

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1734 of 2023

Dr Binod Singh @ Binod Singh Son of Late Jagdish Singh, Resident of Mohalla- Ashok Nagar, Road No. 11, Flat No. 304, Raj Ram Mohan Roy Apartment, P.S. Kankarbagh, P.O. Lohia Nagar, District and Town- Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar represented through the Additional Chief Secretary, Health Department, Government of Bihar, Patna.
2. The Joint Secretary, Health Department, Government of Bihar, Patna.
3. The Under Secretary, Health Department, Government of Bihar, Patna.
4. The Indigenous Medicine, Government of Bihar, Patna.
5. The Deputy Director (Homeopath), Indigenous Medicine, Government of Bihar, Patna.
6. The Bihar State Homeopathic Board, Kadamkuan, Patna through its Registrar, the President, Bihar State Homeopathic Board, Kadamkuan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Mrigank Mauli, Sr Advocate with M/s Radha Mohan Singh, Navin Kr Singh, Advocates
For the Respondent/s	:	Mr Mujtabaul Haque, GP XII with Mr Manish Kr, AC to GP XII

CORAM: HONOURABLE MR JUSTICE RITESH KUMAR

ORAL JUDGMENT

Date : 11-02-2026

Heard the parties.

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

“a To quash and set aside (Annexure P/20) the rejection of appeal order dated the 17th May 2016 (Memo No 576) [received by the petitioner in the month of November of 2022 from the office] issued under the signature of the Under Secretary of the



Health Department, Government of Bihar, Patna whereby and whereunder the appeal dated 7 August, 2013 (Annexure P/14) was rejected in compliance of the order dated 27 August, 2014 (Annexure P/17) passed in CWJC No 12677 of 2014 filed by the petitioner under a non-reasoned and cryptic order.

b To quash and set aside Annexure P/12 i e the order of punishment dated 20th May 2013 (Notification No 482) whereby and where under a punishment of censure as also withholding of five annual increment with cumulative effect (major penalty) was imposed upon the petitioner contrary to the mandate of law.

c To direct for refund of the deducted annual increment (s) as a consequence of setting aside of the punishment order with interest.

d To declare that the enquiry report dated 21st May 2012 (Annexure P/9) is in accordance with law which proved that no misconduct was committed by the petitioner.

e Any other relief or reliefs which the petitioner be found entitled with the facts and circumstances of the case.

f Cost of this litigation.

g Compensation for mental agony and losses sustained by this petitioner.”

3 At the outset, learned Senior Counsel for the petitioner submits that while the petitioner was working as Government Homeopathic doctor, he was assigned the additional charge of Registrar of the Bihar State Homeopathic Board (for brevity, ***the Board***) by an order contained in Memo No 751 dated 16.07.2008 issued by the Health Department, Government of



Bihar, Patna. While he was working on the said post, in February 2011 a complaint was filed by one Dr Prashant Banerjee of Kolkata on 18.02.2011 and 21.02.2011, upon which an inspection with respect to the affairs of the Board was carried out by the Deputy Director (Homeopath), Indigenous Medicine Directorate, Bihar, Patna who submitted his ex parte report dated 24.02.2011 contained in Memo No 43. Based on the above mentioned report, a show cause notice was issued vide Memo No 254 dated 24.03.2011 under the signature of the Joint Secretary, Department of Health, Government of Bihar, Patna on ten charges mentioned therein. The petitioner submitted his show cause reply on 06.04.2011 by denying each and every charge and gave reason for his denial.

4 It has further been submitted by the learned Senior counsel for the petitioner that in the meantime, the petitioner was put under suspension by an order dated 11.10.2011 issued by the Special Secretary to the Government, Department of Health, Bihar, Patna. The petitioner, being aggrieved with the order of suspension filed CWJC No 18745 of 2011, but during pendency of the writ petition, charge sheet was issued on 05.12.2011 wherein four charges were levelled against the petitioner. Upon issuance of the charge sheet, the petitioner preferred to withdraw the writ



petition filed by him and vide order dated 05.12.2011, CWJC No 18745 of 2011 was permitted to be withdrawn. The petitioner appeared before the Enquiry Officer and filed his comprehensive written statement of defence on 17.01.2012, wherein he provided explanation for each and every charge and requested the Enquiry Officer to exonerate him from the charges levelled against him. The Enquiry Officer proceeded with the enquiry, wherein the petitioner fully cooperated and after thorough enquiry, the Enquiry Officer submitted her report on 21.05.2012 whereby she found the charges to be not proved against the petitioner.

