

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.78 of 2021

In

Civil Writ Jurisdiction Case No.13158 of 2006

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1. Honble High Court of Judicature at Patna through its Registrar (Administration), Patna High Court, Patna.
 2. District Judge, Civil Court, Bhagalpur.
 3. Enquiry Officer cum Additional District Judge, Civil Court, Bhagalpur.

... .. Appellant/s

Versus

1. Ajit Kumar Mishra Son of Late Ashayavat Mishra Resident of Anandbagh Colony, Mohalla- Bhikhanpur, P.S.- Kotwali in the town and District Bhagalpur.
2. State of Bihar through the Secretary (Personnel and Administrative Reforms Department), Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Piyush Lall, Adv
For the Respondent No. 1	:	Mr. J.S. Arora, Sr. Adv.
For the Respondent/s	:	Mr. Saroj Kumar Sharma, AC to AAG -3

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 16-05-2022

Re: Interlocutory Application No. 2 of 2021

The present Interlocutory Application has been filed for condoning the delay in preferring the present memo of



appeal.

For the reasons stated in the application, the delay in preferring the appeal is condoned.

Interlocutory Application No. 2 of 2021 stands allowed.

Re: L.P.A. No. 78 of 2021

1. Heard Mr. Piyush Lall, the learned Advocate for the appellant and Mr. J.S. Arora, the learned senior Advocate for private respondent no. 1.

2. The respondent no. 1 was subjected to a departmental proceeding for having shown negligence in executing the writ of the court for delivery of possession in favour of the decree holder and that also for extraneous consideration.

3. It would be necessary, for disposing of this appeal, to analyse the charge which was handed over to the respondent to answer to.

4. The charge no. 1 declared that while he was posted as Nazir In-charge, Civil Court, Sadar, Bhagalpur on 14.12.03, he received a writ issued by the court of learned Munsif -II, Bhagalpur in Title Execution Case No. 17/1999 for effecting delivery of possession of the shop in question in favour of the



decree-holder but he negligently and carelessly did not make proper / necessary arrangements of police force for effecting the delivery of possession with an intent to defeat the writ and submitted a false report for the purposes of getting extraneous consideration. The charge no. 2 is that at his instance, the Peons, namely, Satyanarayan Singh, Suresh Kumar Singh and Md. Afsar, all posted in Civil Courts, Sadar, Bhagalpur, had made a demand of Rs. 20,000/- as bribe for effecting the delivery of possession in execution of the decree as mentioned in the charge.

5. The Inquiry Officer viz. the Registrar, Civil Court, Bhagalpur submitted a report that the respondent was guilty of negligence but there was no evidence to indicate that he was instrumental in asking other Peons for demanding bribe for executing the delivery of possession.

6. The Disciplinary Authority accepted the report of the Inquiry Officer that there was no demand of bribe but found that the negligence of the respondent was writ large, considering that he was a Nazir, who is responsible for executing the writs of the Courts. He had acted negligently. Accordingly, he was held to be guilty and was slapped with a punishment of dismissal.



7. The aforesaid order of the Disciplinary Authority found favour with the Appellate Authority whereafter the respondent no. 1 approached this Court vide C.W.J.C. No. 13158 of 2006.

8. It was urged by the respondent no. 1 before the learned Single Judge that in the event of the charge of abetting / demanding of bribe not having been proved, no motive could be imputed to the respondent for having deliberately avoided the execution of delivery of possession.

9. Against the charge of his being negligent, it was argued that the learned Munsif- II, Bhagalpur had, vide his order dated 22.11.2003, directed for effecting the delivery of possession with a returnable date of 20.12.2003 for which the respondent received authorization on 02.12.2003. On 20.12.2003, the parties to the proceedings had filed their attendance but the matter was adjourned for 17.01.2004 but later, on the same day i.e. on 20.12.2003, on the receipt of a communication dated 14.12.2003, it was reported that neither the decree holder nor his representative were present on the spot and the police force was also not there. However, it was brought to the notice of learned Munsif that the Executive Magistrate was present there. In the absence of the police force, the



delivery of possession could not be executed. It was also pointed out by the respondent before the learned Single Judge that he had requisitioned police force on 14.12.2003. Earlier, a letter in that regard was sent to the Superintendent of Police, Bhagalpur on 09.12.2003, which was transmitted to the Sub Divisional Magistrate, Bhagalpur also, on which communication, an Executive Magistrate was deputed by order dated 13.12.2003 for facilitating the delivery of possession along with police force. When such report was perused by the learned Munsif, no fault was found. As it often happens, it was urged, not on all fixed dates, delivery of possession is necessarily executed and the same thing happened in the instance also. However, the respondent was subjected to departmental proceeding on the complaint made on behalf of the decree-holder that without ensuring the presence of police force and without intimating the decree-holder or the judgment-debtor, the respondent had proceeded to the place with the sole intention of defeating the writ.

