

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4188 of 2011

Parmanand Maurya, Son of Late Brij Mohan Lal Maurya, resident of Village Saraiyan, P.S. Fatehpur, District Barabanki (U.P.) presently posted as Sub Judge-VI, Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government Of Bihar, Patna.
2. The High Court of Judicature at Patna through the Registrar General.
3. The Enquiry Officer cum District and Sessions Judge Rohtas at Sasaram.
4. The District and Sessions Judge, Madhubani.
5. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna.

.... Respondents

Appearance :

For the Petitioner : Mr. Prashant Sinha, Advocate

For Respondent Nos.2 to 4 : Mr. Satyabir Bharti, Advocate

For the State : Mr. Sanjay Pandey, GP21

Mr. Vivek Anand Amritesh, AC to GP21

For the Accountant General: Mr. Madhuresh Prasad, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 26-03-2015

The petitioner was appointed as a Judicial Magistrate in Bihar Judicial Service in the year 1986. Thereafter he was promoted as Subordinate Judge and then the Adhoc Additional District & Sessions Judge.

2. In 2006 while the petitioner was functioning as Munsif at Sasaram, Execution Case No. 8 of 2005 was before him. The judgment debtor in that execution case approached this Court by filing Civil Revision No.292 of 2006 and an order of stay of the execution proceedings was passed on 12.09.2006. The counsel for the

judgment debtor filed a letter on 07.10.2006 informing that the order of stay was passed. However petitioner proceeded with the execution of the decree and directed delivery of possession on 08.10.2006.

3. The acts and omissions on the part of the petitioner were brought to the notice of this Court on judicial side. Thereafter the matter was taken up on administrative side. The charges were framed and not satisfied with the explanation offered by the petitioner, departmental enquiry was conducted. The enquiry officer submitted a report holding that the charges are proved. Taking into consideration the report, the High Court passed an order imposing the punishment of reversion to the substantive post of Subordinate Judge and reduction of pay-scale, withholding of three increments with cumulative effect. The result thereof was communicated to the petitioner through Memo No.1320 dated 23.10.2010 issued by the District & Sessions Judge, Madhubani, where he was working at the relevant point of time. The petitioner challenged the same.

4. It is pleaded that though an order of stay was passed by this Court in the aforesaid Civil Revision on 12.09.2006, the concerned party did not file any copy of the order and when the matter was taken up by the Court on 07.10.2006, a specific direction was issued to comply with Order 41 Rule 5 of the Code of Civil Procedure but the same was not done. The petitioner further submits



that he expressed his apology for the lapses on account of the communication gap and still punishment was imposed against him. A complaint is also made that the copy of the order of punishment has not been served upon him so far. It is also alleged that though punishment is of stoppage of three increments with cumulative effect, his pay-scale has been reduced.

5. The respondents filed a detailed counter affidavit. It is stated that the petitioner proceeded to execute the decree, despite there being an order of stay passed by this Court, and in view of the gravity of the misconduct proved against the petitioner, the Standing Committee had resolved to initiate departmental proceedings. It was further stated that the petitioner did not ask for furnishing a copy of the order of punishment and the same would be served immediately. As regards reduction of the pay, more than what was ordered in the punishment, it is pleaded that the Government is answerable in that behalf.

6. Heard Sri Prashant Sinha, learned counsel for the petitioner, Sri Satyabir Bharti, learned counsel for respondent nos. 2 to 4, Sri Sanjay Pandey, learned Government Pleader No.21 for the State and Sri Madhuresh Prasad, learned counsel for the Accountant General.

7. The petitioner was given major punishment of



withholding of three increments with cumulative effect. This is not a case where punishment was imposed without conducting the departmental enquiry. It is not in dispute that the departmental enquiry was conducted and the charges framed against the petitioner were held to be proved. An attempt is made to demonstrate that the punishment imposed against the petitioner is disproportionate to the charges framed against him. We are not inclined to accept the same. The execution of decree by the petitioner, despite there being an order of stay of this Court, is a very serious matter.

8. Though the petitioner has tried to justify his action stating that neither any copy of the order of stay passed in the aforesaid Civil Revision was communicated to him nor any affidavit, provided for under Order 41 Rule 5 of the Code of Civil Procedure was filed. Even if that is true, once the factum of stay by the superior court was brought to the notice of the inferior court, the latter just can not proceed with the matter on the spacious plea that a copy of the order of stay was not placed before it. In a given case, the trial court may verify from the High Court, whether there was any communication gap. There cannot be any justification for the petitioner to ignore the order passed by the High Court.

9. Therefore, we do not find any basis to interfere with the order of punishment.

10. So far as the grievance of the petitioner about reduction of pay-scale much more than what was ordered is concerned, we direct that the Government of Bihar, concerned authorities of the Finance Department and the Office of the Accountant General shall ensure that except that three increments are denied to the petitioner with cumulative effect, no further reduction in his pay-scale shall be made. It will be open to the petitioner to submit a representation and as and when it is submitted, necessary steps in this behalf shall be taken within four weeks.

11. Till further orders in this behalf, no recovery shall be made from the salary of the petitioner. The writ petition is disposed of accordingly.

12. The interlocutory order, if any, shall stand disposed of.

(L. Narasimha Reddy, CJ)

AFR

(Vikash Jain, J)

B.T/-

U			
---	--	--	--