

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5541 of 2022

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Ganesh Prasad Yadav Son of Late Atul Prasad Mandal, Resident of New Harnichak, Yamuna Yadav Path, (Phulwari), P.S.- Beur, Anishabad, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Public Health Engineering, Govt. of Bihar, Patna.
3. The Principal Secretary, the Department of General Administration Department, Govt. of Bihar, Patna.
4. The Engineer in Chief/Health Engineering Department Govt. of Bihar, Patna.
5. The Commissioner Departmental Enquiry, General Administration Department, Govt. of Bihar, Patna.
6. The Accountant General Office (A and E), Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2398 of 2022

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Ganesh Prasad Yadav S/o Late Atul Prasad Mandal Resident of New Harnichak, Yamuna Yadav Path (Phulwari), P.S.- Beur, Anisabad, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Public Health Engineering, Govt. of Bihar, Patna.
4. The Principal Secretary, the Department of General Administration, Govt. of Bihar, Patna.
5. The Engineer in Chief/Health Engineering Department, Govt. of Bihar, Patna.
6. The Chief Engineer, Public Health Engineering Department, Govt. of Bihar, Patna.
7. The Commissioner, Departmental Enquiry, General Administration Department, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :



(In Civil Writ Jurisdiction Case No. 5541 of 2022)

For the Petitioner/s : Mr. Satyam Shivam Sundaram, Advocate
Mr. Anchit, Advocate
Mr. Sanjeev Kumar, Advocate

For the State : Mr. Vishwambhar Prasad, AC to AAG5

For Respondent No.6 : Ms. Ritika Rani, Advocate

(In Civil Writ Jurisdiction Case No. 2398 of 2022)

For the Petitioner/s : Mr. Satyam Shivam Sundaram, Advocate
Mr. Anchit, Advocate
Mr. Sanjeev Kumar, Advocate

For the Respondent/s : Mr. Arvind Ujjwal (SC 4)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 22-01-2026

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Accountant General, Bihar in both the writ petitions.

Re. CWJC No. 5541 of 2022

2. Learned counsel for the petitioner submits that the present writ petition has been filed for setting aside the Resolution contained in Memo No. 303 dated 02.05.2017 issued by the Public Health Engineering Department, Government of Bihar (hereinafter referred to as “PHED”), whereby and whereunder the petitioner, who was then posted as Executive Engineer in PHED, has been awarded the punishment of withholding 5% of his pension for a period of five years under Rule 43(b) of the Bihar Pension Rules, 1950.

3. Learned counsel for the petitioner further submits that the dispute giving rise to the present writ petition relates to the period when the petitioner was posted as Executive



Engineer, PHED, Sasaram from June, 2010 to December, 2011.

It is submitted that the petitioner was served with an order contained in Memo No. 489 dated 25.10.2013 along with a memorandum of charge initiating a departmental proceeding under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “the CCA Rules, 2005”). Learned counsel submits that a total of nine charges were levelled against the petitioner. The petitioner duly participated in the departmental proceeding, which was registered as Departmental Proceeding No. 57 of 2013. It is further submitted that upon conclusion of the enquiry, the petitioner was exonerated from all the charges, as none of the nine charges was found to have been proved. Thereafter, a second show cause notice was issued. Though the charge memo was issued during the petitioner’s service period on 25.10.2013, admittedly, he retired from service on 31.01.2014. The enquiry proceedings were concluded after his retirement. It is further submitted that the second show cause notice was issued on 16.07.2017, wherein the disciplinary authority disagreed with the findings of the enquiry report. Since the petitioner had already retired, the departmental proceeding was converted into one under Rule 43(b) of the Bihar Pension Rules, 1950, which



fact has been duly acknowledged in the final order itself.

4. Learned counsel for the petitioner submits that in the final order, there is only a one-line observation to the effect that the reply submitted by the petitioner to the second show cause notice has been considered and all the allegations have been found proved, without assigning any cogent reasons. It is further submitted that Rule 43(b) of the Bihar Pension Rules, 1950 clearly stipulates that the appointing authority has the right to withhold or withdraw pension or any part thereof, whether permanently or for a specified period, or to order recovery from pension of the whole or part of any pecuniary loss caused to the Government, only if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Government by misconduct or negligence during service.

5. Learned counsel further submits that in the present case, neither of the aforesaid conditions has been satisfied. It is submitted that at the fag end of his career, the Government initiated three separate departmental proceedings against the petitioner by issuing three different charge memos. One charge memo was issued prior to his retirement, while two charge memos were issued on the very date of his retirement. In this



regard, the petitioner had filed three separate writ petitions. The writ petition arising out of the charge memo issued on the date of his retirement was registered as CWJC No. 16576 of 2017 (Ganesh Prasad Yadav vs. State of Bihar & Ors.), which was decided on 03.08.2021 by a Coordinate Bench of this Court. The remaining two writ petitions are the present writ petitions, namely CWJC No. 5541 of 2022 and CWJC No. 2398 of 2022.

