

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17721 of 2023

Sudhanshu Shekhar Tripathi S/o Late Rajbali Tripathi, Flat No. - 304, Shyama
Palace Apartment, Ved Nagar, Rukanpura, Patna - 800014.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna, Bihar.
2. The Principal Secretary, Department of Labour Resources, Government of Bihar, Niyojan Bhawan, Patna, Bihar - 800001.
3. The Deputy Secretary, Department of Labour Resources, Govt. of Bihar, Niyojan Bhawan, Patna, Bihar - 800001.
4. Officer On Special Duty, Department of Labour Resources, Niyojan Bhawan, Patna, Bihar.
5. The Director of Employment, Directorate of Empolymnt and Training Department of Labour Resources, Niyojan Bhawan, Patna, Bihar.
6. The Accountant General (A and E) Bihar.
7. The Director of Provident Fund, Finance Department, Govt. of Bihar.
8. The District Treasury Officer, Gaya, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. P.N. Shahi, Sr. Advocate
Mr. Anand Kumar, Advocate
Mr. Ankur Govind, Advocate
.For the Respondent/s : Mr. Anil Kumar Singh (Gp -26)

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT
Date : 09-04-2026

Heard the parties.

2. The present writ petition has been filed for the
following reliefs:-

*“That this writ petition is being filed in this
Hon’ble Court with prayer calling upon the
respondent(s) to show cause why rule nisi in
the nature of writ and/or in the nature of writ
of certiorari be not issued upon the
respondent(s) and the order dated*



15.05.2023 passed by the Officer on Special Duty, Department of Labour Resources, Government of Bihar be quashed and or cancelled; further for issuance of writ/order/directions upon the respondent(s) to quash the entire disciplinary proceedings under Memo No.2887 & 2888, both dated 31.10.2017 issued by the respondents upon the petitioner; further issue a writ of or in the nature of writ of mandamus commanding and/or directing the respondents to forthwith release the post-retirement benefits, withheld so far, with interest admissible to the petitioner.”

Submissions on behalf fo the petitioner

3. The brief fact giving rise to the present writ petition is that the petitioner having been allocated the Bihar Employment Service, gave his joining as a District Employment Officer on 02.04.1992. He was promoted to the post of Assistant Director of Employment on 02.04.2004 in the pay scale of Rs. 15600-39100/- with Grade Pay of Rs. 6600/-. Subsequently, the petitioner was granted promotion to the post of Deputy Director of Employment and thereafter superannuated from service on 31.10.2017. On 16.10.2017, the petitioner informed the Principal Secretary, Department of Labour Resources,



Government of Bihar, Patna about fake appointments on Class-III and Class-IV posts in the Department of Employment and the need to enquire into the matter. Pursuant to the Letter dated 16.10.2017, an enquiry was conducted and without any basis the department initiated departmental proceeding against the petitioner vide Resolution No. 2887 and 2888, both dated 31.10.2017, but the same was not served upon the petitioner, since on the same day he has superannuated. The said resolutions were not served upon the petitioner, since the same were said to have been sent to the previous place of posting of the petitioner i.e. Gaya Division, Gaya, therefore, the same was returned unserved. However, vide Memo Nos. 3112 and 3114 dated 16.11.2017 issued under the signature of the Deputy Secretary to the Government, Labour Resources Department, Government of Bihar, Patna a decision was taken to convert the departmental proceeding, initiated against the petitioner vide Memo No. 2888 dated 31.10.2017, in the proceeding under Rule, 43(b) of the Bihar Pension Rule, 1950. The petitioner was served with all the letters mentioned hereinabove i.e. Resolution Nos. 2887 and 2888 dated 31.10.2017 and Resolution Nos. 3112 and 3114 dated 16.11.2017, through registered post on 22.11.2017. Along with the letters, the charge



Memo was also annexed, from where the petitioner came to know about the initiation of departmental proceeding against him. Subsequently vide Letter No. 3468 dated 04.12.2017 issued under the signature of the Deputy Secretary to the Government, Labour Resources Department, Government of Bihar, Patna the petitioner was informed that the entire gratuity has been kept withheld due to the pending enquiry against him and he was also informed that his pension has been reduced by 10%.

