

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15248 of 2006

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1. Suresh Kumar Singh Son of Sri Brij Kishore Singh, resident of Village- Badhiyan, P.S.- Ekma, Distt.-Saran.
 2. Satya Narayan Singh, son of late Mathura Singh, resident of Village- Amma Pali, P.S.- Pirpaiti, Distt.- Bhagalpur.
 3. Md. Afsar son of late Sami Ahmad, resident of Village- Agarpur, P.S.- Sabbor, Distt. Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Personnel and Administrative Department, Bihar, Patna.
2. The Patna High Court, Patna through its Registrar, Patna High Court, Patna.
3. The District & Sessions Judge, Civil Court, Bhagalpur.
4. The Registrar, Civil Court, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate.
For the State	:	Mr. Braj Kishore Singh, AC to SC 5
For the Rsp. No. 2-4	:	Mr. Bindhyachal Singh, Advocate.
		Ms. Smriti Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

8 13-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioners in this writ application

reads as follows:

"1. ... for quashing of the order dated 11.07.05 passed by the learned Sessions Judge, Civil Court, Bhagalpur whereby and whereunder punishment has been awarded to the petitioner withholding four increments and salary of the suspension period and quashing of the order dated 24.5.2006 passed by the Hon'ble High Court Patna by which punishment has been modified with respect to withholding of increments i.e. two in place of four, by issuing an appropriate writ and further for issuance of an appropriate writ/writs, direction/directions directing the respondents to pay salary of the suspension period i.e. 22Rs. 12.9.04 to 11.7.05..."



3. Mr. Rajendra Prasad Singh, learned senior counsel, appearing on behalf of the petitioners, has submitted that the impugned orders of punishment against the petitioners is based on no evidence and that as a matter of fact the inquiry officer had found the charges against the petitioners to be true even without adducing of any oral evidence.

4. Learned counsel for the respondents, on the other hand, has sought to justify the impugned orders of punishment and his main submission is that no procedural infirmity can be found in the departmental proceeding conducted against the petitioners.

5. This Court has carefully perused the materials on record and from them, it has found that the charges against the petitioners, namely, Suresh Kumar Singh, Satya Narayan Singh, both the Peon in Civil Court, Bhagalpur and Md. Afsar, Process Server, Civil Court, Bhagalpur, were that they were deputed to assist Ajit Kumar Mishra, Nazir Incharge in getting delivery of possession ordered by the court of Munsif, Bhagalpur for its being effected on 14.12.2003 in favour of the decree holder. All the above named three petitioners infact are said have gone to the house of the decree holder and made demand of a sum of Rs. 20,000/- as bribe, as per the desire and wishes of Incharge Nazir, namely, Ajit Kumar Mishra.

6. The further charges against the petitioner no. 2.

Satya Narayan Singh was that he having gone to the house of the decree holder on 13.12. 2003 with Suresh Singh, petitioner no. 2 and Md. Afsar, petitioner no. 3, had taken Rs. 4,000/- from Priti Shri, the daughter of the decree holder, and gave it to Suresh Singh with an assurance to pay rest of the amount of Rs. 16,000/- at a later date. All the three petitioners were also charged that they in collusion with Nazir Incharge, Ajit Kumar Mishra, having taken money from the family members of the judgment debtor, had returned back the writ without executing the delivery of possession.

7. Let it be noted that along with three petitioners, Ajit Kumar Mishra was also subjected to departmental proceeding with a charge that, on 14.12.2003, he had received the writ issued by the court of Munsif -2nd, Bhagalpur in Title Execution Case No. 17 of 1999 for making delivery of possession of the shop in question in favour of the decree holder, but he negligently and carelessly did not make proper arrangement of police force for affecting delivery of possession and had submitted a false report for the purpose of extraneous consideration by way of demanding bribe through the three petitioners, above named, in the name of affecting the delivery of possession in the execution of decree.

