

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.66 of 2020

In

Civil Writ Jurisdiction Case No.4713 of 2006

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1. The Bihar State Food and Civil Supplies Corporation Limited through the Chairman-Cum Managing Director, having his Office at Sone Bhawan 5th Floor, Birchand Patel Path, Patna.
 2. The Chief of Administration, Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan 5th Floor, Birchand Patel Path, Patna.
 3. The Enquiry Officer, Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan 5th Floor, Birchand Patel Path, Patna.

... .. Appellant/s

Versus

Ravi Kishore Sahay Son of Late Shashi Bhushan Sahay, Resident of Mohalla Boring Road, Police Station Sri Krishnapuri, District Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate assisted by Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s	:	Mr. Mukeshwar Dayal, Advocate Mr. Vikash Mohan, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAMESH CHAND

MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-01-2024

In the instant appeal the appellants – Bihar State Food and Civil Supplies Corporation Limited and others (hereinafter referred to as ‘Corporation’) have assailed the order of the learned Single Judge dated 31.08.2018 passed in CWJC No. 4713 of 2006. Respondent – *Ravi Kishore Sahay* was subjected to disciplinary proceedings by the appellants – Corporation on the allegation of



misappropriating the sugar and defalcation of Rs. 10.75 lakhs. The disciplinary proceedings was concluded in imposition of penalty of dismissal from service and it was subject matter of review petition in which also respondent had suffered orders on 29.03.2004 and 08.07.2004 respectively, which are subject matters of CWJC No. 4713 of 2006.

2. Learned Single Judge proceeded to allow the writ petition on technical / legal lacunas in the departmental inquiry, in which he has recorded that it is a case of no evidence and findings of the inquiring officer is perverse. He is also relying on the decisions of the Apex Court passed in the case of ***Roop Singh Negi vs. Punjab National Bank*** reported in (2009) 2 SCC 570 and ***State of U.P. vs. Saroj Kumar Sinha*** reported in (2010) 2 SCC 772.

3. The alleged allegation levelled against the respondent was in respect of misappropriating the sugar and such misappropriation would be resulting in defalcation of Rs. 10.75 lakhs. It is a serious allegation/charge levelled against the respondent.

4. Learned counsel for the appellants submitted that having regard to the charges levelled against the respondent and the fact that on an earlier occasion he was also subjected to



disciplinary proceedings on identical charges in the year 1997 and it was concluded in imposition of penalty of recovery and having regard to the repeated alleged allegations which were proved, the appellants – Corporation proceeded to impose the penalty of dismissal from service.

5. *Per contra*, learned counsel for the respondent – *Ravi Kishore Sahay* submitted that there is no infirmity in the order of the learned Single Judge. It is also submitted that respondent was already punished on 17.08.1999 on identical charges and ordered for recovery of Rs. 12,91,938.53/-. It is submitted that respondent cannot be punished for the same offence on two occasions and it is in violation of Article 20 of the Constitution of India. Therefore, no interference is called for in respect of order of the learned Single Judge dated 31.08.2018 passed in CWJC No. 4713 of 2006.

6. Heard learned counsels for the respective parties.

7. Perusal of the records, in particularly earlier punishment order dated 17.08.1999, the alleged allegation of misappropriation of sugar and its calculation in money terms is in respect of alleged allegations of the year 1997 whereas the present charges are relating to the year 2000, therefore, the contention of the respondent that for the same offence or for the same allegations, respondent has been punished on two occasions in the



year 1999 and in the year 2004 cannot be acceptable in view of the factual difference to the extent that earlier recovery order of a sum of Rs. 12,91,938.53/- is in respect of alleged allegations relates back to of the year 1997 whereas the present dismissal order is in respect of alleged allegations in the year 2000.

8. The learned Single Judge has committed error in not remanding the matter for the reasons that the alleged allegation made relates to defalcation of Rs. 10.75 lakhs. It is true that sufficient material has not been placed on record before the inquiring authority and proved in the manner known to the law. Therefore, to that effect there is a lacunae in the disciplinary proceedings. If the order of dismissal or punishment order in a department is set aside on technicality like the present case that no materials have been placed on record and inquiring officer's report is perverse, in such circumstances, it is a case of remand having regard to the fact that the allegation is of misappropriation of Rs. 10.75 lakhs.

9. Apex Court in the case of *Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Others* reported in (1993) 4 SCC 727 and *Chairman-cum-Managing Coal India Ltd. and Others vs. Ananta Saha and Ors.* reported in (2011) 5 SCC 142, paragraph Nos. 48 to 50 reads as under:



"48. In ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161] , 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 [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC 3018] , Akola Taluka Education Society v. Shivaji



[(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC (L&S) 372].

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.”

The principle laid down in the aforementioned decisions is that if a Court set aside the punishment order on technicality where there is financial irregularities, in such circumstances, it is a case for remand to the disciplinary authority to hold fresh inquiry and complete within the time limit. The said principle was reiterated by the Apex Court in the Case of ***State of Uttar Pradesh & Ors. vs. Prabhat Kumar*** reported in **2022 Live Law SC 736**.

10. Taking note of the later decisions of the Apex Court cited *supra*, it is a case for remand to the disciplinary authority to initiate fresh inquiry and conclude the matter within a period of six months from the date of receipt of copy of this order. To the extent



above, order of the learned Single Judge dated 31.08.2018 stands modified. If the disciplinary authority fails to complete the inquiry within a period of six months, in that event, respondent is entitled to cost of Rs. 1 lakh. Cost shall be paid if the inquiry proceedings go beyond the time limit stipulated by this Court.

11. Accordingly, present LPA stands disposed of. Respondent is hereby directed to co-operate with the disciplinary authority/inquiry officer to give effect to the aforementioned order. If there is no co-operation, disciplinary authority / inquiry officer may proceed to pass *ex parte* proceedings after taking note of all relevant materials like documents and evidence on behalf of appellants – Corporation.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.01.2024
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