# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.8708 of 2022**

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Bhanu Sah Son of late Lalji Sah resident of Hardia Chowk, Ward No. 19, P.S.- Shikarpur, P.O.- Narkatiyaganj, District- West Champaran.

... ... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank through its Chairman, Head Office, Kalambagh Chowk, Muzaffarpur.
2. The Chief Manager, Retiral Benefit Department, Head Office, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
3. The Regional Manager, Uttar Bihar Gramin Bank, Regional Office, Bettiah.
4. The Branch Manager, Uttar Bihar Gramin Bank, Rampur Branch, West Champaran (Bettiah).

... ... Respondent/s

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with

**Civil Writ Jurisdiction Case No. 7973 of 2019**

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Bhanu Sah Son of late Lalji Sah Resident of Hardia Chowk, Ward No.19, P.S.-Shikarpur, P.O.-Narkatiyaganj, District-West Champaran

... ... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank through its Chairman, Head Office, Kalambagh Chowk, Muzaffarpur.
2. The Chairman/Appellate Authority, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
3. The General Manager/ Disciplinary Authority, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
4. The State of Bihar, Through the Additional Chief Secretary, Education Department, Bihar, Patna.
5. The District Education Officer, Motihari.
6. The Bihar Shiksha Pariyojna Parishad, Through its Project Director, Patna.

... ... Respondent/s

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**Appearance :**
(In Civil Writ Jurisdiction Case No. 8708 of 2022)
For the Petitioner/s : Mr. Prashant Sinha, Adv.
Mr. Satish Kumar Pandey, Adv.

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| For the Respondent/s | : | Mr. Prabhakar Jha, Adv.<br>Mr. Mukund Mohan Jha, Adv. |
| (In Civil Writ Jurisdiction Case No. 7973 of 2019) | | |
| For the Petitioner/s | : | Mr. Prashant Sinha, Adv.<br>Mr. Satish Kumar Pandey, Adv. |
| For the Respondent/s | : | Mr. Prabhakar Jha, Adv.<br>Mr. Mukund Mohan Jha, Adv. |
| For the State | : | Mr. Ajitesh Suman, AC to SC-13 |
| For the BSPP | : | Mr. Girijesh Kumar, Adv. |

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**
**ORAL JUDGMENT**

**Date : 11-08-2025**

Heard the parties.

2. At the relevant time, while the petitioner was holding the post of Branch Manager, Ghorasahan Branch, Uttar Bihar Gramin Bank, he was subjected to departmental proceeding, on the charges of, inter alia, issuing a manifold to the Motihari Branch for issuance of bankers cheque of Rs. 6,36,544/- in favour of Bank of India, without confirming about the earlier manifold and without obtaining payment advice, which was issued from the branch by him; and further with respect to a charge of issuing another manifold for an amount of Rs. 64,198/- on Muzaffarpur Branch of bank in favour of Bajaj Allianz General Insurance Company Limited, towards payment in respect of insurance premium without debiting the amount from the concerned loan account of the borrower with respect to insurance premium.

3. On being found the charges proved, the petitioner

was served with the consolidated punishment under order contained in letter no. 196 dated 17.08.2018 issued by the disciplinary authority, whereby the petitioner has been inflicted with the punishment of reduction of one increment and recovery of Rs. 6,36,544/-. The appeal preferred against the order of punishment also came to be rejected vide order dated 17.12.2018. Both the afore-noted orders were put to challenge in CWJC No. 7973 of 2017.

4. In the mean while, the petitioner attained the age of superannuation and thus, the respondent, Senior Manager, Uttar Bihar Gramin Bank, Head Office, Muzaffarpur came out with letter no. HO/TBC/14/21-22/830 dated 07.01.2022, whereby the payment of pension of the petitioner has been made subject to recovery of the amount of Rs. 6,36,544/-. It is this order which has been questioned by filing a subsequent writ petition bearing C.W.J.C. No. 8708 of 2022. In the aforesaid premise, both the writ petitions have been heard together and are being disposed off by this common order.

