

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2484 of 2018

Heera Prasad Singh S/o Late Kalanand Singh Resident of Village-Madurauni,
P.S. Rangra District Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Public Health Engineering Department,
Government of Bihar, Patna.
3. The Engineer-in-Chief, Public Health Engineering Department, Government
of Bihar, Patna.
4. The Superintending Engineer, Public Health Engineering Circle Purnea
5. The Executive Engineer, Public Health Engineering Division, Katihar.
6. The Sub-Divisional Officer, Public Health Engineering Sub-
Division, Katihar.
7. The Accountant General, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sriram Krishna Mr. Amarjeet, Adv Mr. Prabhat Kumar Singh, Adv
For the Respondent/s	:	Mr.Arvind Ujjwal-Sc-4, Adv Mr. M.N. Roy
For the A.G.		Mr. Ramtal Singh

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 06-11-2023

Learned counsel for the petitioner, learned counsel for the
State and learned counsel for the Accountant General present.

2. The present writ petition is filed for quashing the
orders contained in Memo No. 408 dated 24.06.2014
(Annexure-7) passed by which the Respondent No. 4



(Superintending Engineer Public Health Engineering Circle, Purnea) has passed order for recovery of Rs. 10,39,863/- against the petitioner who retired in 2010 directing the respondent no. 5 to ensure the recovery of the said amount.

3. Counsel for petitioner submits that petitioner is unfortunate person that he has moved before this Hon'ble Court series of time but then also he has not got his retiral dues. Counsel submits that the petitioner joined his service is Public Health Division, Katihar on 01.05.1979 and retired from the service on 13.06.2010 after attaining the age of Superannuation.

4. Counsel submits that during his service period, no departmental proceeding was commenced against him till 30.06.2010. He further submits that no criminal proceeding lodged against him. Counsel also submits that his retireal dues was never been in question but even after repeated request since 2010 his retiral dues have not been granted to him. He submits that at the time of retirement, he has handed over the charge of his two stores, one is at Mirchabari Ward and second one is Mangal Bazar. The charge reports do not mention any missing of any articles from the said stores. He also submits that the said charge reports do not mention any shortage on the said date but subsequent allegation against the petitioner has been made of



shortage and an order for recovery has been passed. Counsel submits that said order for recovery is malafide attempt and also passed in the teeth of the order passed by this Hon'ble Court in favour of the petitioner vide order dated 01.10.2012 passed in CWJC No. 8444 of 2012 in which it has been categorically observed by this Hon'ble Court that

“After superannuation on 01.06.2010, the master-servant relationship stood severed. The only power available to the respondents for any recovery was under Rule-43(b) of the Bihar Pension Rules. That could only be done after a formal charge-sheet for an event within four years from the date that the charges were framed. The charges in the present case relate to the years 1997-1998. the power under Rule-43(b) also is not available to the respondent today.”

5. Counsel submits further that ignoring the above said order, the authorities have issued Annexure-7 against the petitioner vide memo No. 408 dated 24.06.2015 in which it was directed to recover Rs. 10, 39, 863/- from the pension dues of the petitioner which is absolutely illegal and in the teeth of the order passed by this Hon'ble Court.

6. Counsel for State submits that from Paragraph 3 of the petition, it transpires that that petitioner has checked history of litigation. He has moved before this Hon'ble Court in many occasions. Firstly, C.W.J.C. No. 17929 of 2011 which was allowed on 13.10.2011 followed by M.J.C. No. 212 of 2014 which was disposed of on 06.05.2012. Second attempt by way



of filing C.W.J.C. No. 8444 of 2012 which was allowed on 01.10.2012 followed by M.J.C. No. 4492 of 2014 disposed of on 22.05.2017, thirdly, in C.W.J.C. No. 19981 of 2011 which was disposed of on 20.08.2013 finally on C.W.J.C. No. 11077 of 2015 followed by M.J.C. No. 3581 of 2016 which was dismissed on non-prosecution on 23.08.2017.

7. Counsel also submits that in the light of the earlier directions made, the department has found shortage in the godown and the loss of Rs. Rs. 10,39,863/- has been found and for that reason, an order has been passed on 24.06.2014. Counsel further submits that the petitioner is in habit of filing writ petitions before this Court.

8. In reply for the statement made of counsel for the State, Counsel for the petitioner submits that only deficiency done on the part of the petitioner is that his C.W.J.C. No. 11077 of 2015 could not be pursued by the petitioner as a result it was dismissed for non-prosecution and subsequently restoration petition bearing M.J.C. No. 3581 of 2016 filed for restoration of C.W.J.C. No.11077 of 2015 was also dismissed. Otherwise, all writ petition has been filed with specific relief made and all the writ petitions have been decided in his favour. But the department sat over the matter either one way or the other,



department could not grant any relief to the petitioner and even after categorical direction of this Hon'ble Court vide order dated 01.10.2012 passed in C.W.J.C. No. 8444 of 2012 that any recovery could be made only and only by way of proceeding under 43(b) of Bihar Pension Rules, and directed that this remedy is not available to the respondent today. Therefore, due to this reason alone, the writ petition is fit to be allowed.

9. Upon going through the pleadings and hearing the parties, it transpires to this Court that present writ petition has been filed for setting aside the orders contained in Memo No. 408 dated 24.06.2014 (Annexure-7) by which the Respondent No. 4 (Superintending Engineer Public Health Engineering Circle, Purnea) has passed order for recovery of Rs. 10,39, 863/-.

9. Upon going through the order dated 01.10.2012, it is very much clear that the order under challenge has been passed in the violation of the said order dated 01.10.2012 passed by this Hon'ble Court in C.W.J.C. No. 8444 of 2012 as such this Court holds that Annexure-4 i.e. letter no. 999 dated 24.08.2011 is completely illegal and for recovery of Rs. 10,39, 863/- from the petitioner is not sustainable in the eye of law and therefore that said letter dated letter no. 999 dated 24.08.2011 contained in



Annexure-4 is hereby set aside.

The respondents are directed to pay retiral dues of the petitioner within six months from the date of production of the order and non payment of his retiral dues shall treated to be contemptuous action against Respondents.

(Dr. Anshuman, J.)

Sunnykr/-

AFR/NAFR	
Uploading Date	
Transmission Date	

