of writ in the nature of certiorari for quashing the District Order No.40/2003 issued by Memo No.71 dated 18.01.2003by which the petitioners have been dismissed on the ground that their appointments were illegally made by previous D.G. cum I.G. Bihar, Patna without any show cause.

(ii) For issuance of writ in the nature of mandamus directing the respondent authorities to consider and appoint the petitioners for the post of Constable and and to give all notional benefits including the arrears of salary of thee all dismissal period as well as ancillary/consequential benefits with statutory interest.

(iv) For any other relief or reliefs for which the petitioners are found to be entitled in the facts and circumstances of the case.”

In this petition, there are seven petitioners. Insofar first and sixth petitioners are concerned, they are legal heirs of deceased late Deep Narayan Ram and late Rama Shankar Mahto. Petitioner, Rameshwar Prasad Singh and Chhedi Mandal deceased



persons grievance are rejected by virtue of impugned orders. In other words, initial dismissal is against late Deep Narayan Ram and late Rama Shankar Mahto, Rameshwar Prasad Singh and Chhedi Mandal. They were stated to have been selected and appointed to the post of Constable on 16.09.1994. Their services were terminated on 18.01.2003 on the score that their initial appointment to the post of Constable was not in accordance with the relevant procedure/regulation.

Feeling aggrieved and dissatisfied with the order of dismissal dated 18.01.2003 legal heirs of late Deep Narayan Ram and late Rama Shankar Mahto and petitioners namely Rameshwar Prasad Singh and Chhedi Mandal preferred petitions and it was subject matter of litigation before this Court in CWJC No. 9595 of 2003 and it was decided on 30.08.2018 while passing the following order:-

“The learned counsel for the parties are in agreement that an order similar to the one passed by the learned Division Bench in L.P.A. no. 1584 of 2017 dated 31.01.2018 can also be passed in the present case.

Accordingly, the impugned order of termination dated 18.01.2003 is quashed and the petitioners/ their legal heirs are granted liberty to approach the Director General of Police, Police Headquarters, Bihar, Patna along with a certified copy of this order



and all the relevant documents and the Director General shall examine the claim of the petitioners/legal representatives in the backdrop of the observations made in the judgment dated 31.01.2018 passed in L.P.A. no. 1584 of 2017, after proper application of mind within a period of 60 days thereafter. The writ petition is disposed of.”

Pursuant to the aforesaid order the disciplinary authority proceeded to pass impugned order, thus, the petitioners have questioned the validity of the impugned order dated 15.04.2019 (Annexure-8), hence, the present petition.

Learned counsel for the petitioners submitted that impugned action is without initiating disciplinary proceedings. Further, it is submitted insofar as late Deep Narayan Ram and Rama Shankar Mahto are concerned the impugned action cannot be sustainable as no order can be passed against dead persons. It is further submitted that whatever the proceedings pending against the dead persons stand abated as and when concerned employee died.

Per contra, learned counsel for the State resisted the aforesaid argument and submitted that late Deep Narayan Ram, late Rama Shankar Mahto, Rameshwar Prasad Singh and Chhedi Mandal their selection and appointment was illegal from the inception as necessary proceeding known to the law has not been adhered by selecting and appointing them to the post of Constable. If



illegal appointment order has been issued, the same is not sustainable in the light of Full Bench decision of this Court dated 29.03.2019 passed in CWJC No. 14455 of 2007 with 14230 of 2007.

Heard learned counsel for respective parties.

Undisputed facts are that late Deep Narayan Ram and Rama Shankar Mahto, Rameshwar Prasad Singh and Chhedi Mandal were selected and appointed to the post of Constable in the year 1994 and they were continued in service till 18.01.2003, the date on which their services were dismissed in passing termination order and it was subject matter of litigation in CWJC No. 9595 of 2003 decided on 30.08.2018. It is to be noted that the order of termination dated 18.01.2003 was set aside while reserving liberty to the concerned authority to take appropriate action in the light of LPA No. 1584 of 2017 decided on 31.01.2018. During the pendency of the aforesaid litigation Deep Narayan Ram stated to have died and so also Rama Shankar Mahto. The disciplinary authority in the guise of order dated 30.08.2018 proceeded to pass an order on 15.04.2019 relating to rejection of representation of legal heirs of late Deep Narayan Ram namely Chandrawati Devi for monetary benefits and reinstatement of two petitioners.



Undisputedly, disciplinary authority has accepted the order of this Court dated 30.08.2018. In other words, quashing of termination order dated 18.01.2003 in effect restoration of the position of the respective parties in the department insofar as Rameshwar Prasad Singh and Chhedi Mandal, the remaining petitioners are legal heirs of late Deep Narayan Ram and late Rama Shankar Mahto are entitled to monetary benefits from 18.01.2003, the date on which initial termination was ordered till death of deceased employees. The respondents merely rejecting their claim for reinstatement and denial of monetary benefits may not be correct for the reasons as long as termination order dated 18.01.2003 is quashed by this Court; nothing adverse order is pending against petitioners. Hon'ble Apex Court in the case of **Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras** reported in (1992) 3 SCC 1 has distinguished what is the effect of quashing or stay of an order. The relevant paragraph 10 reads as under:-

“10. In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the



appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the order of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been dis-



posed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”

In the light of the principle laid down by the Hon’ble Apex Court in the aforesaid decision quashing of the order of termination dated 18.01.2003 in effect restoration of original position of the petitioners namely Rameshwar Prasad Singh and Chhedi Mandal and the disciplinary authority should have resorted to further proceedings if it is warranted like initiation of domestic in-



quiry in accordance with the relevant provision of law since order of termination dated 18.01.2003 was set aside on technicality. In identical circumstances, Hon'ble Apex 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 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.”

In the light of observation made by the Hon'ble Apex Court the disciplinary authority is required to take appropriate action in respect of settling the intervening period from the date of termination dated 18.01.2003 till final order is passed. In respect of late Deep Narayan Ram and late Rama Shankar Mahto all proceedings stands abated as on the date of their death. In the result, legal heirs of the aforesaid persons are entitled to monetary benefits, the same is required to be examined and settled by the disciplinary authorities/appointing authorities within a period of three months from the date of receipt of this order. Insofar as Rameshwar Prasad Singh and Chhedi Mandal are concerned, the impugned action is only rejection of reinstatement, even to this day



there is no fresh termination order pursuant to the order passed in CWJC No. 9595 of 2003 decided on 30.08.2018 after due process of law. For the above persons, disciplinary authority is required to take appropriate action after holding disciplinary proceedings. It is to be noted that mere issuance of show cause notice is not sufficient since order of the disciplinary authority is for initial appointment of the petitioners were irregular and contrary to law. The aforesaid two persons were selected and appointed on 16.09.1994 and their performance has been declared satisfactory. In such an event, relevant disciplinary proceedings were required to be adhered by the disciplinary authority before terminating the services of these two petitioners.

In the light of these facts and circumstances, the impugned order dated 15.04.2019 (Annexure-8) stands quashed. The disciplinary authority is hereby directed to regulate the period from 18.01.2003 till passing of final order against the aforesaid two persons in the light of decision in the case of **Chairman-cum-Managing Coal India Ltd.** (supra). The disciplinary authority is hereby directed to take appropriate action within a period of three months from the date of receipt of this order failing which Rameshwar Prasad Singh and Chhedi Mandal are entitled to mon-



etary benefits during the intervening period from 18.01.2003 till passing of final order and so also reinstatement into service.

With the aforesaid observations, the present writ petition stands disposed off.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.03.2022
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