8. This Court, from the inquiry report, would find that Priti Shri, daughter of the decree holder, who had made the allegations against Ajit Kumar Mishra as also three petitioners, was examined on 23.11.2004 in the departmental enquiry and she had supported her allegation made in her application in course of her deposition before the Enquiry Officer. She had clearly stated about coming of three Peons i.e. the three petitioners who had told her that they had come from Nazarat on being sent by Ajit Kumar Mishra, the Nazir and they had given their names as Suresh Kumar Singh, Satya Narayan Singh and Md. Afsar and they had demanded Rs. 20,000/- for giving delivery possession. She had also deposed that three petitioners had informed her that delivery of possession had not been effected earlier because judgment debtor had given Rs. 25,000/- to them and as such, the delivery of possession could not be made to the decree holders if the demanded amount of Rs. 20,000/- was not paid to them. The said witness had also stated that initially she had shown her inability to fulfil the demand of paying the amount of Rs. 20,000/- whereafter the petitioners had said that they will come on later date. According to her, the petitioners had again come to her house on 13.12.2003 and in presence of the witness and Advocate, namely, Kisun Gupta and Ratan Kumar Jha respectively, she had paid Rs.

4000/- to them as also had agreed to pay rest of amount of Rs. 16,000/- after delivery of possession. The said lady witness had further deposed that on 14.12.2003 before the Enquiry Officer that the three petitioners along with Nazir had come at the spot for execution of delivery of possession, but they had left the place within 2 to 3 minutes on account of their being in league with the judgment debtor.

9. The said lady witness infact was cross-examined by the petitioner and in her cross examination she had very fairly said that at the time of payment of Rs. 4,000/- to the petitioner, Ajit Kumar Mishra, the Nazir was not there but she had paid amount of Rs. 4,000/- in the hand of the petitioner Suresh Singh, who had handed over the same to the petitioner Satya Narayan Singh.

10. It appears that the inquiry officer, however, did not find the charge of giving bribe of Rs. 4,000/- by the daughter of the decree holder to the petitioners to be proved but then he had also gone into the aspect of dereliction of duty and negligence on the part of the petitioners and Ajit Kumar Mishra and had recorded a finding that Ajit Kumar Mishra and his team assisted by three Peons, namely, the petitioners no. 1 to 3, had gone at the spot without informing the police party with regard to the task of delivery of possession and also without the connected order of the

court which actually was not issued till 13.12.2003. In this regard the finding of the inquiry officer reads as follows:

"Now considering the allegation regarding negligence and dereliction of defeating the order of the court for execution of D.P. i.e. writ for D.P. of the shop by breaking the lock of the same as described in the writ is concerned, I find that Nazir Incharge Ajit Kumar Mishra and his team consisting the three peons had gone at the spot with Executive Magistrate, deputed to assist the process of the court, without the police force knowingly that the D.P. is not possible without police force. In this regard it has come that the letter written for sanction of police force was not issued till 13.12.2003 and there is question that for what purpose the proceedee had gone at the spot. It is the fact that they had gone at the spot and could not comply with the order of the court, rather , submitted report after an unwanted enquiry for which delinquents were not authorized and this fact shows their intend to defeat the writ issued by the court for the execution of D.P. It has been argued on behalf of the proceedee that on the letter of S.D.M. regarding the deputation of magistrate they had gone at the spot with hope that police force would have been present at the spot. It is the fact that the Nazir was entrusted for the execution of D.P. by the court concerned with the help of armed force and the Executive Magistrate and until 13.12.2003 there was no order from the office of Superintendent of Police regarding the deputation of police force and therefore there was no reason to go at the spot but without the ulterior motive. It has also come that the parties concerned have also not been duly informed nor their Advocates had been told to remain present at the spot. It was the duty of I/C Nazir to inform all the parties concerned after fixing the date for D.P. after obtaining the sanction orders of the deputation of police force as well as of the Executive Magistrate. The I/C Nazir has not fixed the date after complying these facts and motively been gone at the

spot with Executive Magistrate and submitted report defeating the order of the court.

