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**(2013) 07 JH CK 0168**  
**In the Jharkhand High Court**  
**Case No : WP (S) No. 4747 of 2003**

Jaleshwar Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 05-07-2013

**Acts Referred:**

**Citation :** (2014) 1 AJR 214 : (2013) 3 JLJR 564

**Hon'ble Judges :** S. Chandrashekhar, J

**Bench :** Single Bench

**Advocate :** P.P.N. Roy and Miss Pragati Pd, for the Appellant; Abhay Kumar Mishra and Vishal Kumar Trivedi, for the Respondent

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## Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court with the following prayers:--

For issuance of an appropriate writ, order, direction for quashing the office order issued vide KA. AA.S.NIG/SARA-5071/01-245 dated 4.9.2003 issued by Deputy Secretary, Public Works Department, Jharkhand, Ranchi, whereby and whereunder an order has been passed under Rule 43(B) of the Bihar Pension Rules on the basis of the report submitted by the enquiry officer and the second show cause filed by the petitioner whereby and whereunder decision has been taken, the amount of gratuity payable to the petitioner and leave salary of the petitioner has been withheld and further 10% amount of pension has also been ordered to be deducted from the pension of the petitioner and further an order has been passed to recover Rs. 2,40,63,933.00 after filing certificate case against the petitioner. Further respondents may be restrained to take any coercive action against the petitioner on the basis of office order issued under Rule 43(b) of the Bihar Pension Rules dated 4.9.2003 i.e. at Annexure-8 of the writ petition.

The brief facts of the case are that, the petitioner was initially appointed in the year, 1965 on the post of Junior Engineer in Public Works Department. At the

relevant time he was posted as junior engineer. He was transferred from Deoghar on 28.8.1998. The petitioner was suspended by order dated 20.12.2001 and a charge-memo was given to him on the following allegations:--

(i) while the petitioner was posted at Deoghar, Bitumen of the amount of Rs 15.95 lakhs was misappropriated as no adjustment of that amount was made in the office, and

(ii) while the petitioner was posted at Deoghar he had taken advance of Rs 1.24 lakhs and that amount was not adjusted and as such he had misappropriated-that amount.

2. An enquiry was conducted by the Chief Engineer and the charge levelled against the petitioner was not found proved. As several aspects were not examined by the enquiry officer, a second enquiry was initiated and it was found that there was misappropriation of Rs. 2,40,63,933.00.

3. A counter-affidavit has been filed on behalf of the respondents stating that the charge against the petitioner was serious and in departmental enquiry the charge was found proved. This is a case in which huge public money has been misappropriated by the petitioner and therefore, order of recovery of Rs. 2,40,63,933.00 was ordered.

4. Heard learned counsel appearing for the parties and perused the documents on record.

5. Mr. P.P.N. Roy, learned Senior Counsel appearing for the petitioner has raised a contention that the impugned order dated 18.11.2002 continuing the departmental proceeding after the superannuation of the petitioner on 31.10.2002, is bad in law. Referring to the order passed by the Deputy Secretary on 18.11.2002, the learned Senior Counsel has contended that the petitioner superannuated on 31.10.2002, however, by resorting to the provisions of Rule 43(b) of the Jharkhand Pension Rules, the proceeding initiated against the petitioner, has been ordered to continue. He has further submitted that once the charge against the petitioner has not been found proved, a second enquiry. could not have been initiated against the petitioner. He relied upon the decision rendered in Bholan Choudhary Vs. The State of Bihar and Others, and in Bindeshwari Choudhary Vs. The State of Bihar and Others, .

6. Per contra, learned counsel appearing for the respondents contended that this technical plea of the petitioner cannot be entertained for the reason that, there is a specific provision under the Jharkhand Pension Rules which authorises the employer to initiate a proceedings even after the superannuation of the employee from service. He has further submitted that since the first enquiry report was submitted in which several important facts were not taken into consideration, a second enquiry was initiated and in the second enquiry, it has been found that huge public money has been siphoned off by the petitioner.

7. Adverting to the contention raised on behalf of the petitioner, I find that a

learned Single Judge of Hon'ble Patna High Court, has held that after superannuation from service as the relationship of the employer and employees is severed, there must be a fresh order before the employee retires for continuing the departmental enquiry which was initiated during the service of the petitioner. Relying on an earlier decision, the learned Single Judge in the case of "Bindeshwari Chaudhary vs. The State of Bihar" (supra) has observed as under:--

8. To appreciate the submissions of the learned counsel. I will refer to the decision first in the case of Ram Ekbal Sharma (supra). The question for consideration in that case was as to whether the State Government under Rule 43(b) can withhold pension and/or recover the amount from the pensionary benefits if the delinquent found guilty of the gross misconduct in a departmental or any judicial proceeding. Answering the question in affirmative his Lordship has held that a departmental proceeding and/or proceeding initiated in terms of Rule 43(b) during the service tenure of the employee is to continue even after the retirement of the Govt. Servant but there must be a specific order for continuing such proceeding and, that too, before retirement in the case in hand, the admitted fact is that a proceeding was initiated while the petitioner was in service but was dropped by virtue of the judicial order which was reopened pursuant to the direction of the High Court and the said proceeding culminated by passing the impugned order. In that view of the matter, it cannot be held that the respondent authority could not have passed the impugned order after retirement of the petitioner. There was no necessity for the respondent authority to pass a specific order to allow such proceeding when earlier proceeding was revived by virtue of judicial order passed by this Court....

8. Rule 43(b) of the Jharkhand Pension Rules is as follows:--

Rule 43(b). The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on reemployment after retirement:

Provided that-

- (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;
- (i) shall not be instituted save with the sanction of the State Government;
- (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
- (iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to

proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation--for the purposes of the Rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:--

(i) In the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) In the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a Civil Court.

9. Since the order dated 18.11.2002 has been passed after the superannuation of the petitioner from service w.e.f. 31.10.2002, in view of the decision rendered in Bindeshwari Choudhary Vs. The State of Bihar and Others, and in Bholan Choudhary Vs. The State of Bihar and Others, , the impugned order dated 18.11.2002 is hereby quashed, however, it is open to the respondents to resort to the provisions contained in Jharkhand Pension Rules and initiate a proceeding against the petitioner. It is further clarified that in view of the pendency of the writ petition, the period of four years as prescribed under Rule 43(b) of the Jharkhand Pension Rules would not come in the way of the respondents, if they are so advised, to initiate a fresh proceeding against the petitioner. This writ petition is disposed of in the aforesaid terms.