

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 254 of 2014

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Surendra Prasad Singh, aged about 64 years, Son of Late Pradip Singh, Resident of Village - Pakauli, Police Station - Poonpoo, District - Patna, at Present Chitaur Nagar, New Area, Aurangabad, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
2. The Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
3. The Engineer-in-Chief, Rural Works Department, Vishwesharaiya Bhawan Bailey Road, Patna.
4. The Engineer-in-Chief, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
5. The Chief Engineer - 1, Rural Works Department, Vishwesharaiya Bhawan Bailey Road, Patna.
6. The Chief Engineer - II, Rural Works Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
7. The Executive Engineer, Rural Works Department, Works Division, Madhepura, District – Madhepura.
8. The Executive Engineer, Rural Works Department, Works Division, Aurangabad, District – Aurangabad.
9. The Treasury Officer, Madhepura, District – Madhepura.
10. The Treasury Officer, Aurangabad, District – Aurangabad.
11. The Sub Divisional Officer, Rural Works Department, Sub Division No.1, Aurangabad.
12. The Sub Divisional Officer, Rural Works Department, Sub Division No.2, Aurangabad.
13. The Accountant General (Accounts and Entitlement), Bihar, Patna, Birchand Patel Path, Police Station Kotwali, District – Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-03-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following

reliefs:

“That this writ application is filed for



issuance of writ in the nature of certiorari for quashing the order dated 30.01.2012 issued over the signature of the Executive Engineer, Rural Works Department, Works Division, Madhepura rejecting the representation dated 03.11.2010 of the petitioner filed in pursuance of order dated 11.10.2010 passed in C.W.J.C. No. 18680 of 2008 whereby and whereunder recovery to the tune of Rs. 13,59,755.99/- has been ordered to be effected from half pay medical leave, gratuity, leave encashment and pension of the petitioner arbitrarily and unreasonably.”

3. The petitioner having superannuated from the post of Junior Engineer on 31.01.2008 approached the authorities for payment of his retiral dues but upon scrutiny and verification, by the impugned order recovery is sought of an amount of over Rs. 13.5 lakhs.

4. Learned counsel for the petitioner submitted that the said amount is explainable from the various vouchers which he has submitted to his superior authorities and also from the materials available in the M.B. record relating to the work having been done. It was further submitted that the authorities had also directed the successor to the petitioner to take over the charge but the same was not done and finally he had to hand over charge to the Assistant Engineer. Learned counsel submitted that even the evaluation of the materials, which is alleged not to have been handed over by the petitioner, has been made only on assessment, without there being



proper evaluation. Learned counsel submitted that the Court in the case of **Smt. Shanti Choubey v. State of Bihar** reported as **2004(4) PLJR 236**, has held that recovery cannot be made without taking recourse to Rule 43(b) of the Bihar Pension Rules, 1950. It was further submitted that the Hon'ble Supreme Court also in the case of **State of Punjab v. Rafiq Masih** reported in **(2015)4 SCC 334**, has held that recovery after superannuation is not permissible. Learned counsel submitted that as per the provisions of the Bihar Public Works Department Code Rules 254, 255 and 256 and Rules 568, 575 and 579 of the Bihar Public Works Account Code, relating to taking over and handing over charge has also been followed by the authorities in the present case and, thus, recovery is bad in law.

5. Learned counsel for the State submitted that upon transfer in the year 2006, the petitioner was reminded by repeated communication from the Department to hand over charge to the successor Junior Engineer but he did not do so. It was further submitted that in view thereof, the Department constituted a team of senior officers headed by the Executive Engineer to evaluate the cost of the materials which were not handed over and recoverable from the petitioner who have quantified the amount. Learned counsel submitted that the amounts which have been held to be recoverable from the petitioner are in terms of the verification made by the



officers and due to the own conduct of the petitioner, of not handing over charge to his successor at the relevant time and only later, upon superannuation, at the time of fixing of his retiral dues, he has taken some steps in the matter but not accounted for the amount which has been held to be recoverable from him and for which order dated 30.01.2012 has been passed.

6. Having considered the matter, the Court does not find any merit in the writ application. The petitioner admittedly had not handed over charge of the post of Junior Engineer at the relevant point of time in the year 2006. His plea that the incumbent was not taking charge, cannot be accepted for the reason that he has not moved the Court till date for any such grievance that the person, who was supposed to take charge from him has not done so. Only after his superannuation in the year 2008, being fully aware of the requirement of the statute, both P.W.D. Code as well as P.W. Accounts Code relating to handing and taking over of charge, if the relevant provisions were not complied with, he was required to move before the authorities and the Court thereafter. If the charge was not being taken over, he choose not to do so and, thus, the Court cannot go into such aspect of the matter as to whether there has been violation of the provisions of the P.W.D. Code or the P.W. Accounts Code in the matter as that is not the issue involved in the present case



or the relief sought by the petitioner in the present writ application. Moreover, from the pleadings on record, it is apparent that the amount which has been held outstanding against the petitioner cannot be said to be one relating to any misconduct for which any departmental proceeding is required, for it is a simple adjustment of whatever was given to the petitioner, either by way of charge of materials or temporary advances taken, which had to be properly adjusted. Non adjustment of the same by the petitioner after is transfer/superannuation has resulted in the authorities now adjusting the amount due against him from his retiral dues. Such adjustment cannot be said to be without jurisdiction or arbitrary. As far as the decision relied upon by learned counsel for the petitioner in the case of **Smt. Shanti Choubey** (supra), the basic facts were different. The employee had died after six and a half years from the last date of alleged advances and thereafter recovery was sought to be made after a lapse of 10 years from the dues payable to the petitioner which has been held to be impermissible, in the present case, the petitioner is very much alive and after superannuating in the year 2008 itself, while he was agitating the matter before the authorities, he was required to give charge and account for the advances taken after verification have been found that a sum of about Rs. 8 ½ lakhs remained unadjusted and, thus, rightly has been shown adjustable



from his retiral dues. As far as the case of **Rafiq Masih** (supra) is concerned, the petitioner is neither a IIIrd Grade nor IVth Grade employee and further, the Court has held with regard to excess payment made to a person which is sought to be recoverable whereas in the present case, recovery is not for alleged excess payment but a simple case of adjustment of whatever was not handed charge of by the petitioner or the advance taken by him for various works which have to be adjusted. The amount being public money, the Court cannot shut its eyes to the fact that if materials brought from public money in the charge of the petitioner, he had to account for them at the time of transfer/superannuation and further the advance taken from the public exchequer for doing work, accounting had to be done to satisfy that the amount so taken had been properly utilized for the purpose for which it was taken.

7. In the present case, from the materials on record, the Court does not find that the action of the authorities is arbitrary. There is sufficient material to show that the action of the authorities concerned is only adjusting such amount and that too, after proper verification, to the extent it was practically possible. If still the petitioner feels that such accounting/reconciliation has not been proper, the only remedy available to him would be the civil Court of competent jurisdiction where finding of facts can be recorded after



evidence being adduced by the parties concerned. For the purposes of the present writ application, the materials on record and the conduct/action of the authorities cannot be said to be either beyond jurisdiction, arbitrary or perverse so as to warrant any interference.

8. In view thereof, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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