4. The learned Senior counsel for the petitioner submits that being aggrieved with the decision of the State Government the petitioner preferred C.W.J.C. No. 720 of 2018 before this Court, wherein a learned Co-ordinate Bench of this Court vide its order dated 15.01.2018, while directing the respondent authorities to file counter affidavit, stayed further proceeding in the matter. The writ petition filed by the petitioner was finally heard by a Co-ordinate Bench of this Court and vide order dated 05.09.2018, the same was partly allowed by quashing the departmental proceeding in relation to Letter Nos. 2887 and 2890 dated 31.10.2017 and further directed that the proceeding related to Letter Nos. 2887 and 2888 dated 31.10.2017 will continue, subject to the observations made in



the order dated 05.09.2018. The petitioner also filed C.W.J.C. No. 16529 of 2017 and the same was disposed of vide order dated 19.04.2019 passed by a Co-ordinate Bench of this Court with a direction to the respondent to release the withheld retiral dues and 90% gratuity amount in favour of the petitioner.

5. The learned Senior Counsel for the petitioner further submits that in view of the observations made by the learned Single Judge vide his order dated 05.09.2018, passed in C.W.J.C. No. 720 of 2018, the Joint Labour Commissioner, Bihar vide Memo No. 2010 dated 08.05.2019 directed the Enquiry Officer to produce the letters/documents mentioned therein, in the enquiry, so that decision can be taken that whether the departmental proceeding under Rule 43 (b) of the Bihar Pension Rules has been initiated in violation of the provision contained therein or not, but even then no such documents were provided to the petitioner or produced before the authorities concerned. The petitioner filed an appeal before this Court against the order dated 05.09.2018 passed in C.W.J.C. No. 720 of 2018. The appeal filed by the petitioner was numbered as L.P.A. No. 1553 of 2018.

6. The learned Senior counsel for the petitioner further submits that vide Letter dated 23.08.2021 the petitioner



again requested the Conducting Officer to provide evidences with regard to proof of service of the charge-sheet upon the petitioner, before his date of retirement i.e. 31.10.2017, but no response was received by the petitioner, then he was constrained to again write a Letter dated 17.09.2021 to the Conducting Officer, wherein the petitioner again asked for the proof/evidence about the claim of serving notice/charge-sheet upon him before the date of retirement. Along with in the letter dated 17.09.2021, the petitioner also requested the Conducting Officer to call certain witnesses for their examination and cross-examination, to prove/disprove the charges against the petitioner, but no such document was ever provided to the petitioner.

7. The learned Senior counsel for the petitioner submits that the Enquiry/Conducting Officer vide his Letter No. 354 dated 04.02.2022 proceeded to submit his enquiry report before the disciplinary authority, wherein he came to the conclusion that since the delinquent has not appeared and denied the charges levelled against him, therefore, the Letter No. 1262 dated 27.08.2007 of the District Magistrate, Vaishali, which is the evidence of the charge-sheet, on the basis of the said letter the charges are found to be proved. Subsequently,



vide Letter No. 691 dated 24.03.2022 issued under the signature of the Officer on Special duty, Labour Resource Department, Government of Bihar, Patna, second show cause notice was issued to the petitioner and the petitioner was directed to submit his reply within fifteen days, that why punishment be not imposed against the petitioner. In compliance thereof, the petitioner submitted his reply on 07.04.2022, wherein he took a defense that initiation of the departmental proceeding itself was in complete violation of the provisions contained in Rule 43 (b) of the Bihar Pension Rule, 1950 and other statutory Rules, as well as in violation of the principles of natural justice, in violation of Rule, 17 (3) and 17 (6) (iv) of the Bihar CCA Rule of 2005. The enquiry report was submitted without appreciation of any evidence.

