

S.B. CIVIL WRIT PETITION NO. 2798/2002.

Ramesh Chandra

Vs.

The State of Rajasthan & Ors.

Final Order dated **23.09.2014**

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**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

:: ORDER ::

S.B. CIVIL WRIT PETITION NO. 2798/2002.

Ramesh Chandra Vs. The State of Rajasthan & Ors.

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Date of Order :: **23rd September, 2014.**

P R E S E N T

HON'BLE Dr. JUSTICE VINEET KOTHARI

Appearance:

Mr. Sunil Ranwah for Mr. Manish Shishodia, for the petitioner.
Mr. S.M. Toshniwal, Govt. Counsel, for the respondent-State.

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BY THE COURT:

1. The present writ petition has been filed by the petitioner on **26.07.2002** with the following prayers:-

“Hence, it is prayed that the writ petition filed by the petitioner may kindly be allowed and by a writ of mandamus or any appropriate writ, order or direction, the impugned order dated 8.7.2002 (Annex.6) may be quashed and set aside.

Any other appropriate order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of this case may be passed in favour of the petitioner.

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*Costs of the writ petition may kindly be
awarded to the petitioner.”*

2. In the inquiry held under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 ('the Rules of 1958'), by an order Annexure-6 dated **08.07.2002** passed by the respondent Executive Engineer, Irrigation Division, Banswara, a sum of Rs.41,400/- was sought to be recovered from the petitioner who was working as Junior Engineer in the respondent Department pertaining to the year 1997-98. The inquiry was held under Rule 17 of the Rules of 1958 on the charge-sheet issued to the petitioner vide Annexure-1 dated **08.08.2000** levelling the allegation against him that in the drought relief works undertaken by the State Government in the Samvat Year 2043-44 at Vagh Talab, Faifar Talab, Sher Ki Rail Talab and Ambapada Talab, excess construction material was collected at the sites in question which could not be utilised in execution of works and, therefore, the financial loss was caused to the respondent – State on account of negligence on the part of the petitioner who was working as Junior Engineer in the respondent Department.

3. The petitioner has furnished his explanation vide Annexure-2 dated **11.09.2000** before the learned Executive Engineer, Irrigation Division, Banswara. It was submitted on behalf of the

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petitioner that for the aforesaid works undertaken during the drought period, the material in question was purchased by one Shri Kanhaiya Lal, another Junior Engineer of the Department at the relevant point of time and, therefore, he was not the responsible person for the works and purchases in question. The said explanation furnished by the petitioner was not considered by the Disciplinary Authority and he rejected the same vide Annexure-4 dated **06.05.2002**. However, the punishment of stoppage of one annual grade increment without cumulative effect was imposed upon the petitioner. Aggrieved by the order Annexure-4 dated **06.05.2002**, the petitioner preferred an appeal vide Annexure-5 dated **08.07.2002** before the Chief Engineer, Irrigation Department, Jaipur, the Appellate Authority and who was expected to decide the said appeal of the petitioner. It appears that on the basis of the communication dated **20.06.2002** of the Additional Chief Engineer, which was written in prior point of time of decision of the appeal, the respondent Executive Engineer, Irrigation Division, Banswara had issued the impugned order Annexure-6 dated **08.07.2002**, the date coincides with the date of filing the appeal aforesaid by the petitioner and rejecting the explanation, recovery of an amount of Rs. 41,400/- was sought to be made in three installments by deducting one-third of the salary and the petitioner was directed take receipt of the same. Aggrieved by the said order Annexure-6 dated **08.07.2002**, the

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present writ petition has been filed by the petitioner.

4. While issuing notices in the matter, a co-ordinate bench of this Court on **08.08.2002** had granted the interim order in favour of the petitioner staying the operation of the impugned order dated **08.07.2002** (Annex. 6).

5. On being served, the respondents have filed a detailed reply to the writ petition and have disputed the averments made by the petitioner in the writ petition and have justified the impugned order Annexure-6 dated **08.07.2002** on the aforesaid ground that the financial loss has been caused to the respondent-State on account of negligence of the petitioner, who at the relevant point of time was working as Junior Engineer, in purchasing the excess construction materials which were lying at the sites in question without any utilisation.

6. No supporting documents have been filed with the reply to the writ petition by the respondent-State.

7. Having heard the learned counsels for the parties and having perused the record of the case, this Court is satisfied that the fate of the appeal filed by the petitioner vide Annexure-5 dated **08.07.2002** by passing appropriate order by the respondent Appellate Authority still has not been placed on record by the respondents. The case of the petitioner is that even after passing of 12 years, the respondents have not been in a position to produce the copy of the order showing the fate of the appeal filed

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by the petitioner vide Annexure-5 dated **08.07.2002** but it was fairly conceded on behalf of the respondents that the Annexure-6 dated **08.07.2002** was passed on the basis of the communication dated **20.06.2002** of the Additional Chief Engineer, which is prior in time of filing the appeal by the petitioner and by which, recovery of an amount of Rs.41,400/- was directed in three installments by deducting one-third salary of the petitioner.

8. A bare perusal of the impugned order Annexure-6 dated **08.07.2002** shows that the explanation or the contentions sought to be raised in the memo of appeal have not been considered by the respondent authorities and passing of the impugned order Annexure-6 dated **08.07.2002** coincides with the date of appeal vide Annexure-5 dated **08.07.2002** filed against the penalty order dated **06.05.2002**. Apparently, the order Annexure-6 passed on **08.07.2002** is not the disposal of the appeal filed by the petitioner against the penalty order Annexure-4 dated **06.05.2002** passed by the Executive Engineer.

9. In view of the above circumstances, it is very difficult for this Court even to know whether the appeal filed by the petitioner against the penalty order Annexure dated **06.05.2002** has not been decided on merits or not but the since the impugned recovery order Annexure-6 dated **08.07.2002** has been passed without touching or deciding the explanation or appeal of the petitioner and no reasons have been recorded in the impugned

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recovery order but it appears that the same has been passed merely on the basis of communication dated **20.06.2002** of the Additional Chief Engineer which communication has not been produced on record by either of the parties, therefore, it is concluded that the respondents have not paid any heed to the explanation of the petitioner at any stage so far. In these circumstances, the impugned recovery order Annexure-6 dated **08.07.2002** is unsustainable in the eye of law and this writ petition deserves to be allowed.

10. Accordingly and in view of the above, this writ petition is allowed. The impugned recovery order Annexure-6 dated **08.07.2002** is quashed and set aside. No order as to costs. A copy of this order be sent to the parties concerned forthwith.

(Dr. VINEET KOTHARI), J.