5. The facts are admitted to the extent, while the petitioner was the Branch Manager, Uttar Bihar Gramin Bank, Ghorasahan, on 06.11.2017 one memo of charge was issued alleging double payment of the amount of Rs. 6,36,544/-. The petitioner submitted his reply to the memo of charge denying

the allegation and explained the situation, under which he issued the duplicate manifold. On being dissatisfied with the explanation of the petitioner, the disciplinary authority resolved to initiate a departmental proceeding against the petitioner and appointed Conducting Officer and Presenting Officer to conduct the enquiry and submit a report.

6. Subsequently thereto, on 26.12.2017 one another memo of charge was issued alleging the bank has been put to financial loss of Rs. 64,198/- on account of irresponsible behaviour of the petitioner, as he failed to debit the amount of Rs. 64,198/- in the concerned loan account of the borrowers with respect to amount of insurance premium. The petitioner submitted his reply to the supplementary memo of charge, however, that was also rejected and after appointment of Enquiry Officer and Presenting Officer, the petitioner was asked to submit his defence statement before the Enquiry Officer. The defence statement with respect to both the charges were submitted. After enquiry, the Conducting Officer returned the finding adversial to the petitioner, on being found both the charges proved. The second show cause notice alongwith the enquiry report of the Conducting Officer was served upon the petitioner, which was duly replied by filing a detailed

explanation. The disciplinary authority finally passed the impugned order of punishment vide letter No. HO/DAD/11/18-19/NO 196 dated 17.08.2018 and the same was communicated vide letter No. HO/DAD/11/1819/NO 197 dated 17.08.2018. The appeal preferred by the petitioner also did not find any favour and finally came to be rejected vide order dated 17.12.2018 by the Appellate Authority.

7. Mr. Prashant Kumar Sinha, learned Advocate for the petitioner urged before this Court that knowing very well the scope of judicial review while exercising the writ jurisdiction under Article 226 of the Constitution of India, that the Court is only concerned with the decision making process and not the decision. Albeit, it is the case where without having any materials available on record, as also without any loss having been caused to the bank; and in fact, on account of a mistake on the part of some other persons and branch, the petitioner has been inflicted with the punishment at the very evening of his career, jeopardizing his reputation and causing huge financial loss while extending the benefit of pension.

8. Taking this Court through the materials available on record, it is submitted that at the relevant time in Ghorasahan Block, various schools were maintaining their account with the

Ghorasahan Branch. On 14.03.2011, the schools issued some cheques in favour of Bihar Shiksha Pariyojna, Motihari, which was having an account in the Bank of India, Motihari. Upon receiving clearing request, the petitioner issued one manifold bearing no. 120015 for a sum of Rs. 6,36,544/- to the Motihari Branch of the bank, which was the Nodal Branch of the district. Instead of issuing a bankers cheque for an amount of Rs. 6,36,544/- to Ghorasahan Branch, the Motihari Branch of the bank directly issued cheque of Rs. 25,72,966/-in favour of the Bank of India, Motihari Branch, which also included the amount of Rs. 6,36,544/-, however, this fact was not intimated to Ghorasahan Branch. The petitioner enquired from the Motihari Branch about the manifold and on being intimated that it is not traceable, the petitioner issued a duplicate manifold and sent it to the Motihari Branch with a clear forwarding letter that upon enquiry made from the Motihari Branch, it has come to his notice that manifold is not traceable, therefore, a duplicate manifold is being issued. The Motihari branch on such request, issued a bankers cheque of Rs. 6,36,544/- in favour of Bank of India and accordingly, the amount was credited in the account of Bihar Shiksha Pariyojna. The entire facts have been brought to the knowledge of the enquiry officer as also the disciplinary authority.

9. The petitioner also produced letter no. 121 dated 12.01.2017 of the Motihari Branch written to the District Education Project Officer, Bihar Education Project in which it was admitted by the Motihari Branch that amount of Rs. 25,72,966/- was paid through cheque no. 254476 dated 21.03.2011 in favour of Bank of India, wherein the amount of manifold of Rs. 6,36,544/- was also included, but the same could not be intimated to Ghorasahan Branch and on account of non-communication, when the school started putting pressure, the Ghorasahan Branch issued duplicate manifold, but ignoring the fault of Motihari Branch, the Enquiry Officer proved the charges.