6. Learned counsel for the petitioner further submits that since there is absolutely no finding of grave misconduct nor any finding regarding pecuniary loss caused to the Government, the order passed under Rule 43(b) of the Bihar Pension Rules, 1950 is wholly illegal, arbitrary, and unsustainable in law and is, therefore, fit to be set aside.

7. Learned counsel for the State, on the other hand, submits that the writ petition is fit to be dismissed on the ground that the charge memo was issued strictly in accordance with law. He submits that although the enquiry officer did not find any lacuna against the petitioner in the enquiry report, under the CCA Rules, 2005, it is well within the power of the disciplinary authority to disagree with the findings of the enquiry report, issue a second show cause notice, and thereafter pass an order after granting due opportunity to the delinquent officer. It is



further submitted that the disciplinary authority, having disagreed with the findings of the enquiry report, issued a second show cause notice and, after considering the reply submitted by the petitioner, passed the final order. Since the petitioner had retired by that time, the order was passed under Rule 43(b) of the Bihar Pension Rules, 1950. Learned counsel specifically submits that there is no procedural or legal infirmity in the said proceeding and, therefore, the writ petitions are liable to be dismissed.

8. Since the petitioner in both the aforementioned writ petitions is the same person and the hearing in both the writ petitions has been conducted jointly, this Court shall record its conclusions in a common judgment at the appropriate stage.

9. With regard to CWJC No. 2398 of 2022, learned counsel for the petitioner submits that the charge memo was issued against the petitioner on 31.01.2014, i.e., the date of his retirement, containing four allegations. Upon conclusion of the enquiry, out of the four charges, two were found not proved and one charge was found proved. Thereafter, the matter was referred to the disciplinary authority. Since the petitioner had already retired by then, the proceeding was converted into one under Rule 43(b) of the Bihar Pension Rules, 1950. A second



show cause notice was issued and, after receipt of the reply thereto, the final order was passed.

10. Learned counsel for the petitioner has raised the same contention that in the order passed by the disciplinary authority, as contained in Memo No. 900 dated 21.08.2018, there is only a cursory and one-line consideration of the reply submitted by the petitioner to the second show cause notice, stating merely that upon analysis, the reply was not found acceptable. Learned counsel submits that such a mechanical consideration is wholly unsustainable in law, inasmuch as not a single point raised in the reply to the second show cause notice has been discussed or dealt with by the disciplinary authority. He further submits that there is neither any finding of grave misconduct nor any allegation or finding of pecuniary loss caused to the Government. According to learned counsel, the sole allegation against the petitioner is that he failed to properly supervise the work and that the funds for the work were released to the local Mukhiya by the competent authorities.

11. Learned counsel further submits that the petitioner was neither the releasing authority nor the checking authority, nor was he a member of any supervisory committee in respect of the work executed by the Mukhiya. It is contended that in the



absence of any misconduct on the part of the petitioner or any pecuniary loss caused by him to the Government, the provisions of Rule 43(b) of the Bihar Pension Rules, 1950 are not attracted and, therefore, the impugned order is liable to be set aside.

12. Learned counsel for the State, on the other hand, submits that the petitioner being a Government servant, his service conditions are governed by the CCA Rules, 2005. It is submitted that the charge memo was duly issued and a departmental enquiry was conducted, in which out of the four charges, one charge was found proved and one was found partially proved. Thereafter, the disciplinary authority, after issuance of a second show cause notice and consideration of the petitioner's reply, passed the final order strictly in accordance with law.

Re. CWJC No. 5541 of 2022 and CWJC No. 2398 of 2022

13. After hearing learned counsel for the parties and upon perusal of the materials on record, this Court finds that two aspects arise for consideration in the present matters. The first is whether the orders passed by the disciplinary authority in both the cases are sustainable in law, particularly in view of the specific pleadings and contentions raised by the petitioner in



both the writ petitions.

14. The specific contention of learned counsel for the petitioner in both the cases is that the replies submitted by the petitioner to the second show cause notices were not considered at all and that the disciplinary authority merely recorded a one-line observation stating that upon consideration of the replies to the second show cause notices, the same were not found acceptable. Such an observation cannot be countenanced by a judicial forum, for the reason that every judicial or quasi-judicial order must be supported by reasons. An order bereft of reasons is no order in the eye of law. A disciplinary proceeding being quasi-judicial in nature, it is incumbent upon the disciplinary authority to record reasons and to indicate as to why the explanation or reply submitted by the delinquent officer has been rejected.