10. It was thus sought to be inferred by the respondent before the learned Single Judge that in the absence of any evidence of even an attempt at extracting any extraneous consideration, he could not have been blamed for any criminal



negligence and of submitting a false report regarding non-execution of delivery of possession.

11. The aforesaid arguments were rebutted by the appellant before the learned Single Judge. It was argued that all that a writ Court was required to see was whether there was any procedural irregularity in conducting the proceeding and whether the respondent had been given ample opportunity for representing his cause. Beyond this, the writ Court ought not to go into the sufficiency of reasons for holding a delinquent guilty or for finding fault with the quantum of sentence imposed. It was thus urged before the learned Single Judge that if there was no procedural irregularity in the departmental proceeding to which the respondent was subjected, there was no requirement for any interference.

12. The learned Single Judge after referring to various case laws [*B.C. Chaturvedi vs. Union of India & Ors ; (1995) 6 SSC 749; Union of India vs. H.C. Goel; AIR 1964 Supreme Court 364; Lalit Popli vs. Canara Bank & Ors; (2003) 3 SCC 583; M.V. Bijlani v. Union of India & Ors ; (2006) 5 SCC 88 and (Union of India & Ors. vs. P. Gunasekaran ; (2015) 2 SCC 610*] found that the findings of the Inquiry Officer as also the opinion of the Disciplinary Authority deserved interference



for the reason that the finding of the Inquiry Officer which was accepted by the Disciplinary Authority was perverse as it was based on no evidence.

13. The grounds which weighed with the learned Single Judge was that the charges of demanding bribe had fallen to the ground in the absence of any cogent evidence and, therefore, the subsequent charge of being negligent and careless in not making proper arrangement was also groundless. There could have been no reason except for extraneous consideration that such negligence would have deliberately been shown by the respondent. That, the respondent had written a letter on 09.12.2003 to the Superintendent of Police, Bhagalpur seeking police force as also the communication made to Sub Divisional Magistrate, Bhagalpur for deputation of Executive Magistrate and the armed forces on the day when the delivery of possession was to be executed, was good enough evidence, in the absence of any rebuttal by the appellant, to disapprove the charge of negligence. That the Sub Divisional Magistrate was available on the spot, who also endorsed that the delivery of possession could not take place because of absence of police force, was a further evidence in favour of the respondent that there was no negligence at least criminal negligence, on his part.



14. On these two grounds, the learned Single Judge found that the report of the Inquiry Officer as well as the decision of the Disciplinary and the Appellate Authority was totally flawed and, therefore, both the orders were set aside and a direction was issued for payment of full back wages to the respondent in view of his superannuation.

15. The aforesaid decision was arrived at on the strength of the judgment of the Hon'ble Supreme Court in ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors; (2013) 10 SCC 324.***

16. Mr. Piyush Lall, the learned Advocate for the appellant has challenged the aforesaid judgment on several counts. He has argued that the learned Single Judge was not correct in holding that in the absence of the proof of demand of extraneous consideration/bribe (charge no. 2), the charge no. 1, namely, negligence also fell to the ground. Charge no. 1 was distinct from the charge no. 2 and not interdependent. He has further urged that even in charge no. 1, there were two charges viz. showing complete negligence in not taking appropriate measures for requisitioning police force and secondly for submitting a false report in order to deflect the course of justice. In support of the aforesaid contention, Mr. Lall has drawn the



attention of this Court to the report of the respondent which he had submitted before the Court after delivery of possession could not be executed. The report *inter alia* states that at the place, the police force was not available. The decree holder, namely, Jugal Kishore Gupta and his Advocate's Clerk were also not found present. On further enquiry by the respondent, he learnt that the decree-holder had gone for his medical treatment to Patna. Mr. Lall has carefully taken the Court to the further part of his report, which according to him indicated that the respondent had tried to locate the property but he could not. He is reported to have inquired from a person standing in front of disputed shop, who is said to have told him that no shop of Bibi Nargis is available but the shop in question was being run for the last forty to fifty years by the sons of Ahmad Raza, which fact was supported by some of the other witnesses. Though presumably the decree of possession was not effected because of the absence of police force but penning down such an endorsement regarding identification of property /shop and the local evidence that the shop did not belong to Bibi Nargis but was being run by others, was simply unwarranted. It was in this context, it has been argued, that the charge of submitting false report was laid on the respondent, over and above the charge of



negligence in not arranging for appropriate police force for executing the writ of the Court.