8. The learned Senior counsel for the petitioner submits that a second supplementary counter affidavit was filed by the respondent-State on 13.08.2022 in LPA No. 1553 of 2018, filed by the petitioner, wherein the extract of the dispatch register was produced, which goes to show that the resolution letter (along with charge Memo Nos. 2887 and 2888) dated 31.10.2017 were dispatched for the first time through registered on 02.11.2017 i.e. after the retirement of the petitioner. The



appeal preferred by the petitioner i.e. L.P.A. No. 1553 of 2018 was disposed of by the Hon'ble Division Bench of this Court vide judgment dated 31.08.2022 with a direction to the State-respondent to issue show cause notice to the petitioner in furnishing necessary materials with the Memo dated 31.10.2017 has been served upon the petitioner and on receipt of such notice and material, the petitioner was directed to file his explanation along with material information, if any and thereafter the disciplinary authority was directed to analyze the material fact and explanation to be submitted by the petitioner and take a decision within a period three months from the date of receipt of the order. The petitioner was directed to co-operate in deciding the issue with the disciplinary authority. It was further directed that till the decision is taken by the disciplinary authority, further action pursuant to the Memo dated 31.10.2017 shall be kept in abeyance, until decision is taken by the disciplinary authority.

9. Being aggrieved with the judgment dated 31.08.2022 passed in L.P.A. No. 1553 of 2018, the petitioner preferred SLP (Civil) No. 20131 of 2022. In the meantime the respondent-State, in compliance of order dated 31.08.2022 passed in L.P.A. No. 1553 of 2018, issued fresh show cause



notice to the petitioner, without providing any acknowledgment or any certificate mandated under Section 65 (B) of the Indian Evidence Act and in violation of the directions given by the Hon'ble Division Bench in L.P.A. No. 1553 of 2018. In compliance thereof the petitioner filed his reply on 25.11.2022 to the fresh show cause notice dated 10.11.2022, wherein he explained that the proceeding initiated vide Memo Nos. 2887 and 2888 dated 31.10.2017 i.e. on the date of his retirement, are illegal, invalid and ultra virus, as the respondent authorities have failed to prove the service of the said notice/charge Memo upon the petitioner, during his service period and nor did they submit acknowledgment or certificate required under Section 65 (b) of the Indian Evidence Act, to make any electronic document admissible as evidence. The SLP preferred by the petitioner was disposed of on 06.12.2022 by the Hon'ble Supreme Court of India, in view of the fresh show cause notice issued by the State-respondent, with a direction to the petitioner to participate in the proceeding before the disciplinary authority and it was observed that it goes without saying that all the defences which may be available to the petitioner are kept open to be considered by the disciplinary authority in accordance with law and on its own merits.



10. The learned Senior counsel for the petitioner submits that on 16.12.2022 the petitioner filed his supplementary show cause, wherein he brought on record the order passed by the Hon'ble Supreme Court of India and he also submitted his defense in detail, for consideration by the disciplinary authority, as directed by the Hon'ble Supreme Court of India, but vide Memo No. 1216 dated 15.05.2023 issued under the signature of the Officer on Special duty, Department of Labour Resources, Government of Bihar, Patna, the explanation submitted by the petitioner was rejected without any justifiable basis. Immediately thereafter, the petitioner filed a review petition before the disciplinary authority on 12.06.2023, against the order dated 15.05.2023, wherein it was stated that the Officer on Special duty failed to consider all the points of defense raised by the petitioner in his show cause reply dated 25.11.2022 and the supplementary show cause filed on 16.12.2022. The petitioner requested the disciplinary authority to consider all the 82 points of defense raised by the petitioner, in compliance of the order passed by the Hon'ble Supreme Court of India. The petitioner again submitted a representation on 13.07.2023 before the disciplinary authority, wherein he again requested the disciplinary authority to consider the 82



points raised by the petitioner in his defense, which was submitted by him, in view of the directions given by the Hon'ble Supreme Court of India, but even then no action was taken by the respondent authorities.

11. The learned Senior counsel for the petitioner further submits that vide Memo No. 3480 dated 16.11.2023 issued under the signature of the Under Secretary, Department of Labour Resources, Government of Bihar, Patna, punishment was imposed against the petitioner whereby the disciplinary authority proceeded to pass the order of deduction of 20% of the amount from the pension of the petitioner, under the provision contained in Rule 43 (b) read with Rule, 139 of the Bihar Pension Rules, 1950.

12. The Learned Senior counsel for the petitioner further submits that the petitioner filed a review petition on 23.12.2023 in terms of the provision contained in Rule 24 (2) of the Bihar CCA Rules, 2005, before the disciplinary authority against the order contained in Memo No. 3480 dated 16.11.2023 whereby a penalty of deduction of 20% from the Pension of the petitioner was imposed, but the authority concerned i.e. the Joint Secretary to the Government, Department of Labour Resources, Government of Bihar, Patna vide his order contained in Memo



No. 848 dated 07.03.2024 proceeded to reject the review filed by the petitioner.

