IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14330 of 2010

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Mahendra Prasad Singh S/o Late Narihar Prasad R/o Village- Puraniganj, P.S.- Kashim Bazar, District- Munger

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Road Construction Department, Government of Bihar, Patna
2. The Engineer-In-Chief-cum-Additional Commissioner Road Construction Department, Bihar, Patna
3. The Chief Engineer (Mechanical) South Bihar Division, Road Construction Department, Government of Bihar, Patna
4. The Superintending Engineer Road Construction Department, Lakhisarai, District- Lakhisarai
5. The Executive Engineer Road Construction Department, Jamui, District.- Jamui
6. The Executive Engineer Road Construction Department, Lakhisarai, District- Lakhisarai

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. JITENDRA PANDEY
Mr. Bamdeo Pandey

For the State : Mr. Mankeshwar Tiwari, A.C. to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 16-08-2018

The present petition has been filed by the petitioner for quashing the order dated 02.07.2010, whereby and where under punishment of deduction of 50 per cent each of pension and gratuity has been inflicted upon the petitioner. The petitioner has further prayed for quashing of the order dated 10.08.2010, whereby and where under it has been directed to recover the balance amount of unrecovered sum of Rs. 31,09,420/-, which could not be recovered from the pensionary benefits of the petitioner, by way of money suit/certificate proceedings from the movable and immovable property of the petitioner.

Brief facts of the case are that a departmental proceeding was initiated against the petitioner vide office order no. 249 dated 05.10.2006 and a charge sheet was served on the petitioner on the allegation that the petitioner had failed to hand over the charge after transfer and subsequently when the articles kept in the stores were examined, articles worth Rs. 34,09,229/- were found deficient and the same had been misappropriated for which the petitioner is guilty and secondly upon verification, bitumen totaling to about 79.35 metric amounting to Rs. 10.34 lakhs approximately was found deficient for which the petitioner is responsible. The Enquiry Officer had submitted his enquiry report dated 06.02.2007, which surprisingly has not been annexed by the petitioner deliberately and in fact has been brought on record by the respondents in their counter affidavit, whereby both the charges levelled against the petitioner has been conclusively found to have been proved. Thereafter, a second show cause notice dated 08.03.2007 was served on the petitioner directing him to file his reply to the second show cause notice as to why he should not be dismissed from service. The petitioner had submitted his show cause vide letter dated 08.04.2007 whereafter a response was called from the Superintending Engineer, East Bihar Circle, Bhagalpur, however, in the meantime, the petitioner retired with effect from 30.09.2007. The disciplinary authority had then vide Memo dated 25.03.2008 converted the ongoing departmental proceeding into a proceeding under Rule 43(b) of the Bihar Pension Rules. After receipt of the response of the Superintending Engineer, East Bihar Circle, Bhagalpur vide his letter dated 01.04.2009, the whole matter was considered and thereafter a show cause notice dated 11.03.2010 was again served upon the petitioner, asking him to show cause as to why a sum of Rs. 33,03,870/- be not recovered from the petitioner since the allegations levelled against the petitioner have been proved. After considering the reply of the petitioner, the disciplinary authority has passed the order of punishment dated 02.07.2010 whereby it has been directed to deduct 50 per cent each of the pension and gratuity amount.

The learned counsel for the petitioner has submitted that earlier also two enquiries had taken place and enquiry reports dated 09.11.2004 and 09.08.2007 were submitted wherein it was not conclusively found that the petitioner had either deliberately not handed over the charge or engaged in misappropriation of various articles from the stores, hence the petitioner is innocent and the enquiry report dated 06.02.2007 as also the punishment order dated 02.07.2010 are illegal and fit to be set aside.

I have heard the learned counsel for the parties and I find that the petitioner has suppressed material facts in the writ petition and that is why this Court by an order dated 15.05.2018 had directed the Department to produce the records of the departmental proceeding in question. Subsequently, the records of the departmental proceeding has been produced by the learned counsel for the respondent and upon going through the same as also upon perusal of the counter affidavit and the documents annexed thereto, this Court could comprehend the actual sequence of events and it has transpired that the enquiry reports dated 09.11.2004 and 09.08.2007, annexed to the main writ petition are not the actual enquiry reports submitted by the Enquiry Officer in pursuance to the departmental proceeding initiated by the disciplinary authority vide Office Order No. 249 dated 05.10.2006 whereas the actual enquiry report is the one which has been annexed by the respondents in their counter affidavit and the same is dated 06.02.2007 whereby and where under all the charges levelled against the petitioner have been found to have been proved and only then a second show cause notice was issued to the petitioner but in the meantime, the petitioner had retired, hence the disciplinary proceedings were converted into a proceeding under Rule 43(b) of the Bihar Pension Rules whereafter another second show cause notice was issued to the petitioner and upon considering the defence of the petitioner, the impugned order of punishment dated 02.07.2010 has been passed by the disciplinary authority.

