

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1015 of 2024**

**In**  
**Civil Writ Jurisdiction Case No.9533 of 2023**

- 
- 
1. The State of Bihar through the Additional Chief Secretary, Excise and Prohibition Department, Bihar, Patna.
  2. The Secretary, Excise and Prohibition Department, Bihar, Patna.
  3. The Commissioner, Excise and Prohibition Department, Bihar, Patna.
  4. The Joint Commissioner, Excise and Prohibition, Bihar, Patna -cum-Enquiry Officer.
  5. The Deputy Commissioner, Excise and Prohibition, Bihar, Patna.
  6. The Secretary to the Commissioner, Excise and Prohibition Department, Bihar, Patna.
  7. The Superintendent of Excise and Prohibition, Madhepura.
  8. The Superintendent of Excise and Prohibition, Banka.
  9. The Section Officer, 8B, Excise and Prohibition, Bihar, Patna -cum-Enquiry Officer.

... .. Appellant/s

Versus

Radhey Krishna Singh, Son of Late Lal Bihari Singh Resident of Village-Dhawapar, P.S.- Parasbigaha, District- Jehanabad.

... .. Respondent/s

---

---

**Appearance :**

For the Appellant/s : Mr. Kumar Pankaj, AC to SC 5

For the Respondent/s : Mr. Indu Bhushan, Advocate

---

---

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

**Date : 16-04-2025**

**Re.: I.A. No. 2 of 2025**

The learned Advocate for the appellants presses  
the afore-noted interlocutory application for condoning the



delay of 47 days in preferring this appeal.

2. For the reasons stated in the application, the delay of 47 days in preferring this appeal is condoned.

3. I.A. No. 2 of 2025 stands allowed.

**Re.: LPA No. 1015 of 2024**

4. Heard Mr. Kumar Pankaj, the learned Advocate for the appellants/State and Mr. Indu Bhushan, the learned Advocate for the respondent/delinquent.

5. The respondent was put to a trap and was arrested while taking bribe of Rs. 5,000/-. A criminal case was instituted against him. Shortly later, a departmental proceeding also was initiated against him. In the departmental proceeding, the respondent was dismissed from service, which order but could not be sustained. The challenge to the order of dismissal succeeded.

6. By judgment dated 16.12.2021 passed in CWJC No. 10704 of 2015, the dismissal order was set aside and the respondent was directed to furnish a detailed explanation to the notices sent to him, whereafter the Disciplinary Authority was directed to pass a fresh order in the departmental proceeding, in accordance with the *Bihar*



*Government Servants (Classification, Control & Appeal) Rules, 2005.*

7. By this time, the respondent had superannuated from service in the year 2017.

8. Pursuant to the orders passed by this Court, referred to above, the proceeding was converted into Rule 43(b) of the Bihar Pension Rules, 1950 (for brevity 'Pension Rules'), notwithstanding the caveats for initiating such proceeding, one of which prescribes that the offence in question should not have been committed beyond four years to be counted from the date of retirement.

9. The offence in this case had been committed sometimes in the year 2004.

10. Nonetheless, in obedience to the judgment passed by this Court, the proceedings continued, wherein the Disciplinary Authority did not find any reason to saddle the respondent with any punishment.

11. However, while concluding, the Disciplinary Authority took a decision under Rule 139 of the Pension Rules of deducting 10% to the pension of the respondent and further directed that nothing shall be payable to the



respondent from the date of his dismissal in 2014 till the time he retired in 2017.

12. This was not approved of by the learned Single Judge, who vide his impugned judgment dated 11.07.2024 passed in C.W.J.C. No. 9533 of 2023, set aside the order and directed for the release of the entire pensionary and other consequential benefits to the respondent.

13. The argument on behalf of the State is that even though the order was passed by the Disciplinary Authority by invoking the provision under Rule 139 of the Pension Rules, it should actually be read as an order passed under Rule 43(c) of the Pension Rules.

14. With the setting aside of the order of termination passed in 2014, the respondent had to be reinstated in service; put under suspension and the proceeding had to be continued under Rule 43(b) of the Pension Rules.

15. If the Disciplinary Authority, in the second instance, did not find any reason to saddle the respondent with any punishment, the matter was over and the Disciplinary Authority was not within his rights to invoke



Rule 139 of the Pension Rules to withhold 10% of the pension of the writ-petitioner.

16. The provisions contained in Rule 139 of the Pension Rules specifies that for passing any order under the said Rule, the pensioner concerned would be required to be given a reasonable opportunity of showing cause against the action proposed to be taken with regard to his pension. The respondent had only been responding to the charges in the disciplinary proceeding, which was continued even after his retirement, by virtue to the order passed by this Court.

17. The peroration of the order of the Disciplinary Authority indicates that because a criminal case stood pending against the respondent, so in all fitness of things, 10% of his pension be deducted and he be not paid anything from the date of his dismissal order in 2014 till the date of his superannuation in 2017, notwithstanding the fact that the termination order had already been set aside by this court earlier, as referred to above.

18. This is not permissible.

19. In that view of the matter, we uphold the judgment impugned by which the respondents/appellants



have been directed to release the entire pensionary benefit and other consequential benefits to the petitioner/respondent as admissible under the law.

20. The appeal is dismissed.

21. However, it would be open for the appellants to take a decision afresh under Rule 139 of the Bihar Pension Rules, but only after giving reasonable opportunity to the respondent to respond to the charges.

22. Interlocutory application, if any, shall also stand closed.

**(Ashutosh Kumar, ACJ)**

**(Partha Sarthy, J)**

Manoj/Sujit-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 17.04.2025 |
| Transmission Date | NA         |