10. Similarly, with respect to second charges, the petitioner categorically stated that the amount of premium was debited from the account of the borrower manually, but at the time of conversion in the computerized system, it could not be entered in the system and in fact, no loss was caused to the bank. Notwithstanding the aforesaid facts, the petitioner on protest, deposited the amount of Rs. 64,198/- on the assumptions that the matter could be set at rest.

11. Mr. Prashant Sinha, narrating the aforesaid facts

further contended that with regard to an occurrence which took place in the year 2011, the memo of charge as well as supplementary memo of charge have been issued after 6 years in the month of November, 2017. The petitioner was never at fault with regard to the charges as discussed hereinabove. Firstly, the Motihari Branch included the amount of manifold issued by the petitioner with cheque amount of Rs. 25,72,966/-, secondly did not intimate the Ghorasahan Branch that the amount has been included with Rs. 25,72,966/- and further when the petitioner enquired about the manifold, he was intimated that it is not traceable and finally when the petitioner issued duplicate manifold, Motihari Branch paid the amount of Rs. 6,36,544/- without tracing the previous manifold. The fact is admitted in the letter issued by the Motihari Branch that they could not communicate to Ghorasahan Branch about the aforesaid facts. Moreover, the Enquiry Officer has proved an altogether different charge, than mentioned in the memo of charge.

12. It is specifically submitted that in the memo of charge, the allegation of issuance of duplicate manifold without getting confirmation and non-payment advice, but the Enquiry Officer has proved the charge that due to confusing letter of the petitioner, the cheque was issued again. He further submits the

supplementary memo of charge has also been wrongly proved by the Enquiry Officer, without considering the explanation of the petitioner that the conversion from Manual System to the Core Banking System was made at Motihari by Regional Office, Motihari through outsourcing agency and the petitioner had no control over it; and furthermore, the amount has also been deposited by the petitioner.

13. Making a lengthy submission as noted hereinabove, he finally concluded that the enquiry report is *per se* perverse as it has been issued without consideration of the explanation submitted by the petitioner. The disciplinary authority also failed to appreciate that at no point of time, any loss has been caused to the bank and the explanation to the second show cause was turned down without making appreciation of the true facts; the Appellate Authority has committed the identical mistake.

14. Refuting the aforesaid contention, Mr. Prabhakar Jha, learned Advocate for the bank submitted that the amount of Rs. 6,36,544/- was remitted twice to the concerned Education Department due to issuance of manifolds, twice by the petitioner without verification, which caused financial loss to the bank and thus, on being found the petitioner *prima facie* guilty of

misconduct, memo of charge has been issued by the respondent bank. It was the responsibility of the petitioner to enquire the whereabouts of the cheques so issued by Motihari Branch, but the petitioner did not produce any evidence to testify his deposition that the cheque so issued was lost by Motihari Branch. The petitioner neither issued any letter from Motihari Branch as defence evidence nor produced any witness from the Motihari Branch to testify his deposition that the cheque was lost.

15. It is further submitted that the contention of the petitioner that he was not informed about the issuance of cheque to Bank of India in respect of original manifold bearing no. 120015 dated 14.03.2011 and his presumption about lost cheque is not tenable, because he should have taken non-payment advice from Motihari Branch prior to the issue of duplicate manifold, because he was the originator for the said instrument and in case of any loss, it was to be borne by Ghorasahan Branch, but the petitioner did not ensure any non-payment advice from Motihari Branch and subsequently issued a duplicate manifold, based upon which payment has been made twice.

16. So far the second charge is concerned, it is

submitted that admittedly transaction of such manifold was not accounted in the system. Even though said amount has been deposited by the petitioner on 11.05.2018, even then he cannot escape from his responsibility being the Branch Manager. It was his responsibility to account for the entries in all 31 accounts in the system. It is submitted that the Enquiry Authority has found these charges as proved. The petitioner accepted his guilt, has also deposited the amount of Rs. 64,198/- and now he cannot turn around and challenge the same. Because of the misconduct committed on the part of the petitioner in not making entry of Rs. 64,198/-, it remained outstanding for the liquidation and thus, the petitioner has rightly been inflicted with the punishment.