13. The learned Senior counsel for the petitioner submits that even though Section (17) 4 of the Bihar CCA Rules, 2005 is silent about the mode of service of notice on the delinquent employee, with regard to initiation of disciplinary proceeding, but in case of the petitioner the disciplinary authority himself directed for service of Memo of charge through post and there is no evidence brought on record by the respondent authorities to suggest that the disciplinary authority has ever directed for service of notice upon the petitioner through electronic mode. Even then the same is said to have been sent by a sub ordinate employee, by using his private computer for sending the notice through electronic mode upon the petitioner, which is in complete violation of the provisions, contained in law. Further, even if it is assumed that charge Memo was sent through electronic Mode vide valid authorization, then in that case also there is no valid proof of the service of the said charge Memo since the required certificate in terms of Section 65 (B) (4) of the Evidence Act by a Competent Officer is absent. The Office Clerk whose Letter has been treated to be certificate, is neither authorized to grant such



certificate nor was In-charge of the computer and he had used his personal computer for sending the same without any valid authorization. Further, during course of enquiry in the departmental proceeding and even the documents brought on record in the present proceeding, there are discrepancies with regard to the fact that on which Email I.D. the said Memo of Charge dated 31.10.2017 was sent/dispatched. The Enquiry Officer submitted a perverse enquiry report based on no evidence, since neither any witness was examined during course of the departmental enquiry nor the petitioner was afforded any opportunity of producing witnesses on his behalf. There is no order on record by the Enquiry Officer, fixing any date for production of witnesses by the petitioner. The Enquiry Officer treated the letter of the complainant to be true and only because the petitioner did not appear and controverted those letters, proceeded to found the charges levelled against the petitioner to be proved.

14. The learned Senior counsel for the petitioner further submits that from a bare perusal of the charge Memo, it would transpire that all the charges levelled against the petitioner were of the period more than four years prior to his retirement and thus no proceeding in terms of Rule 43 (b) of the



Bihar Pension Rules could have been initiated/conducted against the petitioner, after his retirement on 31.10.2017. Further, the impugned order of punishment, whereby 20% of the Pension of the petitioner has been forfeited, is too harsh and disproportionate to the charge levelled against the petitioner and neither the disciplinary authority nor the reviewing authority bothered to consider the show cause reply filed by the petitioner and the points raised therein.

15. The learned Senior counsel for the petitioner further submits that as per the provision contained in Rule 43 (b) of the Bihar Pension Rules, the State Government has the power to withhold any part of the pension of a delinquent employee for causing grave misconduct or pecuniary loss to the State exchequer, but in the present case no such finding has come that the action of the petitioner resulted in any pecuniary loss to the State exchequer.

16. The learned senior counsel for the petitioner refers to and relies on a judgment of the *Hon'ble Supreme Court of India* reported in (2010) 2 SCC 772 *State of Uttar Pradesh and Ors Vs. Saroj Kumar Sinha* wherein in paragraph No.28, it has been held as follows:-

“28. An inquiry officer acting in a quasi-



judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

17. The learned Senior counsel for the petitioner further refers to and relies on a judgment of the **Hon’ble Supreme Court of India reported in (2009) 2 SCC 570, Roop Singh Negi Vs. The Punjab National Bank & Ors.**, wherein in



paragraph No. 14, 19 and 23, the Hon'ble Supreme Court of India has held as follows.

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

19. The judgment and decree passed against the respondent in Narinder Mohan Arya Case² had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the



validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non-application of mind.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As



the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

18. The learned Senior counsel for the petitioner further refers to and relies on a judgment of the **Hon’ble Supreme Court of India** reported in **(2020) 7 SCC 1 Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Others** wherein in paragraph Nos. 60 and 61 it has been held as follows:-

“60. It may also be seen that the person who gives this certificate can be any one out of several persons who occupy a “responsible official position” in relation to the operation of the relevant device, as also the person who may otherwise be in the “management of relevant activities” spoken of in sub-section (4) of Section 65-B(4). Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4) makes it clear that it is sufficient that such person gives



the requisite certificate to the “best of his knowledge and belief”. [Obviously, the word “and” between knowledge and belief in Section 65-B (4) must be bread as “or”, as a person cannot testify to the best of his knowledge and belief at the same time.