15. In addition thereto, this Court is of the considered view that for initiation and culmination of proceedings under Rule 43(b) of the Bihar Pension Rules, 1950, two essential ingredients must be satisfied, namely: (i) the pensioner must be found guilty of grave misconduct; or (ii) he must be found to have caused pecuniary loss to the Government by misconduct or negligence. In this regard, a Coordinate Bench of this Court, in



the case of *Ganesh Prasad Yadav vs. State of Bihar & Ors.*, decided on 03.08.2021, after considering a catena of decisions of the Hon'ble Supreme Court of India, has held as under:

“20. What amounts to misconduct, has been lucidly explained by the Supreme Court in case of **Union of India v. J Ahmed** reported in (1979) 2 SCC 286. Paragraph 11 of which reads as under:-

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster* [17 QB 536, 542]). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)* [(1959) 1 WLR 698]]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur* [61 Bom LR 1596], and *Satubha K. Vaghela v. Moosa Raza* [10 Guj LR 23]. The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik* [AIR 1966 SC 1051 : (1966) 2 SCR 434 : (1966) 1 LLJ 398 : 28 FJR 131] in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India* [(1967) 2 SCR 566 : AIR 1967 SC 1274 : (1967) 2 LLJ 249] the manner in which a member



of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta [AIR 1963 SC 1756 : (1964) 2 SCR 104 : (1963) 1 LLJ 679 : 24 FJR 464] wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see



Navinchandra Shakerchand Shah v. Manager, Ahmedabad Coop. Department Stores Ltd. [(1978) 19 Guj LR 108, 120]). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

(Emphasis supplied).

21. In case of State of Punjab v. Ex-Constable Ram Singh reported in (1992) 4 SCC 54, the Supreme Court had again the occasion of dealing with the term 'misconduct' and laid down in paragraphs 5 and 6 as under:-

"5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety mismanagement, offense, but not negligence or carelessness."

Misconduct in office has been defined as:

"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821 defines 'misconduct' thus:

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual



parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

(Emphasis supplied).

22. Similar view has been taken by the Supreme Court in its subsequent decision in case of **Zunjarrao Bhikaji Nagarkar v. Union of India and Others** reported in (1999) 7 SCC 409, relying on the Supreme Court's decision in case of **Ex Constable Ram Singh (supra)**.



23. In a subsequent decision in case of **Inspector Prem Chand v. Govt. of NCT of Delhi and Others** reported in (2007) 4 SCC 566, the Supreme Court held that an error of judgment per se is not a misconduct and a negligence simpliciter also would not be a misconduct.

24. It is culled out on the basis of the tentative notes of disagreement of the Disciplinary Authority itself read with the finding recorded by the Enquiring Authority that the calculation done by the petitioner of the amount of price neutralization was not found to be excessive because of the proper upkeep of the register but because the monthly rates were not obtained from Kudremukh Iron Ore Company Ltd.

25. Further, Mr. Shahi has rightly placed reliance on the Supreme Court's decision in case of Rajendra Yadav (supra). The Disciplinary Authority has not dealt at all with the finding recorded by the Enquiring Authority in this regard in his report and has thus admitted that no disciplinary action was initiated against others, who had also submitted the proposals in the same manner in which, the petitioner had done.

26. Situated thus, keeping in mind such findings of the Enquiring Authority in respect of which no disagreement had been recorded in the tentative notes of disagreement, as has been discussed hereinabove and the law on 'misconduct' as adjudged by the Supreme Court in its various judicial pronouncements noticed in this judgment, I am of the considered view that no case of grave misconduct has been made out against the petitioner, which is a prerequisite for action under Rule 43(b) of the Bihar Pension Rules in the absence of any pecuniary loss caused to the State; warranting punishment of withholding of pension. Resultantly, the impugned order requires interference. The impugned order dated 12.10.2017 issued vide letter no. 853 is hereby quashed, accordingly.

16. In light of the discussions made and the reasons assigned hereinabove for non-sustenance of the final orders impugned in both the writ petitions, and this Court being in full agreement with the ratio laid down by the Coordinate Bench in **Ganesh Prasad Yadav (supra)**, the impugned orders dated



02.05.2017 contained in Memo No. 303, issued by the Special Secretary, Public Health Engineering Department, Government of Bihar and order dated 21.08.2018 contained in Memo No. 900, passed by the Engineer-in-Chief-cum- Special Secretary, Public Health Engineering Department, Government of Bihar, are hereby set aside. The respondent authorities are directed to ensure payment of the entire admissible retiral dues of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

17. In the result, both the writ petitions stand allowed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	28/01/2026
Transmission Date	NA