17. The learned Advocate for the bank further submits that the Chairman of the respondent bank being the Appellate Authority, after careful consideration of the facts and gravity emerged in the enquiry proceeding did not interfere with the finding derived and the Appellate Authority also affirmed the order of punishment.

18. This Court has given anxious consideration to the submissions advanced by learned Advocate for the respective parties and perused the materials available on record. This Court

has reminded that "*judiciary is respected not on account of its power to legalize injustice on technical ground but because its capable of removing injustice and it is expected to do so*". The afore-noted proposition has been reinforced by the Apex Court in the case of ***State of Karnataka vs. Kuppuswamy Gownder, AIR 1987 SC 1353***.

19. In tune with the principles, noted herein-above, to meet the ends of justice, this Court vide order dated 14.11.2024 has directed the petitioner to make Bihar Education Project Council as a party respondent and accordingly, on notice Mr. Girijesh Kumar, learned Advocate for the Bihar Education Project Council ensured his appearance and further filed a counter affidavit. It is fairly contended that the Bihar Education Project Council vide letter no. 1004 dated 05.03.2025 has requested the Branch Manager of the State Bank of India, Motihari to deduct the amount of Rs. 6,36,544/- from the account in the name of Bihar Education Project, which amount is said to have been deposited twice by the Nodal Branch of the Uttar Bihar Gramin Bank of District East Champaran at Motihari. However, he submits that the incident of double payment, if so, has occurred, due to gross negligence of the petitioner and his Nodal Branch at Motihari and the Bihar

Education Project is no where at fault.

20. The Hon'ble Supreme Court while defining the scope of judicial review in case of ***Kuldeep Singh vs. Commissioner of Police, 1999 (2) SCC 10*** has observed that:

> *"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.*
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> *7. In Nand Kishore Prasad v. State of Bihar [(1978) 3 SCC 366 : 1978 SCC (L&S) 458 : AIR 1978 SC 1277 : (1978) 3 SCR 708] it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial*

*character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.*

*8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao [(1964) 2 LLJ 150 : AIR 1963 SC 1723 : (1964) 3 SCR 25] in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Ltd. v. Prakash Chand Jain [(1969) 2 LLJ 377 : AIR 1969 SC 983] and Bharat Iron Works v. Bhagubhai Balubhai Patel [(1976) 1*

> *SCC 518 : 1976 SCC (L&S) 92 : 1976 Lab IC 4 : AIR 1976 SC 98 : (1976) 2 SCR 280] . In Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805 : (1985) 1 SCR 866] it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated."*

True it is that the Court while exercising the power of judicial review, cannot sit in appeal over those findings and assumes the role of Appellate Authority, but this does not mean that in no circumstances the Court can interfere. Power of judicial review available to the High Court under the Constitution takes in its stride even the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings were such as could not have been reached by a prudent man or the findings were perverse, or made at the dictates of superior authority.

21. The Apex Court in ***Union of India vs. P. Gunasekaran, 2015 (2) SCC 610*** has painstakingly classified situations, where the Court is precluded from enquiry while exercising the power under Article 226/227 of the Constitution of India in a departmental proceeding, however, it is made clear that the High Court can only see whether :-

> "*(a) the enquiry is held by a competent authority;*
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
> *(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
> *(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
> *(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
> *(i) the finding of fact is based on no evidence.*"

22. Now coming to the case in hand before

highlighting the infirmities in the process which led to the conclusion of guilt and consequent punishment, it would be pertinent to take into account as to whether the act committed by the petitioner was only a negligence or misconduct or an error in his decision.

23. In ***P. Ramanatha Aiyer's Law Lexicon, 1987*** edition defines 'misconduct' that it implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involved in 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 use of 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 unskillfullness, a transgression of some established, but indefinite rule of action, where some discretion is left to the actor.