61. *We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V.², and incorrectly “clarified” in Safhi Mohammad³. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor⁴⁰, which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.”*

19. The learned Senior counsel for the petitioner further refers to and relies on a judgment passed by the **Hon’ble Supreme Court of India AIR (1995) SC 1853 Mohd. Idrish Ansari Vs. State of Bihar and Others** wherein in paragraph



Nos. 06 and 07, it has been held as follows:-

"6. Having given our anxious considerations to these rival contentions, we find that the decision of the High Court on the facts of the present case is unexceptionable. The earlier notice dated 17-7-1993 by which fresh departmental proceedings were sought to be initiated was rightly quashed by the High Court as it was based on the alleged misconduct of the respondent during 1986-87 which was more than four years prior to the issue of the said notice. Such a notice seeking to initiate fresh departmental proceedings after the retirement of the respondent, was clearly hit by the proviso to sub-rule (b) of Rule 43 of the Rules. Rule 43(b) reads as under:

"(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 proceedings 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 re-employment 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;”*

7.A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired government servant, it must be shown that in departmental proceedings or judicial proceedings the government servant concerned is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b), in connection with the alleged misconduct, as it alleged to have taken place in the year 1986-87. As the



alleged misconduct by 1993 was at least six years' old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27-9-1993. It was clearly stated therein that no action can be taken under Rule 43(b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17-10-1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition No. 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice dated 17-10-1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17-10-1987 but initiated fresh departmental inquiry by the impugned notice dated 27-9-1993. Consequently it is not open to the learned advocate for the appellant to rely upon the said earlier notice dated 17-10-1987.”

Submissions on behalf of the Respondent-State

20. Per contra, the learned counsel appearing on behalf of the State-respondents submits that in compliance of



the order dated 31.08.2022 passed in L.P.A. No. 1553 of 2018 an explanation was sought from the petitioner vide Letter contained in memo no. 2570 dated 10.11.2022, with regard to the Memo of Charge dated 31.10.2017 and pursuant thereto the petitioner filed his reply, which was carefully, examined by the competent authority and after considering all the aspects, the same was not found to be satisfactory, therefore, the same was rejected vide order contained in Memo No. 1216 dated 15.05.2023. Further, the information with regard to initiation of departmental proceeding vide Memo Nos. 2887 and 2888 dated 31.10.2017 was given to the petitioner by two different Email IDS i.e. ddegaya@gmail.com and ssstripathipu@yahoo.co.in on 31.10.2017 itself. The notice through aforesaid e-mail were transmitted on official address/mail as well as on his private address/mail and therefore, the allegation of the petitioner that the charge Memo was sent on wrong e-mail i.d. and the same was not served and received by the petitioner, is totally baseless and incorrect.

21. The learned counsel for the State further submits that according to Rule 17 (4) of the Bihar (CCA) Rules, there is no specific provision for any special method or methods of service of notice upon the delinquent officer. Service of



notice can be done upon the delinquent through any mode. The departmental proceedings were initiated against the petitioner in the light of the provision contained in Bihar (CCA) Rules, 2005 and after retirement of the petitioner the same was converted into a proceeding under Rule 43 (b) of the Bihar Pension Rules, 1950. Further, despite the order passed in CWJC No. 720 of 2018, the petitioner never appeared in the departmental proceeding, therefore the allegation of the petitioner that he was not given the list of evidence/documents and witnesses, nor he was allowed to cross-examine the witnesses is entirely baseless. The disciplinary authority after carefully considering the enquiry report and the reply of the petitioner against the findings of the Enquiry Officer and after consideration of the entire materials on record, found the charges to be proved and after obtaining concurrence from the BPSC, a detailed reasoned and speaking order was passed, which was communicated to the petitioner vide Memo No. 3480 dated 16.11.2023, whereby the petitioner has been inflicted with punishment of forfeiture of 20% from his Pension. Further the entire gratuity has been sanctioned vide Memo No. 3993 dated 27.12.2023 and the same was forwarded to the Accountant General, Bihar, Patna to issue authority letter in favour of the petitioner. The Accountant



General, Bihar, Patna issued authority letter after fixation of the Pension in favour of the petitioner vide Authority Letter dated 12.01.2024 and for payment of Pension commutation, the department vide Letter contained in Memo No.425 dated 02.02.2024 requested the petitioner to submit relevant/required documents to the Finance Department with respect of Pension commutation.

