

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P. (S) No.4879 of 2019**

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Surendra Prasad Singh, aged about 61 years, son of Ram Badhan Singh, Resident of Sukhdeo Nagar, P.O. & P.S. Sukhdeo Nagar, District Ranchi

.... .... .... Petitioner

Versus

1. The State of Jharkhand
2. Principal Secretary, Road Construction Department, Government of Jharkhand, having office at Project Building, P.O. & P.S. Dhurwa, District Ranchi
3. Secretary, Rural Development Department, Government of Jharkhand, having office at Project Building, P.O. & P.S. Dhurwa, District Ranchi
4. Joint Secretary, Road Construction Department, Government of Jharkhand, having office at Project Building, P.O. & P.S. Dhurwa, District Ranchi
5. Chief Engineer, Rural Development Department, having office at Engineering Bhawan, Dhurwa, P.O. & P.S. Dhurwa, District Ranchi
6. Executive Engineer, Road Construction Department (Rural Works Affairs) having office at Ramgarh, P.O. & P.S. Ramgarh, District Ramgarh

.... .... .... Respondents

**CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

For the Petitioner : Mr. Rajendra Krishna, Advocate  
Mr. Krishna Kumar, Advocate

For the Respondents-State : Mr. Abhijeet Kumar, A.C. to G.A. III

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**C.A.V. ON: 09.11.2020**

**PRONOUNCED ON: 15.12.2020**

Heard Mr. Rajendra Krishna, learned counsel for the petitioner and Mr. Abhijeet Kumar, learned counsel for respondents-State.

**2.** This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

**3.** The petitioner has preferred this writ petition for quashing the order dated 14.08.2019 passed by respondent no.3 by which sum of Rs.60,82,132/- was directed to be recovered from the retiral benefits of the petitioner. Further prayer is for quashing the order dated 09.01.2019 contained in Annexure-5 by which punishment has been imposed for recovery under Rule 43(b) of Jharkhand Pension Rules.

**4.** The petitioner has retired as Assistant Engineer from the Rural Development Department, Works Division, Ramgarh. The petitioner was appointed as Junior Engineer in Road Construction Department and he

was working in the Rural Development Department and has carried out the construction of roads along with Assistant Engineer, Executive Engineer and other higher Engineers of the Department. In the year 2011-12, there was a proposal for construction of road in between Oreyatu to Ormanjhi Simana and Chetma to Lame Path under the scheme of PMGSY and at that time the petitioner was posted there in the capacity of Junior Engineer and one Pramod Kumar Sinha was working there as Assistant Engineer and one Yatendra Singh was working as Executive Engineer. The tender for construction of the aforesaid road was made by the Road Construction Department and accordingly the contractor was allotted the work for construction of road for the total cost of Rs.7.5 crores. An agreement was executed in between the contractor and Executive Engineer and pursuant to the said agreement, the contractor has started constructing the work of road. Out of total construction of Rs.7.5 crores, the work was done by the contractor for Rs.75 Lacs approximately. Due to objection of Forest Department with regard to the aforesaid construction, the work was stopped in the year 2012 itself. The contractor gone into a litigation and thereafter the matter was set at rest when the department took a decision to foreclose the contract and to make measurement of the work which has already been executed by the contractor. For the work of road, the Department has incurred approximately Rs.60 lacs out of total construction of Rs.7.5 crores in the year 2012.

The petitioner was issued charge sheet in Format "K" vide resolution dated 19.09.2017. There were six charges levelled against the petitioner. The petitioner replied to the charge and refuted entire charges. The conducting officer was appointed. The enquiry proceeded. However, the petitioner filed explanation explaining that work was of the year 2011-12 and the petitioner is not final authority. Finally the authority took a decision to foreclose the contract in 2016-17. The enquiry officer submitted the report on 21.11.2017. The said report was served upon the petitioner by way of second show cause. The second show cause notice dated 25.05.2018 by which the petitioner was directed to submit reply that why not a sum of Rs.60,82,132/- should be realized from the petitioner. The petitioner replied to the second show cause on 11.06.2018. By order dated 09.01.2019, punishment order has been passed against the petitioner whereby the petitioner has

been imposed punishment that during the period of suspension, the petitioner shall not be got any salary save and except subsistence allowances. A sum of Rs.60,82,132/- shall be recovered from the petitioner. No promotion shall be given and the petitioner has been demoted to the lowest scale. The petitioner filed an appeal. In the meantime, the petitioner retired on 31.01.2019. By way of order dated 14.08.2019, gratuity amount of the petitioner has been forfeited and 75% of the pension of the petitioner shall be deducted by the respondent authorities for ten years and seven months. This order was passed on the strength of Rule 43(b) of Jharkhand Pension Rules.