The only issue raised by the learned counsel appearing for the petitioner is that since in the earlier reports submitted by the respondent authorities, the petitioner has not been found to be guilty, the present proceedings are not maintainable, hence are liable to be quashed.

I have perused the materials on record as also the records produced by the respondents pertaining to the conduct of the departmental proceeding as against the petitioner herein. The enquiry report is unassailable, which has gone into great details to prove the charges levelled against the petitioner herein. Basically, the charges levelled against the petitioner involves accounting and documentary evidence, which has been brought on record by the prosecution and are admitted documents inasmuch as the petitioner has never, either during the conduct of the departmental proceeding or thereafter uptill now, refuted the veracity of the said documents. I further find that the proper procedure to be followed for the purposes of conducting the departmental proceeding in question, as against the petitioner herein, has been duly followed by the respondents and there is no procedural lapses on the part of the disciplinary authority, which is also fortified from the fact that the petitioner has not assailed the order of punishment passed by the respondents on technicalities i.e. on the ground that proper procedure was not followed by the authorities during the course of conduct of the departmental proceeding. It is a trite law that this Court cannot sit in appeal and re-appreciate the evidence on record as well as cannot engage in judicial review of the entire records of the departmental proceedings including the enquiry report, the documentary evidence, the second show cause notice and the order of punishment. This Court is not sitting in appeal over the decision of the disciplinary authority to inflict punishment upon the petitioner. As far as the issue raised by the petitioner to the effect that in the past enquiries the petitioner has not been found guilty, hence he should be acquitted of the present proceeding is a point which has to be noticed only to be rejected by this Court inasmuch as any finding or material which is extraneous to the present departmental proceeding in question cannot be taken into account either by the Enquiry Officer or by the disciplinary authority. It is clear from the enquiry report that all the charges have been proved beyond doubt, as against the petitioner herein, hence there is no illegality or irregularity in punishing the petitioner for proved misconduct. I further find that the prosecution has taken full caution to convert the ongoing departmental proceeding into a proceeding under Rule 43(b) of the Bihar Pension Rules after superannuation of the petitioner on 30.09.2007, and further the punishment awarded to the petitioner vide impugned order dated 02.07.2010 is also within the frame work of the Bihar Pension Rules, hence on this score as well no illegality has been committed by the respondent authorities.

In such view of the matter, I do not find any reason to interfere with the order of punishment dated 02.07.2010 which is fully justified in the facts and circumstances of the present case.

Now coming to the reasoned order dated 10.08.2010, which has been passed in pursuance of the order of this Court dated 17.03.2010 passed in CWJC No. 4659 of 2010, I find that the said reasoned order has been passed upon a direction by this Court to the petitioner to file representation stating the details of the unpaid claims and in case such representation is filed by the petitioner, the respondents were directed to consider the claims of the petitioner, as raised in the representation and dispose of the representation of the petitioner. In view of the aforesaid order of this Court dated 17.03.2010, the respondents have disposed off the representation of the petitioner and dealt with the claims of the petitioner. One of such observation in the said reasoned order dated 10.08.2010 passed by the Secretary, Road Construction Department, Bihar, Patna is that since the misappropriated amount of Rs. 31,09,420/- could not be recovered from the pensionary benefits of the petitioner, the same has to be recovered from the immovable / movable property of the petitioner by taking recourse to money suit/certificate suit to be filed against the petitioner. This Court finds that the said reasoned order dated 10.08.2010 is merely a narration of the amounts paid to the petitioner on the head of retiral dues and the amount recoverable from the petitioner. The said order dated 10.08.2010 further refers to letter dated 11.03.2010 of the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction

Department, Bihar, Patna which postulates that during the tenure and charge of the stores of the petitioner, deficient quantities of various articles totaling to a sum of Rs. 33,03,870/- has been found which is recoverable from the petitioner herein. A bare perusal of the said speaking order dated 10.08.2010 shows that no issue has been adjudicated by the said letter and merely the same is a narration of the amounts paid / recoverable from the petitioner, hence the same requires no interference especially in view of the fact that the letter of the Engineer-in-Chief as aforesaid, dated 11.03.2010 has not been challenged by the petitioner.

For the reasons mentioned hereinabove, there is no merit in the present writ petition, hence the same is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	08.08.2018
Uploading Date	17.08.2018
Transmission Date	