Consideration

22. Having heard the learned Senior Counsel for the petitioner and the learned counsel appearing on behalf of the State and after going through the records, this Court finds that, while the petitioner was posted as Deputy Director of Employment on 16.10.2017, he informed the Principal Secretary, Department of Labour Resources, Government of Bihar, Patna about some fake appointments on class - III and Class- IV posts in the Department of Employment and requested to enquire into the matter. Pursuant thereto an enquiry was conducted, however without any basis, a decision was taken to initiate departmental proceeding against the petitioner vide resolution no. 2887 and 2888 dated 31.10.2017. It appears that the same was not served upon the petitioner, since on the same day the petitioner superannuated from service, the authority



concerned while issuing resolution nos. 2887 and 2888 directed for service upon the petitioner through Registered post, but during course of proceeding before this Court not a chit of paper has been brought on record by the respondents, to show that the same was served upon the petitioner before he superannuated i.e. 31.10.2017. The resolution dated 31.10.2017 were sent to the previous place of posting of the petitioner, from where he retired, therefore, the same was not served. Subsequently, vide memo nos. 3112 and 3114 dated 16.11.2017, a decision was taken to convert the departmental proceeding, initiated against the petitioner vide memo no 2888 dated 31.10.2017 as a proceeding under Rule 43 (b) of the Bihar Pension Rule 1950. All the said letters i.e. letter dated 31.10.2017 and 16.11.2017 were served upon the petitioner through registered post on 22.11.2017. The memo of charge was also served, along with the said letters and thereafter, the petitioner came to know about the initiation of departmental proceeding against him.

23. Being aggrieved with the issuance of memo of charge and the decision to initiate departmental proceeding vide resolution dated 31.10.2017 and 16.11.2017, the petitioner preferred C.W.J.C. No. 720 of 2018 before this Court, wherein a learned Co-ordinate Bench vide order dated 15.01.2018, while



directing the State-respondents to file their counter affidavit, stayed further proceeding with regard to initiation of departmental proceeding against the petitioner. Finally, vide order dated 05.09.2018 the writ petition filed by the petitioner was partially allowed by quashing the departmental proceeding in relation to letter nos. 2889 and 2890 dated 31.10.2017 and it was directed that the proceeding related to letter nos. 2887 and 2888 dated 31.10.2017 will continue, subject to the observations made in the order dated 05.09.2018. Pursuant to the observations made by the learned Single Judge of this Court vide his order dated 05.09.2018, vide memo no. 2010 dated 08.05.2019, the Joint Labour Commissioner, Bihar directed the Enquiry Officer, to produce the letters/documents mentioned therein so that decision can be taken that whether departmental proceeding under Rule 43 (b) of the Bihar Pension Rule has been initiated in violation of the provisions contained therein or not, but the said documents were never produced. The petitioner kept on requesting the Conducting Officer to provide evidence with regard to the proof of service of the charge-sheet upon the petitioner, before his date of retirement, but no response was received by the petitioner. The petitioner even requested the Conducting Officer to permit him to call for certain witnesses



for their examination and cross-examination, but no permission was accorded to the petitioner. However, the Enquiry Officer proceeded to submit his enquiry report on 04.02.2022, wherein he came to the conclusion that since the delinquent has not appeared and denied the charges levelled against him, therefore he found the charges to be proved against the petitioner on the basis of letter dated 27.08.2007 of the District Magistrate Vaishali.