5 The learned Senior Counsel for the petitioner further submits that the Disciplinary Authority, vide letter dated 26.09.2012 asked clarification from the petitioner with regard to certain facts mentioned in the enquiry report dated 21.05.2012. It has further been submitted that the Disciplinary Authority, instead of asking for clarification from the Enquiry Officer, asked the same from the petitioner and without disagreeing from the enquiry report, submitted by the Enquiry Officer, directed the petitioner to clarify on the same and to submit his show cause within 15 days. In compliance thereof, the petitioner submitted his show cause reply on 09.10.2012 wherein he gave his clarification/explanation to all the three points raised in the letter dated 26.09.2012.



6 The learned Senior Counsel for the petitioner submits that by the impugned order contained in Memo No 16/M 1-38/2011-482 dated 20.05.2013 issued under the signature of the Joint Secretary to the Government, Department of Health, Government of Bihar, Patna, without considering the explanation/clarification submitted by the petitioner, he came to the conclusion that the Enquiry Officer has found the charges to be proved, although in the enquiry report submitted on 21.05.2012, the Enquiry Officer found the charges to be not proved, proceeded to award punishment of censure as well as major penalty of withholding of five annual increment with cumulative effect and further revoked the suspension of the petitioner with immediate effect and directed the petitioner to give his joining in the Department. The petitioner filed his appeal before the Hon'ble Chief Minister, Bihar against the order of punishment dated 20.05.2013. The petitioner further filed a writ petition bearing CWJC No 8241 of 2013 against continuance of his suspension, but since in the meantime, final order was passed, therefore vide order dated 19.11.2013, the writ petition was dismissed as withdrawn.

7 The learned Senior Counsel for the petitioner further submits that vide letter dated 05.02.2014 issued under the



signature of the Under Secretary to the Government, Department of Health, Government of Bihar, the appeal preferred by the petitioner was rejected on the ground that the same has been filed beyond the period of 45 days. Being aggrieved with the order dated 05.02.2014, the petitioner again preferred a writ petition which was numbered as CWJC No 12677 of 2014 and vide order dated 27.08.2014, the said writ petition was disposed of by remitting the matter back to the Appellate Authority to register the appeal of the petitioner and consider the same on merits and pass appropriate orders in accordance with law. The appeal preferred by the petitioner was taken up by the Under Secretary to the Government, Department of Health, Government of Bihar, Patna and without considering the points raised by the petitioner in his Memo of Appeal, the Appellate Authority proceeded to reject the appeal preferred by the petitioner without any justifiable basis and without application of his mind.

8 The learned Senior Counsel for the petitioner submits that the impugned orders are non-speaking and non-reasoned since no discussion has been made in the impugned orders with regard to the defence submitted by the petitioner. The Disciplinary Authority, without considering the fact that the Enquiry Officer, in her enquiry report, clearly found the charges not to be proved



against the petitioner, without application of mind, recorded that the Enquiry Officer found the charges to be proved and on the basis of the same proceeded to pass punishment order against the petitioner. The learned Senior Counsel for the petitioner further submits that since the impugned order and the appellate order also speaks about the issues, beyond the Memo of Charge and the same were taken into consideration, while passing the punishment order, which itself vitiates the punishment order. The Disciplinary Authority further ignored the fact that the Enquiry Officer, after enquiry, held the charges as not proved and instead of disagreeing with the enquiry report, through show cause asked only some clarification and without considering the same and while altering the charges, which is impermissible in law, proceeded to pass the punishment order.