**5.** Mr. Rajendra Krishna, learned counsel for the petitioner assailed the impugned order on the ground that before passing order dated 14.08.2019, purported to be under Rule 43(b) of Jharkhand Pension Rule, no notice of hearing to the petitioner has been provided. He submitted that before invoking Rule 43(b) of the Pension Rule, the procedure for initiating such proceeding was not adopted by the respondent-State. He further submitted that for the similar amount in question has been sought to be recovered from the contractor and at the same time, the same amount has been ordered to be recovered from the petitioner which is not permissible. He submitted that the enquiry has been completed in absence of any corroborative evidence even measurement book which is alleged to have been prepared by the petitioner, that has not been considered. The said measurement book was signed by the Assistant Engineer as well as Executive Engineer. The rest of the two officers have been allowed to get free whereas the petitioner has been made scapegoat. He also submitted that the punishment order has been passed on 09.01.2019 and the petitioner retired on 31.01.2019. Thus, there cannot be any automatic conversion of the proceeding under Rule 43(b).

**6.** Per contra, Mr. Abhijeet Kumar, learned counsel for respondents-State submitted that the petitioner was suspended. The petitioner was proceeded in departmental proceeding. There were six charges levelled against the petitioner. The Enquiry Officer after a duly conducted departmental enquiry submitted the enquiry report finding the charges nos.1, 3, 4, 5 & 6 have been proved against the petitioner. The petitioner was directed to file reply to the second show cause. Thereafter, the petitioner filed reply of second show cause which was

found not correct and thereafter the impugned order dated 09.01.2019 has been issued inflicting the punishment. The petitioner filed departmental appeal and the departmental appeal was rejected on 14.06.2019 and thereafter the order dated 14.08.2019 has been passed invoking Rule 43(b). The petitioner superannuated on 31.01.2019. He submitted that the appeal is in continuation of the departmental proceeding.

**7.** In view of above facts and submission of learned counsel for the parties, the Court perused the entire material on record. It is an admitted position that the punishment order has been already been passed on 09.01.2019 and the petitioner retired on 31.01.2019. The punishment order was under Rule 55 of Central Civil Services (Classification, Control and Appeal) Rules, 1930. Thus, it was intended to recover the amount in question on the strength of that Rule. Rule 43(b) after passing of punishment order is not applicable in the facts and circumstances of the present case in view of the fact that the departmental proceeding has already been completed before retirement of the petitioner. There cannot be automatic conversion of the said departmental proceeding under Rule 43(b) even assuming that the appeal of the petitioner was pending. The moment when punishment order has been passed, it taken effect with immediate effect. There is no statutory provision in Central Civil Services (Classification, Control and Appeal) Rules, 1930 that filing of the appeal is continuation of the departmental proceeding. Moreover, the cause of action is of the year 2011-12 in view of four years rider in Rule 43(b) that also cannot be allowed to be invoked. The petitioner was not given an opportunity of hearing before invoking Rule 43(b). Before initiating Rule 43(b), sanction of State Government is necessary. Thus, impugned order purported to be issued invoking Rule 43(b) of Jharkhand Pension Rule, is illegal and cannot sustain in the eye of law.

Accordingly, the impugned order dated 14.08.2019, is quashed. The punishment order dated 09.01.2019 is already there and in view of the fact that the departmental proceeding has proceeded in accordance with parameters of the departmental proceeding and in view of well proposition of law with regard to judicial review, the Court is not entering into that aspect of the matter. In view of further fact that no hearing to the petitioner was provided and recovery order is already

there, the Government may recover the same in accordance with law by way of invoking other forum or by way of invoking Rule 139(C) of the Jharkhand Pension Rules. Thus, the matter is remitted back to the Government to proceed afresh invoking Rule 139(C) of the Jharkhand Pension Rules.

**8.** The writ petition is allowed in part to the above extent and disposed of.

**(Sanjay Kumar Dwivedi, J.)**

High Court of Jharkhand at Ranchi  
Dated 15<sup>th</sup> December, 2020  
Anit/N.A.F.R.