24. Further the enquiry officer did not bothered to get the said document proved by examining a witness, since it is settled law that even in a case bared solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove those documents and when so examined, the witness would have to be tendered for cross examination. In the present case, this Court finds that the department had not produced any witness in the enquiry, even though the charges levelled against the petitioner, were denied by him. Therefore, the enquiry itself stood vitiated. This fact finds support from a recent judgment of the Hon'ble Supreme Court of India in a case bearing civil Appeal no. 4130 of 2026 (Arising out of **SLP (C) No. 2900 of 2020**) (**Jai Prakash Saini Vs. Managing Director, U.P.**



Cooperative Federation Ltd. & Ors), wherein in paragraph nos. 17 and 18 has been held as follows:-

*“17. From the decisions of this Court in **Sur Enamel (supra)** and **Kharak Singh (supra)**, followed in **Chamoli District Cooperative (supra)**, which deals with similar service rules as are applicable here, it is now settled that unless the charged employee accepts his guilt in clear terms, an enquiry on the charges drawn against him would have to be held. In the enquiry, the employer/department would have to take steps first to lead evidence against the workmen / delinquent charged and give an opportunity to him to cross examine those witnesses. Only thereafter, the workmen / delinquent shall be asked whether he wants to lead any evidence and/or submit an explanation about the evidence led against him. Even in a case based solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove those documents and when so examined, the witness would have to be tendered for cross-examination.*

18. In the instant case, we find that the



department had not produced any witness in the enquiry even though the charges levelled upon the appellant were denied by him. Therefore, in our view, the enquiry stood vitiated. Once the enquiry stood vitiated, the consequential order of punishment/ recovery cannot be sustained. We therefore allow this appeal. The impugned judgment and order of the High Court is set aside. The writ petition of the appellant stands allowed to the extent indicated below. The order of dismissal and consequential recovery is set aside. The Federation is, however, at liberty to hold a de novo enquiry, if it so desires, within a period of six months from the date of this order. If the Federation does not hold de novo enquiry as permitted above, the appellant shall be entitled to reinstatement with benefit of continuity in service including arrears of salary after adjusting suspension allowance, if any, paid already. In case the Federation chooses to hold an enquiry, it shall reinstate the appellant and place him under suspension till completion of the enquiry and during this period pay suspension allowance as may be payable in accordance with law. In case de novo



enquiry is held, other service benefits including arrears of salary as well as benefits of continuity in service shall depend on the outcome of the enquiry.)”

25. Second show cause notice was issued to the petitioner, which was duly replied by him, wherein he took a plea that the departmental proceeding was conducted in violation of the provisions contained in Rule 43 (b) of the Bihar Pension Rule, 1950 and in violation Rule 17 (3) and 17(6)(4) of the Bihar CCA Rules, 2005. It further appears from the record that in L.P.A. No. 1553 of 2018, filed by the petitioner against order dated 05.09.2018 passed in C.W.J.C. No. 720 of 2018, the dispatch register was brought on record and from perusal thereof it transpired that the resolutions dated 31.10.2017 were dispatched through registered post for the first time on 02.11.2017 i.e. after the retirement of the petitioner. The Letters Patent Appeal preferred by the petitioner was disposed of vide judgment 31.08.2022 with a direction to the State-respondent to issue show cause notice to the petitioner in furnishing necessary materials with memo no. 31.10.2017 has been served upon the petitioner and on receipt of the notice and materials, the petitioner was directed to file his explanation along with material information, if any. The respondent-State, in



compliance of the order dated 31.08.2022 passed in L.P.A. No. 1553 of 2018, issued fresh show cause notice to the petitioner, without providing any acknowledgment or any certificate, mandated under Section 65 (b) of the Indian Evidence Act to prove that the letters/resolution dated 31.10.2017 were served upon petitioner, prior to his superannuation. The petitioner again filed a show cause reply wherein, he stated that the proceeding initiated vide memo nos. 2887 and 2888 dated 31.10.2017, are illegal, since no proof of service of the said notice/charge memo has been provided to the petitioner or brought before competent Court, to suggest that the said charge memo/notice was ever served upon the petitioner, during service period and the respondent authorities did not submit any acknowledgment or certificate required under Section 65 (b) of the Indian Evidence Act. No evidence has been brought on record by the respondent authorities to suggest that the disciplinary authority had ever directed for service of notice upon the petitioner through electronic mode and even if the same was sent to the petitioner, the same was sent by a sub-ordinate employee, by using his private computer, which is not permissible in law. Further, there is no valid proof of service of the said notice through electronic mode, upon the petitioner, since the required certificate in terms