9 The learned Senior Counsel for the petitioner further submits that so far Jamuna Ram is concerned, it was the petitioner who had suspended him on 29.03.2011 after his arrest in connection with the vigilance case and his joining was accepted after release on bail, under the existing Rules, but his nature of assignment was changed and in fact later on Jamuna Ram was again put under suspension by the petitioner on 08.08.2011 and it was the petitioner who gave sanction for launching prosecution



against him in both the cases on 20.04.2011 and 25.08.2011 respectively. The learned Senior Counsel for the petitioner further submits that it was obligatory on the part of the Disciplinary Authority to issue show cause notice to the petitioner when he was altering the charges after submission of the enquiry report and further the so-called second show cause notice was not in accordance with law since no explanation was sought for from the petitioner rather a clarification was asked for from the petitioner. Even none of the authorities, i.e. the Disciplinary Authority and the Appellate Authority considered the point wise reply submitted by the petitioner and no reason was given by the Disciplinary Authority in the punishment order.

10 The learned Senior Counsel for the petitioner relies on a judgment of the Hon'ble Supreme Court of India in the case of *Anant R Kulkarni -Versus- Y P Education Society* reported in (2013) 6 Supreme Court Cases 515, wherein in Paragraphs No 18 to 24, the Hon'ble Supreme Court of India has held as follows:

18. This Court in Noida Entrepreneurs Assn. v NOIDA [(2011) 6 SCC 508 : (2011) 2 SCC (Cri) 1015 : (2011) 2 SCC (Cri) 1015 : (2011) 2 SCC (L&S) 717 : AIR 2011 SC 2112], examined the issue, and held that the competence of an authority to hold an enquiry against an employee who has retired, depends upon the statutory rules which govern the terms and conditions of his service, and while deciding the said case, reliance was placed on various earlier judgments of this Court including B.J. Shelat v. State



of Gujarat [(1978) 2 SCC 202 : 1978 SCC (L&S) 208 : AIR 1978 SC 1109], Ramesh Chandra Sharma v. Punjab National Bank [(2007) 9 SCC 15 : (2008) 1 SCC (L&S) 337] and UCO Bank v Rajinder Lal Capoor [(2008) 5 SCC 257 : (2008) 2 SCC (L&S) 263 : AIR 2008 SC 1831].

19. In State of Assam v Padma Ram Borah [AIR 1965 SC 473], a Constitution Bench of this Court held that it is not possible for the employer to continue with the enquiry after the delinquent employee stands retired. The Court observed : (AIR p 475, para 7)

“7. ... According to the earlier order of the State Government itself, the service of the respondent had come to an end on 31-3-1961. The State Government could not by unilateral action create a fresh contract of service to take effect from 1-4-1961. If the State Government wished to continue the service of the respondent for a further period, the State Government should have issued a notification before 31-3-1961.”

While deciding the said issue, the Court placed reliance on the judgment in R T Rangachari v Secy of State for India in Council [(1936-37) 64 IA 40 : (1937) 45 LW 139 : AIR 1937 PC 27].

20. In State of Punjab v. Khemi Ram [(1969) 3 SCC 28 : AIR 1970 SC 214], this Court observed : (SCC p 32, para 12)

“12. There can be no doubt that if disciplinary action is sought to be taken against a government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the public servant concerned to retire and retain him in service till such enquiry is completed and a final order is passed therein.”



21. In Kirti Bhusan Singh v State of Bihar [(1986) 3 SCC 675 : 1986 SCC (L&S) 703 : AIR 1986 SC 2116], this Court held as under : (SCC pp 678-79, para 6)

“6. ... We are of the view that in the absence of such a provision which entitled the State Government to revoke an order of retirement ... which had become effective and final, the order ... passed by the State Government revoking the order of retirement should be held as having been passed without the authority of law and is liable to be set aside. It, therefore, follows that the order of dismissal passed thereafter was also a nullity.”

22. In Bhagirathi Jena v Board of Directors, OSFC [(1999) 3 SCC 666 : 1999 SCC (L&S) 804 : AIR 1999 SC 1841] this Court observed : (SCC pp 668-69, para 7)

“7. ... There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

23. In UP State Sugar Corpn Ltd v Kamal Swaroop Tondon [(2008) 2 SCC 41 : (2008) 1 SCC (L&S) 352], this Court dealt with a case wherein statutory corporation had initiated proceedings for recovery of the financial loss from an employee after his retirement from service. This Court approved such a course observing that in the case of retirement, master and servant relationship continue for grant of retiral benefits. The proceedings for recovery of



financial loss from an employee is permissible even after his retirement and the same can also be recovered from the retriial benefits of the said employee.

24. Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed.

11 The learned Senior counsel for the petitioner further relies on a judgment of the Hon'ble Supreme Court of India in the case of *United Bank of India -Versus- Biswanath Bhattacharjee* reported in (2022) 13 Supreme Court Cases 329 wherein in Paragraphs No 17 to 19 and 21, the Hon'ble Supreme Court of India, has held as under:

“17. In one of the earliest decisions of Union of India v H C Goel [1963 SCC OnLine SC 16 : (1964) 4 SCR 718 : AIR 1964 SC 364] relating to departmental proceedings, this Court observed that where a public servant is punished for misconduct after a departmental enquiry is conducted, a clear case where interference under Article 226 of the Constitution is warranted is when there is no evidence to establish the official's guilt : (AIR pp 369-70, paras 22-23)

“22. ... The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said



infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned



conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."

18. Apart from cases of "no evidence", this Court has also indicated that judicial review can be resorted to. However, the scope of judicial review in such cases is limited [TNCS Corpn Ltd v K Meerabai, (2006) 2 SCC 255 : 2006 SCC (L&S) 265]. In B C Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80] a three-Judge Bench of this Court ruled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority; it does not reappreciate the evidence. The Court held that : (B.C. Chaturvedi case [(1995) 6 SCC 749 : 1996 SCC (L&S) 80], SCC pp 759-60, paras 12-13)

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.



When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H C Goel [1963 SCC OnLine SC 16 : (1964) 4 SCR 718 : AIR 1964 SC 364], this Court held at p 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

19. Other decisions have ruled that being a proceeding before a domestic tribunal, strict rules of evidence, or adherence to the provisions of the Evidence Act, 1872 are inessential. However, the procedure has to be fair and reasonable, and the charged employee has to be given reasonable opportunity to defend himself (ref : Bank of India v Degala Suryanarayana [(1999) 5 SCC 762 : 1999



SCC (L&S) 1036] a decision followed later in Punjab & Sind Bank v. Daya Singh [(2010) 11 SCC 233 : (2010) 2 SCC (L&S) 758]). In Moni Shankar v. Union of India [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court outlined what judicial review entails in respect of orders made by the disciplinary authorities : (Moni Shankar case [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819], SCC p 492, para 17)

“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere.”

21. The Bank is correct, when it contends that an appellate review of the materials and findings cannot ordinarily be undertaken, in proceedings under Article 226 of the Constitution. Yet, from H.C. Goel [Union of India v. H.C. Goel, 1963 SCC OnLine SC 16 : (1964) 4 SCR 718 : AIR 1964 SC 364] onwards, this Court has consistently ruled that where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are mala fide, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies



under Article 226 of the Constitution are available, and intervention, warranted. For any court to ascertain if any findings were beyond the record (i.e. no evidence) or based on any irrelevant or extraneous factors, or by ignoring material evidence, necessarily some amount of scrutiny is necessary. A finding of “no evidence” or perversity, cannot be rendered sans such basic scrutiny of the materials, and the findings of the disciplinary authority. However, the margin of appreciation of the court under Article 226 of the Constitution would be different; it is not the appellate in character.”

12 The learned Senior Counsel for the petitioner further places reliance on a Division Bench judgment of this Court dated 09.12.2025 passed in *LPA No 285 of 2024* wherein in paragraphs No 8 to 13 the learned Division Bench has held as follows:

“8 it is pointed out by Mr Mriganj Mauli, learned Senior Advocate on behalf of the respondent that the charge sheet was served to the respondent in the year 2010, the above mentioned file dated 15.04.1995 to 21.04.1995 was never produced before the inquiry officer.