24. In ***Union of India & Ors. vs. J. Ahmed, AIR 1979 SC 1022***, the Court held that it is a settled legal proposition that misconduct must necessarily be measured in terms of nature of

misconduct and the Court must examine as to whether misconduct has been detrimental to the public interest. Further in ***Inspector Prem Chand vs. Government of N.C.T. of Delhi, 2007 (4) SCC 566*** the Apex Court held that mere error of judgment resulting in doing of negligent act would not amount to misconduct. Various decision have been rendered on the definition of the term 'misconduct'. In ***M.M. Malhotra vs. Union of India & Ors., 2005 (8) SCC 351*** the Apex Court explained as under:-

> "*…….It has, therefore to be noted that the word 'misconduct' is not capable of precise definition. But at the same time though incapable of precise definition, the word 'misconduct' on reflection receives its connoration from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks to serve.*"

25. The facts are not in dispute that the petitioner has issued a duplicate manifold which led to crediting of the amount of Rs. 6,36,544/-, twice in the account of Bihar Shiksha Pariyojna; nevertheless, the Enquiry Officer has not taken note of the fact that Motihari Branch has accepted that the afore-

noted amount was included in the total amount of Rs. 25,72,966/-, but, it could not intimate the Ghorasahan Branch, where the petitioner was holding the post of Branch Manager and despite issuance of the duplicate manifold, when the petitioner enquired about the first manifold, it was told by the Motihari Branch that it was not traceable and in fact, it is this, which prod the petititioner to issue duplicate manifold. The Enquiry Officer has admitted the fact that if the Motihari Branch intimated the Ghorasahan Branch, the payment of Rs. 6,36,544/- at the second instance could have been stopped, but he came out with the finding that due to confusing letter of the petitioner, the cheque was issued again. However, this was not at all the imputation and the charge against the petitioner. Any punishment inflicted upon the petitioner directing for recovery of the aforesaid amount of Rs. 6,34,544/- and for the same requesting with the Bihar Education Project Council simultaneously would amount to unjust enrichment, on the part of the Bank.

26. This Court in such circumstances had directed the Bihar Education Project Council to file an affidavit, clarifying the position and accordingly admitting the fact of depositing the amount in question twice. They have requested the Branch

Manager to deduct the subject amount from the account of the Bihar Education Project Council and accordingly, it has been deducted from the bank account of Bihar Education Project Council on 06.03.2025; hence, admittedly no loss has been caused to the bank.

27. It would also be relevant to observe that so far the second charge is concerned, the same also cannot be said to be a misconduct *per se* as it is not the case that the amount of Rs. 64,198/- has not been debited, rather the fact is the amount of payment was debited from the account of the borrowers manually, but it could not be entered into system, which duty was assigned to the outsourcing agency. The petitioner can be said to be negligent while supervising the issue, but the petitioner cannot be said to have been guilty of misconduct, moreover, here also no loss has been caused to the bank, but despite the fact the petitioner has been compelled to deposit an amount of Rs. 64,198/-. It is to be noted vide ***Sher Bahadur vs. Union of India & Ors., 2002 (7) SCC 142*** that "*'sufficiency of evidence' postulates existence of some evidence which links with the charged officer with the misconduct alleged against him. Evidence, howsoever voluminous it may be which is neither relevant nor establishes nexus between the alleged misconduct*

*and the charged officer, is no evidence in law.* ".

28. In the opinion of this Court the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merit of the case and had erroneously failed to admit the admissible and material evidence and thereby influenced the finding. Thus this Court has no hesitation to hold that the finding of the Enquiry Officer is *per se* perverse and without consideration of the explanation submitted by the petitioner. Besides the finding of the Enquiry Officer is beyond the charges, levelled in the memo of charge. Once the Court has come to this conclusion, the order of punishment passed by the disciplinary authority based upon the enquiry report cannot be sustained, hence left with no option, the impugned order of punishment dated 17.08.2018 is hereby set aside. In view of the order of punishment having been set aside, the appellate order dated 17.12.2018 also goes.

29. The writ petition stands allowed.

30. The respondents are directed to ensure payment of all the consequential retiral benefits and other dues. The consequential order as contained in letter no. 22/830 dated 07.01.2022 is also hereby set aside.

31. The authorities are directed to ensure all the

benefits preferably within a period of 8 weeks from the date of receipt/production of a copy of this order.

**(Harish Kumar, J)**

supratim/-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 14.08.2025 |
| **Transmission Date** | NA |