From the perusal of the report of I/C Nazir in the D.P., it makes clear that he has reported the fact beyond his jurisdiction and did not comply the order of the court making the favour to the judgment debtor. The report of Incharge Nazir Ajit Kumar Mishra is certainly contrary to his duty and it will amount to create evidence under Order 21 Rule 97 C.P.C. against the Decree- Holder. The said report is undesirable and uncalled for, which defeated the order of the court. Hence, I find that Ajit Kumar Mishra is guilty of gross negligence and dereliction of duty. In the circumstances he deserves major punishment except the capital punishment of dismissal from the service but considering his past service record and other circumstances affecting welfare of his family members, a lesser punishment also may be awarded.

The other three proceedee i.e. Satya Narain Singh, Suresh Singh and Md. Afsar are Class IV Employees and although the allegation of taking bribe from the allegee has not been sufficiently established against them but their suspicious involvement as the members of the party, who by way of their act showing interest with the judgment debtor in the execution of D.P. is sufficiently proved. Although they have to comply the instruction of the I/C Nazir in affecting the D.P. but not upto the stand to defeat the order of the court and therefore, these three proceedees are also liable to get punishment in the way of with-holding of one increment for future with an standing order to condemned their act and posted them in Sub Divisional Courts of this Judgeship as night guards for at least two years."

11. Pursuant to the aforementioned inquiry report, the petitioners were given show cause notice by the District Judge vide his letter dated 4th April 2005 and when the petitioners had

filed their show cause reply, the impugned order of punishment came to be passed wherein he had recorded as follows:-

"I carefully perused the report of Enquiry Officer. The Enquiry Officer has made through enquiry. After appreciating the evidence during enquiry he gave a finding that the allegation of taking or demanding bribe was not established against any of the delinquents and accordingly he exonerated from the allegation of taking bribe but he has not exonerated them from allegation of making demand of bribe. But Enquiry officer has come to conclusion, and given a finding that the report submitted by Sri Ajit Kumar Mishra was uncalled for, false and only with a view to held the Judgment debtor and contrary to his duty and as regards delinquents Satya Narain Singh, Suresh Kumar Singh and Md. Afsar he has given the warrant of the court for execution of decree and their conduct also was not fair.

In response to the second show cause notice, all the delinquents have shown the same cause as during the pendency of proceeding. By second show cause notice vide memo no. 204 dated 2.6.05 agreeing with the finding and conclusion of the Enquiry Officer and also prima facie finding the nature of misconduct proved against Sri Ajit Kumar Mishra. I proposed to award punishment of dismissal from service. In response to the same he has submitted his show cause.

I perused the show cause of Sri Ajit Kumar Mishra, the report of office Superintendent dated 30.3.05 from which it appears that no punishment was ever awarded against Sri Ajit Kumar Mishra in past nor he was ever suspended for any misconduct or any allegation. However, as mentioned, charge against him that instead of executing the decree by affecting delivery of possession, he submitted false and uncalled for report to favour Judgment- Debtor, has been proved and the enquiry officer has rightly come to the conclusion that the act of Sri Ajit Kumar Mishra was contrary to his duty. The Enquiry Officer has also given a



finding that Sri Ajit Kumar Mishra is guilty of gross negligence and dereliction of duty. Although he has recommended to award major punishment except the punishment of dismissal with this recommendation with respect to the quantum of punishment. In my opinion, Sri Ajit Kumar Mishra has committed gross misconduct contrary to his duty and hence, in my opinion, the punishment of dismissal from service will be the adequate punishment and accordingly under Rule 2 (VIII) Bihar and Orissa Subordinate Service Discipline and Appeal Rules, 1935, Sri Ajit Kumar Mishra is awarded punishment of dismissal from service.

