

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.169 of 2021**  
**In**  
**Civil Writ Jurisdiction Case No.11631 of 2019**

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1. The State of Bihar
2. The Divisional Commissioner, Koshi Division, Saharsa.
3. The District Magistrate, Madhepura.
4. The Block Development Officer, Shankarpur, Madhepura.

... .. Appellant/s

Versus

Amol Naryan Choudhary S/o Late Dasarath Choudhary R/o Village- Behahi,  
P.S.- Bihariganj, District- Madhepura.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Nadim Seraj, GP-5  
Mr. Shailesh Kumar, AC to GP-5  
For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**  
**HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

4      26-02-2026                      **Re: I.A. No. 01 of 2021**

Learned counsel for the appellants presses I.A. No. 01  
of 2021 for condoning the delay of 1 year and 133 days in  
preferring this appeal.

2. For the reasons stated in the application, the delay  
in preferring this appeal is condoned.

3. I.A. No. 01 of 2021 stands allowed.

**Re: LPA No. 169 of 2021**

4. The present *intra court* appeal has been preferred



against the judgment and order dated 05.09.2019 (as modified on 20.09.2019) passed by the learned Single Judge in CWJC No. 11631 of 2019, whereby Memo No. 953-2/Est. dated 21.12.2018 issued by the District Magistrate, Madhepura directing recovery of Rs. 37,566.94 along with 12% interest from the writ petitioner (now respondent herein) was quashed.

5. The brief facts of the present case are that the sole respondent, Amol Narayan Choudhary, was posted as Upper Division Clerk and had also functioned as Nazir at Shankarpur Block in the district of Madhepura between 24.08.1996 and 24.06.1998. He retired from service on 31.07.2009 from Block Office, Bihariganj. Subsequently, on the basis of irregularities detected in the *Nazarat* records of Shankarpur Block, the Block Development Officer, Shankarpur reported misappropriation of government funds to the tune of Rs. 8,25,212.94. Initially, by order dated 08.04.2015, recovery of the said amount was directed. The respondent challenged the same in CWJC No. 12899 of 2015, which was allowed on 14.12.2015, leaving it open to the authorities to proceed in accordance with law. Thereafter, a Four-Member Committee was constituted on 29.10.2016 to inspect and verify the records. The Committee submitted its report, reducing the alleged recoverable amount to



Rs. 37,566.94. Based on the said report, Memo No. 953-2/Est. dated 21.12.2018 was issued directing recovery of Rs. 37,566.94 along with 12% interest, totaling Rs. 2,89,509.20. The respondent again challenged the recovery order by filing CWJC No. 11631 of 2019, and the learned Single Judge quashed the recovery order primarily on the ground that there was no legal authority to recover the amount from a retired employee.

6. The learned Writ Court, after hearing the parties, passed the following orders:

*“Amount is irrelevant. The Court’s concern is only whether action was permissible as per law or preceded by any opportunity to the petitioner. Apparently there is nothing on record to sustain the action of the District Magistrate, Madhepura on the basis of any provision in law providing for such an order of recovery, post retirement of a government employee without affording any opportunity. Order of the District Magistrate, Madhepura, therefore is clearly unsustainable.*

*State counsel submits that authorities should be given liberty to proceed as per law. The order dated 14.12.2015 passed in C.W.J.C. No. 12899 of 2015 already grants such an opportunity to the State authorities.*

*In view of the aforesaid circumstances order of the District Magistrate dated 21.12.2018 is hereby quashed. The petitioner would be entitled to*



*all consequential benefits on account of quashing of the order dated 21.12.2018.*

*In the circumstances, it goes without saying that the consequential order issued by the Establishment Section dated 20.08.2019 (Annexure-A) would not be enforceable against the petitioner.*

*The instant writ petition stands allowed.”*

7. Learned counsel for the appellants submits that the recovery order dated 21.12.2018 was passed strictly in compliance with the liberty granted by the High Court in its earlier order dated 14.12.2015 in CWJC No. 12899 of 2015, wherein the authorities were permitted to proceed in accordance with law. Pursuant thereto, a duly constituted Four-Member Committee conducted inspection and verification of records and quantified the actual amount recoverable, which stood substantially reduced.

8. It is further submitted that the recovery proceedings were initiated only after receipt of the Committee's report and after issuance of notice to the respondent, thereby adhering to the principles of natural justice as directed earlier by the Court.

9. Learned counsel for the appellants further submits that the competent authority is empowered to recover misappropriated public funds even after retirement of the delinquent employee, particularly where such loss has been



caused to the State exchequer due to acts of misrepresentation and embezzlement. It is further submitted that the learned Single Judge erred in holding that there was no legal basis for recovery from a retired employee, without considering that public money allegedly embezzled cannot be permitted to be retained merely on account of superannuation.

10. The limited issue for consideration before this Court is that whether the judgment and order dated 05.09.2019 (as modified on 20.09.2019) passed in CWJC No. 11631 of 2019 suffers from any legal infirmity warranting interference by this Court in exercise of its *intra court* appellate jurisdiction.

11. We have heard learned counsel for the parties at length and have carefully perused the records.

12. The learned Single Judge has proceeded on a clear and well-defined premise, namely, that the issue before the Court was not the quantum of the alleged misappropriation but the legality of the action taken by the District Magistrate. The focus of judicial scrutiny was whether the order of recovery dated 21.12.2018 was supported by any statutory provision and whether such action had been preceded by adherence to the minimum requirements of fairness.

13. From the materials brought on record, it is evident



that the recovery was directed against the respondent after his retirement. However, nothing has been shown before this Court to indicate the specific source of power under which such recovery was ordered in the manner adopted. Administrative action affecting civil rights must trace its authority to law. In absence of any demonstrated legal provision authorizing such post-retirement recovery through a mere administrative order, the action cannot be sustained.

14. This Court also finds that the learned Single Judge correctly observed that the permissibility of the action in law is the determinative factor. Even assuming that an enquiry was conducted and a reduced amount was quantified, such determination by itself would not clothe the authority with jurisdiction unless the recovery is anchored in a valid legal framework.

15. In *intra court* appellate jurisdiction, this Court does not sit as a Court of first instance to re-appreciate the entire controversy afresh. Interference is warranted only where the findings recorded are shown to be manifestly erroneous, perverse, or contrary to settled legal principles. The reasoning assigned by the learned Single Judge is consistent, legally sound, and based on the record. No jurisdictional error or patent



illegality has been demonstrated by the appellants.

16. We are, therefore, of the considered opinion that the learned Single Judge rightly held the order dated 21.12.2018 to be unsustainable. Once the principal order of recovery was quashed, the consequential order issued by the Establishment Section could not independently survive.

17. Accordingly, the present *intra court* appeal being devoid of merit, stands dismissed.

18. Pending application(s), if any, shall also stand disposed of.

**(Sudhir Singh, J)**

**(Rajesh Kumar Verma, J)**

Rajesh/-

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