9 Next, he refers to the order sheet of the inquiry proceedings from 28th November 2011. It is pointed out by the learned Senior Counsel that in the order dated 28th November 2011 and even before the said date in all orders there was counter signature of the delinquent employee, however, the order dated 18.02.2011 fixing the next date of inquiry proceeding on 25th March 2011 and the order dated 25th March 2011 wherein, the inquiry proceeding was closed and the date was fixed for passing of the order were not signed by the respondent which amply shows that the said orders and the closure of inquiry were passed behind the back of the respondent, therefore, the respondent prayed for supply of a copy of the order passed on 18th February 2011 by a letter dated 23rd March 2011. The respondent,



however, was not produced with the said orders. Thus, it is contended on behalf of the respondent that the inquiry proceeding is absolutely wrong, arbitrary and contrary to the record of the department because of the fact that the respondent was accepted as “Prakash Parewa” in the year 1995 itself.

10 It is also pointed out by Mr Mauli, learned Senior Counsel for the respondent that the delinquent employee retired from service with effect from 31st October 2024 during the pendency of the appeal. A question arose as to whether on his retirement the inquiry proceeding could have been converted to disciplinary proceeding under Rule 43 (b) of the Bihar Pension Rules. Rule 43 (b) of the Bihar Pension Rules runs thus:-

“43 (b) The [Appointment authority of the post held at the time of retirement] 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 proceeding 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.”

11 On plain reading of the provision suggests initiation of disciplinary proceeding even against a retired employee when a gross pecuniary loss is caused to the Government owing to the payment of pension legally and the Government requires recovery of such money or the money was subjected to grave misconduct or to have cause pecuniary loss to the Government by misconduct or negligence during his service.

12 The initiation of disciplinary proceeding against a retired employee came up for consideration in Radha Raman Sharma v State of Bihar, reported in (2004) 13 SCC 787. The Hon’ble Supreme Court in the



aforementioned decision refers to a proviso in the following words:-

“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 sanction of State Government.

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; 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.

(b) judicial proceeding, if not instituted while the government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.”

13 In the instant case, no allegation against the respondent has been to the effect that he was guilty for gross pecuniary loss or gross misconduct.”

13 The learned Senior Counsel for the petitioner further places reliance on a judgment of the Hon’ble Supreme Court reported in 2025 SCC Online SC 2192 (*Ravi Oraon -Versus- State of Jharkhand & Others and its analogous cases*) wherein in paragraphs 32 and 33, it has been held as follows:



“32 Why is this course of action shocking? The appellants, in their replies to the show cause notices, had categorically demonstrated that they were not required to secure 45% marks in their intermediate examination. They were required to secure more than 40% marks in the intermediate examination, which they did secure. Confronted with this situation, the respondents conveniently proceeded to terminate the appellants' services by computing their marks after excluding the marks secured in the vocational subject. Significantly, the allegation that the appellants had failed to secure 40% marks (after exclusion of marks secured in the vocational subject) in the intermediate examination did not even figure as an allegation in the show cause notices. Therefore, findings were returned by the respondents which were at variance with the allegations levelled in the show cause notices. The appellants having successfully defended the allegations, the respondents were precluded in law from proceeding with such notices. In the absence of fresh show cause notices specifically requiring the appellants to explain why the marks secured in the vocational subject should not be taken into account for determining their overall percentage, in our considered view, the appellants had been denied a fair and reasonable opportunity of hearing and the termination orders are wholly unsustainable and stand vitiated being in violation of the principles of natural justice.

33 The present is akin to a situation where the noticee successfully defends the charge against him but is made to suffer civil consequences because the notifier finds the noticee guilty of a different charge in respect whereof he is not put to notice. In such a case, the finding of guilt which is at variance with the original charge without proper opportunity to respond offends due process and renders any order or action unsustainable.”

14 Lastly, the learned Senior Counsel for the petitioner places reliance on a judgment dated 09.02.2026 passed in CWJC



No 16541 of 2022 by this Court wherein, after referring to different judicial pronouncements, this Court, in paragraphs No 25 and 26 has held as follows:

“25 The disciplinary authority, while imposing punishment upon the petitioner did not even consider the fact that the enquiry officer while submitting his enquiry report, has specifically mentioned that due to efforts made by the petitioner, the deficit Court fee and Registration fee were recovered and in these circumstances he had recommended for exoneration of the petitioner. The disciplinary authority without giving any reason for differing with the report of the enquiry officer, went ahead and found the charges to be proved against the petitioner and even did not give an opportunity to submit second show cause reply, inflicted the punishment of deduction of 10% of pension for a period of five years.