of section 65(b) (4) of the Evidence Act, by a Competent Officer was not brought on record by the respondent authorities and the office clerk, whose letter was brought on record, was neither authorized to grant certificate nor was the In-charge of the computer and he used his personal computer for the same, without any valid authorization. Further, even during course of the departmental enquiry there are discrepancies with regard to the email I.D, on which the said memo of charge dated 31.10.2017 is said to have been sent/dispatched, since different email IDs were mentioned, upon which the which the same was said to have been sent. Even the charges which were levelled against the petitioner were for the period, more than four years prior to his retirement and no proceeding in terms of the Rule 43 (b) of the Bihar Pension Rule, 1950 could have been initiated/conducted against the petitioner, after his retirement on 31.10.2017. Further as per the provisions contained in Rule 43 (b) of the Bihar Pension Rules, the State Government has the power withhold any part of the pension of a delinquent employee for causing pecuniary loss the State exchequer, but in the present case no such finding has come, that the action of the petitioner, resulted in any pecuniary loss to the State exchequer. The entire departmental proceeding was conducted with pre-



determined mind and the enquiry report was based on no evidence. The Enquiry Officer or the disciplinary authority did not bothered to take into account the directions given by a Co-ordinate Bench of this Court in C.W.J.C. 720 of 2018, Hon'ble Division Bench in L.P.A. 1553 of 2018 and even the Hon'ble Supreme Court of India in SLP (Civil No. 20131 of 2022), which was preferred by the petitioner against the judgment dated 31.08.2022 passed in L.P.A. No. 1553 of 2018.

26. Accordingly from the considerations made above, this Court has got no option, but to set aside the Letter no. 1216 dated 15.05.2023 issued by the Officer on Special duty, Department of Labour Resources, Government of Bihar, Patna, resolution contained in memo no. 3480 dated 16.11.2023, issued under the signature of the Under Secretary to the Government, Labour Resources Department, Government of Bihar, Patna, letter no. 425 dated 02.02.2024 issued under the signature of the officer on special duty, Labour Resources Department, Government of Bihar, Patna and memo no. 848 dated 07.03.2024 issued under the signature of the Joint Secretary, Labour Resources Department, Government of Bihar, Patna.

27. Since the petitioner has already superannuated



on 31.10.2017, I am not inclined to remit the matter back to the authorities, for proceeding afresh from the defective stage. Since this Court in a judgment dated 25.02.2026 passed in C.W.J.C. No. 4696 of 2023 (***Nutan Kumar Prabahat Vs. The State of Bihar and Ors.***) in paragraph no. 25 held as follows:-

“25. The High Court under Article 226/227 is entitled to interfere when the finding of fact is based on no evidence and if in every case where no valid evidence is laid at the enquiry proceeding, there is a remand made, it would be offering a premium to the negligence of the management/disciplinary authority and condoning the levity with which the departmental enquiry was conducted. It is the disciplinary authority, who appoints the Enquiry Officer and the Presenting Officer and it is expected that the Presenting Officer would be well versed in the procedures and also be informed in the manner in which evidence has to be laid before the Enquiry Officer, to prove the misconduct, alleged against a delinquent employee. In a disciplinary enquiry proceeding, it is also the trite principle that the standard of proof is preponderance of probability



as distinguished from proof beyond reasonable doubt, as would be required in a criminal prosecution. However, if there is no evidence laid at the enquiry, there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalised on the basis of peremptory finding without any valid evidence. The disciplinary authority had an opportunity in a properly constituted enquiry proceeding and if in such a proceeding no evidence was laid, the punishment of dismissal has to be found to be imposed on no valid evidence.”

28. The respondent authorities are directed to restore the pension of the petitioner to 100% and to refund/return the amount to the tune of 20%, which has been deducted from the pension of the petitioner till date, within a period of three months from the date of receipt/production of a copy of the order. The respondent authorities are further directed to make payment of the entire 100% of the pension/post-retiral dues which have not been paid to the petitioner on account of pendency of the departmental proceeding, within the period aforementioned. If the entire exercise will not be completed



within a period of three months, then the petitioner would be entitled for interest @ 6% from the date of filing of the writ petition till the date of its actual payment.

29. The writ petition is allowed with the direction above mentioned.

30. Pending application, if any, shall also stands disposed of.

(Ritesh Kumar, J)

krishnakant/-

AFR/NAFR	AFR
CAV DATE	19.02.2026
Uploading Date	09.04.2026
Transmission Date	NA

