

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8382 of 2006

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Devendra Prasad Sinha, s/o late Narbadeshwar Prasad, Manki Niketan, East Patel Nagar, Road no. 5, PS-Lal Bahadur Shastri Nagar, Patna-800023

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Commissioner and Secretary to Govt. of Bihar Road Construction Department, Bihar, Patna
3. The Special Officer-cum-Secretary, Road Construction Department, Bihar, Patna
4. The Executive Engineer, Road Division, Road Construction Department, Jainagar
5. The Accountant General, Bihar, Birchand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kr. Sinha

For the Respondent/s : Mr. Dhurjati Kr. Prasad

For Accountant General : Mr. Arun Kr. Arun

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 29-08-2018

1. The present writ petition has been filed for quashing the notification dated 02.03.2006, whereby and whereunder it has been directed to recover a sum of Rs. 5,48,737.81/- from the retrial dues of the petitioner herein which pertains to the pending outstanding advance as against the petitioner herein.

2. The brief facts of the case are that while the petitioner was posted as Assistant Engineer, Jainagar, a sum of Rs. 12.27 lacs approximately was given as advance to the petitioner for completing the road works. It is the contention of the learned counsel for the



petitioner that out of the said sum of Rs. 12.27 lacs, Rs. 6.78 lacs approximately has already been settled and the balance outstanding is only a sum of Rs. 5,48,737.81/-.

3. The learned counsel for the petitioner submits that the petitioner had paid a sum of Rs. 5.91 lacs approximately out of the aforesaid amount of Rs. 12.27 lacs approximately to one Junior Engineer namely Hema Nand Pathak, hence neither any amount is payable by the petitioner herein nor recoverable from the petitioner herein.

4. *Per contra*, the learned counsel for the respondents has submitted that the petitioner had approached this Hon'ble Court earlier as well for quashing the decision of the respondents to recover the balance outstanding of Rs. 12.27 lacs approximately, which was given to the petitioner for doing certain work but the petitioner could not complete the work as also could not give the account of utilization of the said sum of money. A learned Single Judge of this Court by a judgment *dated 16.12.1997* passed in *CWJC no. 6146 of 1997* had dismissed the said writ petition and had held that no error could be found on the part of the respondent-authorities in trying to recover all the advance money which was given to the petitioner herein. It is thus submitted that now by the impugned order dated 02.03.2006, the respondent-authorities have only sought to recover balance



outstanding amount of advance money given to the petitioner and infact, no punishment has been inflicted upon the petitioner herein, hence no error could be found with the impugned order dated 02.03.2006.

5. I have heard the learned counsel for the parties and gone through the materials on record. I find that the learned counsel for the petitioner has not raised any objection pertaining to mode and manner of conduct of disciplinary proceeding, held against the petitioner. I further find that the Enquiry Officer has found the charges to have been fully proved as against the petitioner herein and thereafter, a second show cause notice was given and after considering the reply of the petitioner, the impugned order dated 02.03.2006 has been passed, hence there is no infirmity or illegality in the said order dated 02.03.2006. One other aspect which arises for consideration in the present case is that since this Court by an earlier order dated 16.12.1997 had conclusively held that there is no error on the part of the respondent-authorities in trying to recover the amount of advance which was paid to the petitioner herein, the said findings would act as *res judicata* in the present case, hence the balance/ outstanding amount of advance of Rs. 5,48,737.81/-, sought to be recovered by the respondent-authorities without inflicting any punishment against the petitioner herein under rule 43(B) of Bihar pension Rules cannot be



faulted with and is fully justified, hence no error can be found in the impugned order dated 02.03.2006.

6. Thus, there is no merit in the present writ petition, accordingly the same is dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2018
Transmission Date	NA

