

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.255 of 2016

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Upendra Nath Verma Son of late Moti Lal Singh Resident of Ashiyana Nagar
Phase-II, House No. II, P.S. Rajeev Nagar, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Registrar, Co-operative Societies, New Secretariat, Govt. of Bihar, Patna.
3. The Assistant Registrar (A.R) Co-operative Societies-Cum Conduction Office,
New Secretariat, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Pratap Sharma, Advocate
For the Respondent/s : Mr. M.K. AMBASTHA, S.C.-26
Mr. Subodh Kumar, A.C. to SC-26

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-10-2016

Heard Mr. Pratap Sharma, learned counsel appearing on
behalf of the petitioner and Mr. Subodh Kumar, Assisting Counsel to
SC-26 for the State.

With the consent of the parties the writ petition has been
heard with a view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the order bearing Memo No.
6025 dated 30.9.2015 whereby a punishment has been imposed of
withholding of two annual increments with cumulative effect.

The charge against the petitioner is of disobedience of the
order of this Court passed in CWJC No. 16879 of 2009, a copy of
which is present at Annexure-1 to the writ petition and whereby this
Court directed the respondent authorities to carry out regular



appointments against the vacant sanctioned post of Jeep Driver and if the same is not made within one year then the respondents were restrained from utilizing the services of anyone on daily wages or from substituting one daily wager by another. Annexure-2 is stated to be the copy of the charge sheet bearing Memo No. 4259 dated 23.9.2013. The Assistant Registrar, Cooperative Society was appointed as the conducting officer and the Rural Development Department, Government of Bihar was directed to appoint any competent officer as the presenting officer. The reply of the petitioner is present at Annexure-3 disowning the charges. The report of the Enquiry Officer is present at Annexure-7.

It is the specific stand of the petitioner in his reply that neither he was a party to the writ proceedings nor the copy of the order was supplied to him and no sooner did he receive the copy of the order vide letter no. 401 dated 8.6.2011 he took necessary steps for its compliance. The Enquiry Officer has taken note of this fact in his finding recorded at page 30 of the present proceedings in which he does accept that the petitioner who held the post of Block Development Officer, Halsi, was not a party to the writ proceedings, although the Block Development Officer, Lakhisarai had been added as a party. The Enquiry Officer also takes notice of the fact that the copy of the order was communicated by the Senior Deputy Collector,



Legal Section, Lakhisarai only vide letter no. 401 dated 08.6.2011. Surprisingly despite the position, the Enquiry Officer proceeds to hold the petitioner guilty of his failure to comply with the order of the Court. The petitioner was served with a second show cause on 09.9.2014 vide Annexure-8 and to which he submitted his reply specifically stating that the order of the Court was communicated to him vide letter no. 401 dated 08.6.2011 and he immediately issued directions to the Head Clerk to ensure compliance. However no payments were made to the driver thereafter nor work was taken from him. He has explained that vide notification no. 8232 dated 30.6.2011 he was transferred out from the office. He thus has refuted the charge of flouting the order of the High Court. Despite the position the order of penalty is passed simply proceeding on the fact that the petitioner failed to ensure compliance even after receiving the order of this Court vide letter bearing Memo No. 401 dated 08.6.2011 which was received by him on 13.6.2011. The petitioner feeling aggrieved is before this Court.

I have heard learned counsel for the parties and I have perused the records. There is no dispute on the fact that the petitioner who held the post of Block Development Officer, Halsi where the jeep driver Deepak Kumar was posted, was not a party to the writ proceedings as manifest from Annexure-1. There is again no dispute



on the fact that the order of the High Court passed on 19.1.2010 was communicated to the petitioner by the Senior Deputy Collector through letter no. 401 dated 08.6.2011 and which was received by the petitioner on 13.6.2011. Now whereas the petitioner has specifically stated in his reply at Annexure-9 that he immediately issued directions to the Head Assistant for ensuring compliance of the order of the Court and that no payment was made to the jeep driver Deepak Kumar thereafter but the impugned order suggests that payments were made by the petitioner even after receipt of the communication dated 08.6.2011 and 13.6.2011.

Mr. Pratap Sharma, learned counsel has submitted that the finding of the disciplinary authority regarding payment being made by the petitioner even after receiving the order on 13.6.2011 is contrary to the records.

A counter affidavit is filed enclosing the impugned order but there is no discussion as to the material on which the charges against the petitioner have been upheld regarding flouting the order of the High Court despite receiving a copy thereof on 13.6.2011.

In view of such undisputed position where neither the impugned order nor the counter affidavit does bring any material on record to show that the petitioner flouted the order of this Court even after its receipt on 13.6.2011, in my opinion, the order imposing

penalty bearing Memo No. 6205 dated 30.9.2015 is based on no evidence and thus cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

The consequences shall follow.

(Jyoti Saran, J)

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