26 The appellate authority did not appreciate the enquiry report and the grounds taken by the petitioner in his memo of appeal and rejected the appeal preferred by the petitioner by holding that the grounds taken by the petitioner is not maintainable or without any reasoning.”

15 The learned Senior Counsel for the petitioner submits that the petitioner has, in the meantime, superannuated on 31.08.2024.

16 Per contra, the learned counsel for the respondent-State submits that the reasoned order, as contained in Memo No 576 dated 17.05.2016, does not suffer from any illegality and has been passed in compliance of the order dated 27.06.2016 passed in the petitioner’s previous writ petition bearing CWJC No 2677 of



2014 after thorough consideration of the merits of the case. The learned State Counsel further points out that pursuant to the complaint submitted by one Prashant Banerjee against the petitioner regarding his functioning as the Registrar of the Board, a detailed enquiry was conducted by the Deputy Director, (Homeopath), Indigenous Medicine Directorate, Bihar, Patna on the charges/allegation/complaint and a detailed report/enquiry report was submitted vide Memo No 43 dated 24.02.2011 and, thereafter, the Joint Secretary, Health Department, Government of Bihar, Patna issued a show cause notice to the petitioner seeking his explanation against the charges and irregularities found against him.

17 It has further been submitted that the Memo of Charge dated 05.12.2011 contained altogether eight charges which were grave in nature and, thereafter the Joint Secretary, Health Department, Government of Bihar, Patna who was appointed as the Enquiry Officer, submitted the enquiry report on 21.05.2012 with a finding that the charges against the petitioner does not appear to be proved and thereafter, the copy of the enquiry report was submitted to the petitioner upon which second show cause notice was issued, differing with the enquiry report. Pursuant thereto, the petitioner submitted his show cause reply dated



09.10.2012, whereupon the competent authority proceeded to pass the final order dated 20.05.2013 by which the petitioner has been inflicted with the punishment of censure and stoppage of five increments with cumulative effect.

18 After having heard the learned counsel for the parties and after going through the materials available on record, I find that initially the petitioner was asked to show cause vide letter dated 24.03.2011 wherein ten charges were levelled against him and the same were duly replied by the petitioner, by giving detailed explanation to each and every charge, but while issuing Memo of Charge, some of the charges were altered and the petitioner submitted his reply to the same, whereupon the enquiry was conducted by the Enquiry Officer and the Enquiry Officer submitted her report wherein she found none of the charges to be proved against the petitioner. After submission of the enquiry report, no second show cause notice was issued to the petitioner, rather a clarification in the form of second show cause notice was issued on 26.09.2012, wherein certain new allegations were levelled against the petitioner. The petitioner duly submitted his reply to the said so-called second show cause notice, but the same was not considered and the Disciplinary Authority upon his own came to the conclusion that the charges against the petitioner were



found to be proved, proceeded to impose punishment against the petitioner. Further, the appellate authority, while rejecting the appeal of the petitioner did not consider a single point or the explanation submitted by the petitioner and in a mechanical manner rejected the appeal of the petitioner. It appears that the Disciplinary Authority without following the due process of law i.e. that if he was in disagreement with the enquiry report, then it was incumbent upon him to give his reasons for such disagreement and to issue show cause notice to the delinquent for the same and then to proceed further, but in the present case, the same has not been followed.

19 Accordingly, the order impugned contained in Memo No 16/M 1-38/2011-482 dated 25.02.2013 issued under the signature of the Joint Secretary, Department of Health, Government of Bihar, Patna and the appellate order contained in Memo No 16/M 1-38/2011-576 dated 17.05.2016 issued under the signature of the Under Secretary to the Government, Department of Health, Government of Bihar, Patna deserve to be set aside and are, accordingly, set aside.

20 The petitioner shall be granted the benefits within a period of three months from the date of production/receipt of a copy of this order. The above mentioned directions have been



given, taking into consideration the fact that the petitioner has retired on 31.08.2024 and therefore, there is no justification in remitting the matter afresh to the authorities concerned for proceeding afresh.

21 The writ petition is allowed in the aforementioned terms.

22 Pending applications, if any, shall also stand disposed of.

(Ritesh Kumar, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.02.2026
Transmission Date	NA

