

(2022) 03 PAT CK 0066

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 23146 Of 2018

Rajesh Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: March 29, 2022

Hon'ble Judges: P. B. Bajanthri, J

Bench: Single Bench

Advocate: Brisketu Sharan Pandey, Ashutosh Ranjan Pandey

Final Decision: Partly Allowed

Judgement

Heard learned counsel for respective parties.

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

“(A) For quashing the order dated 07.03.2018, bearing Memo No. 140 A) issued under the signature of the Director Secondary

Education, Department of Education, Government of Bihar, Patna whereby and whereunder the petitioner working as Lab Assistant (Auto-

mobile Engineering Technology) at Mangal Seminary Inter College, Motihari has been dismissed from the service.

(B) For quashing the order dated 02.07.2018, bearing Memo No.331 issued under the signature of Principal Secretary-Cum-Appellate

Authority, Department of Education, Government of Bihar, Patna whereby and whereunder the appeal preferred by the petitioner has been

dismissed and the order dated 07.03.2018 (Annexure-P-1) issued by the Director Secondary Education has been affirmed and as such the

order relating to dismissal of the petitioner has remained un-interfered by the Appellate Authority.

(C) For holding that the impugned order dated 07.03.2018 (Annexure-P-1) and Appellate order dated 02.07.2018 have been issued by the

Respondents in violation to the Bihar CCA Rules, 2005 as also in violation the principles of natural justice moreover the departmental

proceedings against the petitioner suffers from procedural impropriety and thus the aforesaid impugned orders are fit to be quashed.

Further upon quashing the aforementioned order dated

(D) Further upon quashing the aforementioned order dated 07.03.2018 (Annexure-P-1) and Appellate 02.07.2018 the Respondents be

directed to reinstate the petitioner granting him the continuity of service with all consequential benefits.

(E) The Hon'ble Court may pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends

of equity, justice and good conscience.â€

The petitioner was caught red-handed while alleged to have demanded and accepted illegal gratification. Arising out of the aforementioned incident

parallel proceedings were launched by the Department like departmental inquiry and criminal proceedings. Criminal proceedings is still pending

consideration. In the departmental proceedings matter was concluded in imposition of penalty on dismissal of petitioner vide order dated 07.03.2018

and petitioner has exhausted remedy of appeal and it was rejected, thus, the present petition.

Learned counsel for the petitioner vehemently contended that from the inception of issuance of charge memo till imposition of penalty and its

confirmation by appellate authority there are violation of various provisions under Bihar (Classification, Control and Appeal) Rules, 2005.

On this point, learned counsel for the respondent has not disputed and he had clear instruction from the Department to remand the matter.

In view of the aforesaid submission on behalf of learned counsel for respective parties, the impugned orders dated 07.03.2018 and 02.07.2018

(Annexure-P/1 & P/2) are set aside reserving liberty to the disciplinary authority to initiate fresh inquiry and complete the proceedings within a period

of six months from the date of receipt of this order, while complying each and every relevant provisions under Bihar (Classification, Control and Ap-

peal) Rules, 2005. The intervening period from the date of dismissal till fresh initiation of inquiry and its conclusion the disciplinary authority is

required to examine whether petitioner could be placed under suspension or is he entitled for reinstatement or not in the light of Hon^{ble} Apex

Court decision in the case of ECIL vs. B. Karunakaran reported in (1993) 4 SCC 727 read with 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. Thiruvirkulam 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 herein-above after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.â€

The disciplinary authority is hereby directed to take note of the aforesaid judicial pronouncement in respect of whether petitioner is entitled for

reinstatement or he should be placed under suspension. Such decision shall be taken within a period of two months from the date of receipt of this

order. If the petitioner is en-titled for reinstatement he shall be reinstated subject to outcome of the disciplinary proceedings.

Accordingly, the present petition is allowed in part.