

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21814 of 2014

Krishna Kant Kumar Son of Late Ayodhya Mahto R/o Mira Krishna Neketan,
Adarsha Vihar Road No. - 1, R.S. Ramkrishna Nagar, District - Patna - 80027.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Engineer-in-Chief, Building Construction Department, Govt. of Bihar, Patna.
3. The Joint secretary-cum OSD -cum - Chief Vigilance Officer, Building Construction Department, Govt.
4. The Director, Monitoring-cum-Valuation-cum-Purchase Cell, Building Construction Department, Govt.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Dr. Anand Kumar, Advocate Mr. Sanjay Kumar Ghosarvey, Advocate
For the Respondent/s	:	Mr. Sitaram Yadav, GP-16

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

Date : 05-04-2022

Heard 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 or any other appropriate writ for quashing the order contained in Memo No. 7862 dated 30.7.2014 issued under the signature of Joint secretary- OSD- Cum- Chief Vigilance Officer, Building Construction Department, Govt. Bihar, Patna, whereby the petitioner has been awarded punishment of ‘Dismissal’ from Service for the single charge of demanding and accepting illegal gratification of Rs. 20,000/-, though this charge could not be proved in departmental



enquiry and also without considering the submission of the petitioner his reply to the second show cause, And also this punishment order has been passed without considering the submission of the petitioner fact that a criminal proceeding is still pending for the identical charge before the Special Judge(Vigilance), Patna.

(ii) For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondents to reinstate the petitioner on the post of Executive Engineer with all consequential benefit.

(ii) For holding that the second enquiry report contained in Memo No. 52 dated 04.03.2014 is without any basis and against the mandate of law because the same enquiry officer has earlier submitted his enquiry report on 03.06.2013 vide letter No. 1752 in which he has specifically stated that the charge against the petitioner with regard to taking of bribe is not proved.

(v) For issuance of any other appropriate writ, order or direction which your Lordship may deem fit and proper in the facts and circumstances of the case.”

3. The petitioner while holding the post of Executive Engineer was subjected to disciplinary proceedings vide Article of charge dated 30th October, 2012. The petitioner submitted his reply to the charge-memo on 27.12.2012.

4. Dissatisfied with the petitioner's reply, the disciplinary authority proceeded to conduct enquiry. The inquiry officer submitted his report on 03.06.2013 in which it is stated that the alleged charge were not proved. The disciplinary



authority disagreeing with the inquiry officer's finding, remanded the matter to the inquiry officer to commence and conclude the enquiry from the defective stage on 22.07.2013. For the second time, inquiry officer held that charges levelled against the petitioner is not proved. Disciplinary authority disagreeing with the inquiry officer's second report proceeded to issue second show cause notice to the petitioner on 28.03.2014 by stipulating certain time-limit. The petitioner submitted his reply on 25.04.2014 to the second show cause notice. Based on these material information, disciplinary authority proceeded to dismiss the petitioner from service on 30th July, 2014. Thus, petitioner is before this Court.

5. Perusal of the dismissal order dated 30th July, 2014, it is evident that petitioner's explanation to the second show cause notice has not been considered only on the score that it was belated. It is to be noted that on two occasions the inquiry officer held that the charges levelled against the petitioner were not proved. The disciplinary authority disagreeing with the inquiry officer's report proceeded to issue second show cause notice for which petitioner has submitted his explanation on 25.04.2014. The same has not been considered as is evident from para 7 and 8 of the dismissal order.



6. In the light of these facts and circumstances, this Court has to draw inference that there is total non-application of mind. It is a question of livelihood, if his services were dismissed without addressing his explanation to the second show cause notice. In other words, the very object of issuance of show cause notice and obtaining reply would be defeated.

7. In the light of these facts and circumstances, order of dismissal dated 30.07.2014 is set aside.

8. Disciplinary authority is hereby directed to consider each of the contention raised by the petitioner in his explanation and proceeded to pass speaking order. The above exercise shall be completed within a period of two months from the date of receipt of this order. The intervening period from the date of dismissal till final order to be passed by the disciplinary authority is required to be examined as to how it is to be regulated like whether petitioner is deemed to be under suspension or he shall be taken back to the duty, subject to outcome of the final order passed by the disciplinary authority. Aforesaid decision shall be taken by the disciplinary authority in the light of Apex court's 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.”

9. The intervening period shall be regulated with reference to the principle laid down in the aforesaid decision and communicate the decision to the petitioner.

10. With the above observations, the present petition stands disposed of.

(P. B. Bajanthri, J)

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CAV DATE	
Uploading Date	08.04.2022
Transmission Date	

