

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7122 of 2025

=====

Anil Kumar Son of Late Lakshmi Narayan Yadav, Resident of Shri Vihar Colony, Mahila College Road, Post Office Katihar Police Station Town, District Katihar, PIN 854105, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home (Police Wing) Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police (Headquarters), Bihar, Patna.
4. The Inspector General of Police, Darbhanga Range Darbhanga Range, Darbhanga.
5. The Deputy Inspector General of Police, Purnea Range, Purnea.
6. The Superintendent of Police, Katihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate
		Mr. Kumar Ravish, Advocate
For the Respondent/s	:	Mr. Government Pleader (20)

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date :23-04-2026

Heard learned Sr. Counsel appearing for the petitioner
and learned counsel appearing for the respondent State.

2. Learned Sr. Counsel for the petitioner submits that
the petitioner has filed the present writ petition for the following
relief/s :-

*“a. To quash and set aside
Annexure P/18 i.e. the order of punishment
contained under Memo No. 7406 dated
05.07.2024 issued under the signature of
the Deputy Secretary of the Home (Police
Wing) Department, Government of Bihar,
Patna under the orders of the competent
authority under which petitioner was
imposed with a punishment of deduction of
10 % pension under Rule 43(b) of the Bihar*



Pension Rules.

b. To direct for payment of consequential benefits with interest as a consequence of setting aside the order of punishment.

c. To direct for payment of exemplary costs to this petitioner.

d. Any other relief or relief/s which the petitioner may be found to be entitled to in the facts and circumstances of the case.”

3. Learned Sr. Counsel for the petitioner submits that while the petitioner was rendering his services as Sub-Divisional Police Officer, Sadar, Katihar, a memo of charge was issued vide Memo No. 6186 dated 31.07.2019 by the Home Department (Police Wing), Bihar, Patna, under the signature of the Additional Secretary. The substance of the allegation against the petitioner was that his performance was poor. It is further submitted that the petitioner duly responded to the said allegations by submitting his reply vide Letter No. 3220 of 2019 in his capacity as S.D.P.O., Sadar, Katihar. In his reply, the petitioner denied the allegations and furnished detailed explanations in respect of each charge. He specifically asserted that his performance was not poor and that the data relied upon by the department was incorrect. He explained that disposal of cases was substantial; however, proceedings took time due to adherence to procedural requirements, including awaiting show-



cause replies, non-appearance of witnesses, and delays in production of concerned persons. The petitioner also clarified that he was not the lowest-performing officer when assessed in the context of the entire region and further pointed out that he had been rewarded on several occasions by higher authorities.

4. Learned Sr. Counsel further submits that the petitioner superannuated from service on 31.12.2019 while serving in the aforesaid capacity. Despite his retirement, the State Government proceeded with departmental proceedings after rejecting his show-cause reply dated 07.12.2019. An Inquiry Officer and a Presenting Officer were appointed, and the petitioner participated in the inquiry by filing his defence statement as well as a supplementary defence upon conclusion of the oral inquiry. It is submitted that the Inquiry Officer submitted his report vide Memo No. 887 dated 07.06.2023, wherein the charges were found to be only partially proved. Thereafter, a copy of the inquiry report was forwarded to the petitioner along with a second show-cause notice vide Letter No. 9609 dated 08.08.2023. The petitioner submitted his reply on 01.09.2023 and subsequently filed a representation dated 06.06.2024 before the Deputy Secretary, Home Department (Police Wing), requesting that the charges be dropped. However,



the State Government, vide Memo No. 7406 dated 05.07.2024, passed the final order under Rule 43(b) of the Bihar Pension Rules, 1950, imposing a penalty of withholding 10% of the petitioner's pension without specifying any time limit. Aggrieved thereby, the petitioner submitted a representation dated 08.08.2024 before the Hon'ble Home Minister-cum-Chief Minister seeking intervention.

5. Learned Sr. Counsel for the petitioner submits that the impugned order is unsustainable in law, as the essential precondition under Rule 43(b) of the Bihar Pension Rules is that the pensioner must be found guilty of "grave misconduct" or must have caused pecuniary loss to the Government by misconduct or negligence. It is contended that neither of these conditions is satisfied in the present case. It is further argued that even as per the memo of charge and the inquiry report, the charges were not fully proved but only partially established, and the allegations pertain merely to alleged inefficiency or unsatisfactory performance, which cannot be equated with "grave misconduct." There is also no allegation or finding of any pecuniary loss caused to the Government.

6. In support of the aforesaid submissions, reliance has been placed on the judgment of this Court in ***C.W.J.C. No.***



4632 of 2020 (Harish Kumar Singh vs. State of Bihar & Ors.), particularly paragraph 10 thereof. Further reliance has been placed on the judgment in **C.W.J.C. No. 5541 of 2022 (Ganesh Prasad Yadav vs. State of Bihar & Ors.)**, reported in 2026 (2) **PLJR 170** (paragraph 15), as well as the judgment in **C.W.J.C. No. 16576 of 2017 (Ganesh Prasad Yadav vs. State of Bihar & Ors.)**, reported in 2021 (3) **PLJR 805** (paragraphs 18, 19, 20, and 26). Reliance has also been placed on the Division Bench judgment in **L.P.A. No. 837 of 2023 (State of Bihar vs. Arun Kumar Dubey)**, particularly paragraph 21.

7. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in **Union of India vs. J. Ahmed, reported in (1979) 2 SCC 286**, to contend that mere lack of efficiency or failure to attain the highest standards of performance does not amount to misconduct.

8. *Per contra*, learned counsel for the State submits that the Inspector General of Police (Headquarters), Bihar, vide Letter No. 1969/X.P. dated 15.07.2019, forwarded recommendations along with draft charges based on the report of the Inspector General of Police, Darbhanga Range, alleging negligence, dereliction of duty, and irregularities on the part of the petitioner.



9. It is further submitted that upon examination of the materials on record, the State Government decided to initiate departmental proceedings and accordingly issued Memo No. 6186 dated 31.07.2019 along with the statement of charges and supporting documents. The petitioner was granted adequate opportunity to submit his defence, which he availed by filing his reply. Thereafter, a formal departmental proceeding was initiated, and an Inquiry Officer and Presenting Officer were appointed vide Resolution No. 1462 dated 12.02.2020. The Inquiry Officer, after conducting the proceeding, submitted his findings on 07.06.2023 holding the charges to be partially proved. Based on the inquiry report, a second show-cause notice was issued to the petitioner, and upon consideration of his reply, which was found unsatisfactory, the State Government imposed the penalty of 10% deduction from pension under Rule 43(b) of the Bihar Pension Rules.

10. It is further contended that the entire proceeding was conducted strictly in accordance with law and following principles of natural justice. The petitioner was afforded full opportunity to defend himself but failed to produce any cogent evidence to dislodge the charges. Therefore, the impugned order is legal, valid, and does not warrant interference by this Court.



Consequently, the writ petition is liable to be dismissed.

11. After consideration of the arguments of both the parties and upon perusal of the record, it transpires to this Court that for the purpose of reaching on the conclusion with regard to the present case, it is necessary to quote the law and the relevant portion of the judgments on which petitioner has relied.

12. Rule 43(b) of the Bihar Pension Rules states as follows:

“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.

Provided that-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

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

(iii) shall be conducted by such authority and



at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, 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.

Explanation.- *For the purposes of the Rule-*

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted;—

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a Civil Court

Rule 139. *(a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved.*

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

The [Appointment authority of the post held at the time of retirement] reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under the control, if they are



satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.]”

13. Judgment of Harish Kumar Singh vs. State of Bihar & Ors. passed in C.W.J.C. No. 4632 of 2020 by this Hon’ble Court, whose paragraph-10 states as follows:

“10. Upon bare perusal of those provisions, it become crystal clear that Rule 43(b) of the Bihar Pension Rules shall apply in case of grave misconduct and the case of pecuniary loss. Here both are lacking in the present case which transpires from the punishment (impugned order)”

14. Judgment of Ganesh Prasad Yadav Vs. State of Bihar & Ors. (C.W.J.C. No. 5541 of 2022), reported in 2026 (2) PLJR 170, whose paragraphs-15, is as under :-

“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.”

15. Similarly, learned counsel refers to the judgement of this Hon’ble Court rendered in the case of **Ganesh Prasad Yadav Vs. The State of Bihar and Ors.** (CWJC No. 16576 of 2017) reported in **2021 (3) PLJR 805** whose paragraph 18, 19, 20, 26 states as follows:

“18. There is no allegation against the petitioner that any misconduct or negligence on his part, has in fact caused any pecuniary loss to the Government. The impugned decision, in that wake, has to be considered from the perspective, as to whether a case of gross misconduct is made out against the petitioner warranting action under Rule 43(b) of the Bihar Pension Rules, in the light of findings recorded by the Disciplinary Authority in the impugned order. At the cost of repetition, it is reiterated that the finding of ‘ill motive’ recorded in the impugned order has been found hereinabove to be unsustainable in the absence of such allegation in the charge memo.

19. 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

*“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).

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. Reliance has also been placed on the Division Bench judgment passed in L.P.A. No. 837 of 2023 (State of Bihar vs. Arun Kumar Dubey), whose paragraph 21 states as follows:

"21. That apart, this Court also finds substance in the contention of the learned Senior Counsel, representing the writpetitioner/respondent 1st set, that the entire allegation even if accepted in its totality, speaks only about the negligence in performance of duty or inefficiency in discharge of duty on the part of the writ-petitioner, lacking the ingredients of misconduct. Thus, the reliance placed on Union of India And Others (supra) also, fortifies the arguments of the learned



Senior Counsel. The Apex Court, in the above noted case, succinctly observed that “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.”

17. Reliance has also been placed upon the judgment of Hon’ble the Supreme Court passed in *Union of India vs. J. Ahmed*, reported in (1979) 2 SCC 286, whose paragraph 11 states as follows:

*“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.”

18. Upon perusal of the impugned order, it transpires



to this Court that no pecuniary loss has been caused to the Government by the actions of the petitioner. In light of the applicable judgment, this Court further finds that the allegations made do not constitute gross misconduct.

19. Accordingly, this Court is of the considered view that the impugned order, as contained in Memo No. 7406 dated 05.07.2024, whereby a penalty of withholding 10% of the petitioner’s pension has been imposed without prescribing any time limit, is unsustainable in the eyes of law. The said action is arbitrary and contrary to settled legal principles governing pensionary benefits, and is therefore liable to be set aside.

20. Consequently, the impugned order is hereby quashed. The respondent authorities are directed to release the withheld amount of pension to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	31.03.2026
Uploading Date	25/04/2026
Transmission Date	NA