17. It has further been argued that under the Civil Courts Rules, a procedure has been delineated for the processes and Process Servers. Section 49 of the Rules referred to above clearly indicates that when a summons of notice is served personally, the service and the signature or the thumb impression of the person served on the back of summons or notice should be proved and in the case of defendant or judgment debtor, his identity should also be proved. It has been submitted that in any case, such endorsement ought to have been made by the respondent on the writ and there was no necessity of giving a separate report, which only demonstrates that there was an attempt of the respondent to furnish a false report. This aspect of the matter, it has been argued, has not at all been noted by the learned Single Judge and without any cogent reason, it has been held that the enquiry report as also the decision of the Disciplinary Authority and the Appellate Authority are not based on any cogent evidence.

18. It has also been submitted that the learned Single Judge has adopted the principles enunciated for the Labour Laws for restituting the employees whose termination are found



to be incorrect or bad in the eyes of law. Mr. Lall further submits that the judgment which has been relied upon was in the context of not following the statutory provisions contained in Section 25FF and 11A of the Industrial Disputes Act. The learned Single Judge, it has been argued, has directed for payment of full back wages without holding whether the period that the respondent remained under suspension be treated as period in service and the period during which he remained out of service be also treated similarly. He further submits that such decision ought to have been taken by the competent authority. Without there being any discussion on this aspect in the order of the learned Single Judge, the directions for payment of back wages would, therefore, only mean back wages from the time when the respondent was dismissed till the time when he would have superannuated, had he not been dismissed. He further submits that Rule 97 of the Bihar Service Code specifies that when a Government servant, who has been dismissed, removed or suspended or reinstated, the authority competent to order reinstatement shall consider and make specific order regarding the pay and allowance to be paid to the Govt. servant for the period of his absence from duty and whether or not the said period shall be treated as a period spent on duty and for that it is



required to be held that the termination was absolutely unjustified. He has further submitted that even with respect to payment of back wages, there have been change in the stand of the judicial verdict and unless it is proved that during the period of termination, the employee was not gainfully employed elsewhere, an *erga omnes* order cannot be given for payment of entire back wages. The onus though is on the employee in the first instance to contend that he was not gainfully employed in the interregnum but once such a contention is made, the onus shifts on the employer. The learned Single Judge, therefore, did not take into account that there was no argument raised on behalf of the respondent that he had remained idle for all this while and, therefore, the employer / State did not have any opportunity to rebut the aforesaid contention. In that scenario, directing for payment of entire back wages for the period that the respondent was not in service, is not justified.

19. Lastly, it has been submitted that the learned Single Judge ought not to have expressed the necessity of restituting the respondent that it ought to be done wherever an employer is guilty of victimizing the employee or workman. Mr. Lall submits that an organization like the High Court would never victimize its employees and only because the conduct of the



respondent was found to be below board, he was thrown out of service.

20. As opposed to the aforesaid contention, Mr. Arora, the learned senior Advocate has drawn the attention of this Court to the communication made by the respondent with respect to the requisitioning of the police force as well as deputation of the Executive Magistrate. The Magistrate was there on the day when the delivery of possession was to be effected but there was no police force. He further submits that there was nothing on record to indicate that the respondent had not done his part of making necessary requisition for the purposes of ensuring manpower at the disputed place for seamless delivery of possession. He further submits that the learned Single Judge was also justified in holding that the respondent was not negligent in background of the fact that the accusation / charge of demand of bribe for effecting delivery of possession having been found to be not proved even remotely. There could not have been any reason for the respondent to have not executed the delivery of possession in the absence of any motive for not doing so. He has further submitted that though there could have been some lapses in not informing the decree-holder and the judgment-debtor prior to proceeding for



execution of delivery of possession but that by itself would not make it a case of criminal negligence. The enquiry report and the decision of the Disciplinary Authority appear to have been based on the finding that there was no criminal culpability on the part of the respondent for not effecting the delivery of possession on the day when it was so directed by the writ Court.

21. He further submits that it is not very uncommon that on the date fixed the delivery of possession, it may not be effected, which could be for myriad reasons and not necessarily for the Process Server / Nazir playing truant.