As regards Sri Satya Narain Singh, Sri Suresh Kumar Singh and Sri Md. Afsar, all Peons, I find that as mentioned above, Enquiry Officer has given a finding that they also assisted Sri Ajit Kumar Mishra to defeat the warrant of execution of decree. There is direct evidence against them that at the instance of Sri Ajit Kumar Mishra they were making demand of bribe from the decree holder and the circumstances make the allegation probable and they have also acted in contrary to their duty. However, considering the facts that they had to act and assist the Nazir on his instruction and guidance, in my opinion, they do not deserve the punishment of dismissal. Considering their misconduct and circumstances, in my opinion, with holding of four increments will be the adequate punishment against them. Accordingly, Sri Satya Narain Singh, Sri Suresh Kumar Singh and Sri Md. Afsar are awarded punishment according to Rule 2(III) of Bihar and Orissa Subordinate Services Discipline and Appeal Rules, 1935 of withholding of four increments permanently of each of them. The order of suspension passed against Sri Satya Narain Singh, Sri Suresh Kumar Singh and Sri Md. Afsar is hereby revoked. Since they have been found guilty and awarded punishment, except the subsistence allowance they will not get salary of their suspension period."

12. The question, therefore, will be where is the fatal



procedural infirmity which could vitiate the entire departmental proceeding ? The charge of dereliction of duty was based on documentary evidence and added to it, there was also oral evidence of the daughter of the decree holder. As a matter of fact, neither the petitioner nor his counsel Mr. Singh has been able to point out any procedural infirmity in the departmental proceeding. This Court is also not required to sit as an appellate authority over the findings recorded by the inquiry officer or on the ultimate order recorded by the disciplinary authority, if there is some evidence to support the finding which would be good enough for a writ court to uphold the order of punishment. This Court in fact is not supposed to substitute its own views in the matter of proving of charge and/or awarding of the punishment.

13. In the case of *State of Rajasthan & Ors. vs. Sujata Malhotra* reported in (2003) 9 SCC 286 and again in the case of *State of U.P vs. Jaikaran Singh* reported in (2003) 9 SCC 228, it has been held by the Apex Court that the power of punishment shall be within the employer's discretion and the court would not ordinarily interfere where there was no infirmity with the procedural part of departmental enquiry.

14. The Apex Court, in fact, in a series of judgments, such as in the cases of *Union of India & Ors. vs. B.K.Srivastava*



reported in *AIR 1998 SC 300, Government of Tamil Nadu & Anr. vs. A Rajapandian* reported in *AIR 1995 SC 561, High Court of Judicature at Bombay through its Registrar vs. Udaysingh* reported in *AIR 1997 SC 2286* and *Rae Bareilly Kshetriya Gramin Bank vs. Bhola Nath Singh & Ors.* reported in *AIR 1997 SC 1908*, has consistently laid down the law that the courts will not interfere if there is some evidence against the employee which is sufficient to establish charges as against there being no evidence to prove the charge. Infact the courts have to always a distinction between total absence of evidence and a case where there is some evidence. It is also well settled that if there is some evidence to prove the charges the Court or the Tribunal, in exercise of power of judicial review, can not sit as a court of appeal and interfere with the punishment by re-appraising and re-assessing the evidence.

15. Applying the aforementioned principles, as laid down in the aforementioned judgment of the Apex Court, there will be no difficulty in holding that there is some unimpeachable evidence on the basis which the charges against the petitioners had stood proved.

16. Let it be kept in mind that the petitioners the employees of the Court. Their duty was to enforce and execute the

delivery of possession, as directed by the Court, but they did not do so. In fact, the Nazir being the main person and the three petitioners having aided and abetted the Nazir were correctly inflicted punishment proportionate to their alleged misconduct inasmuch as Nazir was dismissed from service whereas these petitioners were inflicted stoppage of four increments which also got reduced to two increments under the appellate order passed by this Court on the administrative side. As a matter of fact, the petitioners are very fortunate of being only inflicted with minor punishment of stoppage of two increments keeping in view the Nazir was dismissed from service.

17. Thus, for the reasons indicated above, this Court does not find any error in the order of punishment of these three petitioners.

18. In the result, this writ application fails and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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