

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17399 of 2012

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1. Ram Jee Dubey S/O Late Jagarnath Dubey R/O Village- Dubey Dehri,
P.O.- Natwar Khurd,P.S.- Dinara, District- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary And Commissioner Road Construction Department, Government Of Bihar, Patna
2. The Engineer-In-Chief Cum Additional Commissioner Cum Special Secretary Road Construction Department, Government Of Bihar, Patna
3. The Additional Secretary Road Construction Department, Government Of Bihar, Patna
4. The Joint Secretary Road Construction Department, Government Of Bihar, Patna
5. The Superintending Engineer Road Construction, Circle Ara
6. The Executive Engineer Road Construction Division, Buxar
7. The Executive Engineer Building Construction Division, Sasaram, Rohtas
8. The Sub-Divisional Officer Public Works Department (Roads), Mohania
9. The Accountant General, Bihar, Patna
10. The Executive Engineer Bhabhua Road Division, Road Construction Department, Bhabhua
11. The Executive Engineer Building Construction Division, Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Kumar
& Mr. Sanjeev Kumar

For the Respondent/s : Mr. Rajiv Roy, G.P-I
With Mr. Suresh Kumar, AC to GP-I

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 19-08-2016 Heard learned counsel for the parties.

This application has been filed seeking quashing
of an order issued vide Memo No. 4828, dated
24.11.2010, passed by the Engineer-in-Chief, Road
Construction Department, Government of Bihar, Patna, in
the light of an order of this Court, dated 13.04.2010,

passed in CWJC No. 6808 of 2005, whereby earlier decision taken by the State Respondents to recover an amount of Rs. 3,84,285.67/- (Three lacs eighty four thousand two hundred eighty five and sixty seven only) from the petitioner's post retiral entitlements has been affirmed.

2. Certain facts are not in dispute. The petitioner retired in the year 2001, while working as an Assistant Engineer, under the Road Construction Department, Government of Bihar. During the period of his service, a physical verification of the stocks was conducted of Sub-Divisional Office, Road Construction Department, Mohania, where the petitioner was posted as Junior Engineer. The Auditors reported loss of stock to the tune of Rs. 5,45,109.94/- attributable to eight officers of the Sub-Divisional office of Road Construction Department, out of which 3,84,285.67/- was found to be attributable to the petitioner. Consequently, the Engineer-in-Chief-cum-Additional Secretary, Public Works Department, Government of Bihar, Patna, issued an order on 19.10.1981, for recovery of the amount at the rate of Rs. 200/- per month from the salary of the officers concerned, including the petitioner with clear stipulation that in case they got superannuated, balance

amount will be recovered from their gratuity amount and moveable/immovable properties.

3. The said order, dated 19.10.1981, remained unchallenged. It appears that during the service period, for one reason or the other, that no deduction was made as stipulated in the order, dated 19.10.1981. The petitioner retired from service with effect from 30.09.2011.

4. Nearly two years after his superannuation, he challenged the said order, dated 19.10.1981, by filing a writ application before this Court, which gave rise to CWJC No. 4566 of 2003. It appears that during the pendency of the application, recovery was effected from the gratuity amount and leave encashment entitlements of the petitioner. The said writ application came to be disposed of by this Court by an order, dated 06.08.2003, in following terms:-

"Under such circumstances, this Court finds it difficult to grant any relief to the petitioner as against Annexure-1. However, having regard to the letters issued by the Executive Engineer to the Engineer-in-Chief, contained in Annexure-5, and also the letter of the Sub Divisional Officer referred therein, this court considers it expedient to dispose of the writ application with a direction to the Engineer-in-Chief (respondent no.2) to re-examine the grievance of the petitioner and dispose it of afresh by a reasoned order within two weeks of the receipt/production of a copy of this order."



5. It appears from the pleadings on record that the petitioner had relied on two letters, bearing No. 540, dated 25.10.1981, of Sub Divisional Officer, Public Works Department, Mohania and letter No. 28.12.1981, of the Executive Engineer, Building Construction Division, Sasaram, in support of his plea before this Court in CWJC No. 4566 of 2003 (supra) that the loss so reported by the Auditors was not attributable to him. It is apparent that this Court in its order, dated 06.08.2003, it did not find any fault with the order of recovery, dated 19.10.1981. However, only for the purpose of considering the petitioner's plea with reference to the aforesaid two letters of the Sub Divisional Officer and the Executive Engineer, this Court required the Engineer-in-Chief to consider the grievance of the petitioner and pass an appropriate order.

6. Accordingly, the Engineer-in-Chief passed an order, dated 23.01.2004, rejecting the grievance of the petitioner. The petitioner, thereafter, challenged the said rejection by filing another writ application, which gave rise to CWJC No. 6805 of 2005. This Court noticed, while examining the order, dated 23.01.2004, that the concerned letters of the Sub Divisional Officer and the Executive Engineer were not duly taken into account as

was required to be done under the orders of this Court, dated 06.08.2003 passed in CWJC No. 4566 of 2003.

7. This Court by judgment and order, dated 13.04.2010, quashed the said order, dated 23.01.2004, mainly on the ground that though the said communications were referred to in the order by the Chief Engineer, the same letters were not dealt and discussed. While allowing the writ application and quashing the order, dated 23.01.2004, this Court by the order, dated 13.04.2010, directed the Engineer-in-Chief to pass an order afresh in accordance with law after giving the petitioner, a due opportunity of hearing.

8. In the light of the said judgment and order of this Court, dated 13.04.2010, the impugned order, dated 24.11.2010, has been passed by the concerned Engineer-in-Chief rejecting the petitioner's claim. From the said order, I find that the petitioner was given an opportunity of hearing. I also find that the said two letters of the Sub-Divisional Officer and the Executive Engineer have been duly addressed and considered.

9. Learned counsel appearing on behalf of the petitioner has submitted that in no event, without resorting to provisions of Rule 43(b) of the Bihar Pension Rules, a decision to make deduction from pension or

gratuity would have been taken by the respondents. According to him, the said decision is in breach of the said provisions of the Bihar Pension Rules.

10. I do not find any substance in the aforesaid submission in view of the observation of this Court made in CWJC No. 6805 of 2005, relevant portion of which reads thus:-

"Having held as such I do not consider it appropriate to deal with the issue whether or not the respondents were within their jurisdiction to effect the recovery without following the procedure as envisaged under Rule 43(b) of the Rules. Even otherwise the responsibility having been identified 20 years prior to the retirement of the petitioner, who never bothered to challenge the same before an appropriate forum, the recovery effected after retirement of the petitioner is merely an implementation of the order of recovery and does not require an independent proceeding. The judgments cited by learned counsel for the petitioner relates to recovery without initiation of any proceeding. The case in hand is on an entirely different footing. In the present case, the order of recovery had already passed though not acted upon. The belated implementation of the order of recovery would not grant a premium to the petitioner to assail the same on the anvil of the provisions of the Bihar Pension Rules. That brings us to the order as contained in Annexure-1 of the writ petition disposing of the claim of the petitioner with the findings that there was no requirement for modification or cancellation of the order dated 19.10.1981."

11. It is settled law that writ Court is not required to go into the correctness of the decision of the executive unless it is patently arbitrary, whimsical or perverse on the face of it. This Court, in a proceeding

of judicial review is required to evaluate the correctness of the decision making process and not the decision itself.

12. I do not find any infirmity in the order impugned. This application is, accordingly, dismissed.

13. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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