22. In the present case, there is nothing on record to indicate anything otherwise. Had the respondent not performed his part of the obligation, the Executive Magistrate would not have been there. The learned Single Judge was absolutely justified in holding that with the endorsement of the learned Sub-Divisional Magistrate that the delivery of possession was not possible in the absence of police force, nothing else could have been read into the conduct of the respondent. He has further submitted that in all such writs for execution of delivery of possession, the property is specifically identified and the date on which such delivery of possession is to be executed and the last returnable date is also indicated. In the writ of the Court, the



returnable date though was mentioned but the date on which such process was to be undertaken in the first instance was kept open ended, which only meant that it could begin or be executed any day after the passing of the order.

23. So far as the reasoning given by the learned counsel for the appellant that charge no. 1 which also has wrongly been found to be groundless in view of charge no. 2 not having been proved and that the charge no. 1 contained a sub-charge of submitting a false report, Mr. Arora submits that reading of that article of charge in that manner would amount to writing a new jurisprudence in service law as the respondent was never subjected to such charge in the manner in which the appellant is projecting the same.

24. If at all, the charge no. 1 included the accusation of submitting a false report, it only referred to the report regarding non-execution of writ for delivery of possession for the reason of absence of police force and not anything else. He further argues that notwithstanding the fact that the respondent exceeded his mandate in making observations in the endorsement that he could not locate the property, that cannot be taken to be a false report as delivery of possession can only be given if the property is located. A Nazir knows that when there



is a judicial order and a decree in favour of a person, such observations at the time of execution would not in any manner dilute the judgment and the directions of the Civil Court. Such statement in the report cannot be read or termed as submitting a false report for the purposes of defeating the claim of the decree holder. Had it been so or would have been understood to be so, it would have been a good enough ground for constituting a separate charge for creating a false document or submitting a false report.

25. Thus, the contention of the respondent is that the aforesaid ground of the appellant for assailing the order of learned Single Judge is only the fecundity of his imagination or else the respondent would have been confronted with that charge of submitting a false report.

26. Mr. Arora has further contended that because the termination of the respondent was found to be bad in the eyes of law as not based on any cogent evidence, it was not unjustified for the learned Single Judge to have directed for restitution of the respondent by directing for payment of back wages. The argument of Mr. Lall that the principle of Labour Law was made applicable in this case is unfounded as the judgment relied by the learned Single Judge primarily deals with the rights of an



employee vis-a-vis his employer. Thus, it has been argued that the learned Single Judge nowhere went beyond record in setting aside the decision to dismiss the respondent and restitute him with payment of full back wages.

27. Lastly, it has been submitted that the Appellate Court may hold a different view but unless it is demonstrated that the view of the learned Single Judge, which is under challenge in the present appeal is so perverse that it cannot be sustained, it ought not to be disturbed.

28. After having heard the learned counsel for the parties, we find that the learned Single Judge has carefully gone through the evidence and was right in holding that there was nothing on record to dispute the fact of the respondent having made necessary arrangements for procurement of police force and deputation of Magistrate on the day when the delivery of possession was to be effected.

29. Though the learned Single Judge may not have gone in detail with respect to the contents of charge no. 1, which according to learned counsel for the appellant, contained another invisible charge, which was equally important to be decided, but on careful analysis of the evidence before us, we are of the considered opinion that while the report of the



respondent with respect to identification / location of the property was unwarranted but it could be read only in connection with non-delivery of possession on that date. It would be too much to read that such a report was made for the purposes of creating a false evidence for for creating doubts in the decree of the Civil Court. Even otherwise, if that were also the charge, it could not have been kept so much under wraps that the respondent would never get an opportunity of confronting it.

30. As far as the direction to restitute the respondent with full back wages is concerned, we are again of the considered view that in the absence of the employer having proved or even initiated a discussion with respect to his gainful employment during the period of his remaining out of service, the decision of the learned Single Judge cannot be discounted on any score.

31. So far as the contention of the appellant that the learned Single Judge was not justified to order for full back wages is concerned, we have taken note of the submission made on behalf of the appellant but we find that when the learned Single Judge found the termination to be absolutely unjustified and which opinion has been endorsed by us, it goes without



saying that the entire period that the respondent has not worked is required to be treated as if in service.

32. We further clarify that the respondent shall be entitled for full wages even for the period of suspension, pending departmental proceeding. We say so for the reason that we find the order of termination of the appellant to be wholly unjustified.

33. In view of aforesaid discussions, we do not find any reason to interfere with the judgment of the learned Single Judge.

34. The appeal is dismissed but without any order as to costs.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	AFR
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