

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1847 of 2016
IN
Civil Writ Jurisdiction Case No. 17399 of 2012**

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Ramjee Dubey, S/o Late Jagarnath Dubey, resident of Village- Dubey Dehri, P.O.-
Natwar Khurd, P.S.- Dinara, District- Rohtas.

.... Writ Petitioner/ Appellant

Versus

1. The State of Bihar through the Secretary and Commissioner, Road Construction Department, Govt. 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, Govt. of Bihar, Patna.
4. The Joint Secretary, Road Construction Department, Govt. 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.

.... Respondents/Respondent/s

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Appearance :

For the Appellant/s : Mr. Siya Ram Shahi
For the Respondent/s : Mr. Rajiv Roy, GP 1
Mr.Arun Kumar, AC to GP 1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-09-2017

Seeking exception to an order dated 19.08.2016 passed by
the learned Writ Court in CWJC No. 17399 of 2012 this appeal has
been filed under Clause 10 of the Letters Patent.

Facts in brief which goes to show that the appellant was
working in the Public Works Department and in the year 1981, on



physical verification of the stock by the Sub Divisional Officer, Road Construction Department, Mohania, in the office where the appellant was posted as Junior Engineer, supply worth Rs.5,45,109.94p. was not accounted for. Attributing this loss to eight officers working in the Sub Divisional Office of the Road Construction Department way back on 19.10.1981 itself an order was passed for recovery of the aforesaid amount from the pay and allowances of the officers. As far as the appellant is concerned, it was ordered that a sum of Rs.3,84,285.67p. be recovered from him as in the audit conducted the appellant was found responsible for the aforesaid amount of loss. Consequently, in the year 1981 itself the Engineer-in-Chief cum Additional Secretary of the Department, passed the order for recovery of the amount from the appellant @Rs.200/- per month. It was further stipulated in the order that in case the employee gets superannuated and then some outstanding amount remains, the balance be recovered from his post-retiral benefits or from the proceeds of his moveable or immoveable property even though the order was passed on 19.10.1981 the appellant did not challenge it and kept quiet and for reasons which remained unexplained the order itself was not given effect and no recovery was in fact made inspite of the order passed.

The appellant retired on 30th September, 2001 and



after two years of his superannuation he challenged the order dated 19.10.1981 by filing writ petition before this Court being CWJC No. 4566 of 2003. It was the case of the appellant that now recovery being initiated in the year 2003 is belated, therefore, he challenged the same by contending that recovery being made from his gratuity or leave encashment after so many years is not permissible. On 06.08.2003 this Court found that it is very difficult to grant any relief to the petitioner based on the impugned order Annexure-1 dated 19.10.1981. However, considering that the Executive Engineer has made some communications to the Engineer-in-Chief the appellant was granted liberty to approach the Engineer-in-Chief who in his turn on 23.01.2004 rejected the representation of the appellant and, therefore, the second writ petition was filed being CWJC No. 6805 of 2005. It was stated in this writ petition that the Engineer-in-Chief has not properly considered the issue and another ground raised was that now after retirement without resorting to the provision of Rule 43B of the Bihar Pension Rules deduction from the pension is not permissible. In CWJC No. 6805 of 2005 this issue was considered and the writ petition was dismissed after considering the question of deduction, permissible under Section 43B of the Bihar Pension Rules in the following manner:-

“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.”

However, liberty was granted to the appellant to approach the Engineer-in-Chief again in case he so wished. The Engineer-in-Chief again rejected his claim on 24.11.2010 and, therefore, the third



petition in question which is CWJC No. 17399 of 2012.

In the present writ petition, again the same grounds were raised which were already considered in the previous two writ petitions and rejected. And, now again before us, the same grounds are canvassed. The ground raised is that in view of the provisions of Rule 43B of the Bihar Pension Rules, recovery from the pension is not permissible. As we have indicated hereinabove, this ground was considered in the second writ petition filed by the appellant being CWJC No. 6805 of 2005 and it was rejected on 06.08.2003 and the portion reproduced hereinabove clearly indicates that the argument which has been advanced before us today with reference to Rule 43B was already considered and rejected in CWJC No. 6805 of 2005. The appellant never challenged this rejection before any court by filing any appeal and this order having attained finality, now in the absence of there being any challenge to the order dated 06.08.2003 passed in CWJC No. 4566 of 2003 merely because the representation of the petitioner was rejected by the Engineer-in-Chief, we see no reason to make any indulgence into the matter. The appellant was visited with an order of recovery in the year 1981, i.e. on 19.10.1981. He never challenged the same for about 20 years till his retirement on 30.09.2001. It was only when the lapse of implementing the order was pointed out at the time of settlement of his post-retirement claim



and when recovery was initiated that he invoked the jurisdiction of this Court and on two earlier occasions as is indicated hereinabove, that is, on 23.01.2004 when CWJC No. 6805 of 2005 was rejected and prior to that on 06.08.2003 when CWJC No. 4566 of 2003 was dismissed all the grounds were considered and rejected. Now reopening of the issue in the facts and circumstances of the case is not permissible or appropriate.

Accordingly, finding no case for interference into the order of the learned Writ Court now on the grounds canvassed before us, the appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl

AFR/NAFR	NAFR
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