

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7855 of 2025

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Hari Kishore Sinha, son of late Ram Prasad Sinha, resident of Village-
Basbitta, P.S.- Majorganj, District-Sitamarhi, presently residing at Road No.
10, Rajiv Nagar, P.S.- Rajiv Nagar, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna.
3. The Additional Chief Secretary, Road Construction Department, Govt. of Bihar, Patna.
4. The Special Secretary, Road Construction Department, Govt. of Bihar, Patna
5. The Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate
		Mr. Shrish Anurag, Advocate
		Mr. Amar Kumar Singh, Advocate
		Mr. Aniket Rai, Advocate
For the State	:	Mr.Standing Counsel (28)
For the A.G.	:	Mrs. Nivedita Nirvikar, Sr. Advocate
		Mr. Arya Achint, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 15-06-2026

Heard learned counsel for the petitioner, learned



counsel for the State and learned Sr. Counsel for the Accountant General, Bihar.

2. The petitioner has filed the present writ petition with the following relief/s :-

(i) For issuance of writ in the nature of certiorari for quashing of the memo of charge dated 23.10.2007 issued under the signature of the memo of charge dated 23.10.2007 issued under the signature of the Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Government of Bihar, Patna.

(ii) For issuance of writ in the nature of certiorari for quashing of the inquiry report dated 21-04-2023 whereby the Conducting Officer has proved the charge against the petitioner despite his finding that the work was not done by Santosh Kumar Jha, rather it was executed by a Govt. agency and the complainant was not the contractor for the work and further the petitioner had granted technical sanction on 28-02-2007 itself, i.e., much prior to his alleged arrest on 14-03-2007.

(iii) For issuance of writ in the nature of certiorari for quashing of notification no. 1953 (S) dated 02-05-2024 issued by the Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna whereby the petitioner has been awarded with the punishment of withholding of full pension of the petitioner.

(iv) For issuance of writ in the



nature of certiorari for quashing of the notification No. 2496 (S) dated 20-03-2025 issued under signature of the Special Secretary, Road Construction Department, Bihar, Patna whereby the memorial preferred by the petitioner has been rejected.

(v) For necessary direction upon the respondent authorities to pay all the consequential benefits including the arrears of pension and other retiral benefits after quashing of the order of punishment.

(vi) For any other direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. Learned counsel for the petitioner submits that the petitioner was appointed as an Assistant Engineer in the Road Construction Department in the year 1987 and, in 2006, was posted as Assistant Engineer under the National Rural Employment Programme (NREP), Saharsa Block. It is further submitted that under the **Sampoorna Grameen Rozgar Yojana (SGRY)**, the Government of India had categorically prohibited execution of works through private contractors and mandated that all schemes be implemented departmentally through Government agencies. The work in question, namely repair of the road from the house of Kailas Jha to the house of Sukul Pandit, was executed through a Government employee, namely Vijay Kumar Paswan, Panchayat Sevak, who acted as the



implementing agency. Therefore, the complainant, Santosh Kumar Jha, had no role as a contractor in the said scheme.

4. Learned counsel submits that the petitioner had already granted technical sanction for the concerned scheme on 28.02.2007, much prior to the alleged complaint dated 12.03.2007. Consequently, there was no occasion for the complainant to approach the petitioner for obtaining technical sanction or for the petitioner to demand any illegal gratification. Even the Block Development Officer, Saharsa, informed the Vigilance Department that the technical sanction had already been accorded before the complaint was made. It is further submitted that while the petitioner was physically verifying the work site before granting technical sanction, one Chhatri Yadav threatened him to sanction the estimate without inspection. Since the petitioner refused to succumb to such pressure, a false criminal case was initially instituted against him through one Ramchandra Sada, which ultimately ended in submission of final form by the police declaring the allegations to be false. Thereafter, the present vigilance complaint was allegedly engineered through Santosh Kumar Jha with an ulterior motive to falsely implicate the petitioner.

5. Learned counsel for the petitioner further submits



that the petitioner never demanded or accepted any bribe and was forcibly taken from his residence by the Vigilance officials on 14.03.2007. The alleged trap proceedings are wholly fabricated, as the official records themselves demonstrate that four members of the trap team, who purportedly prepared the pre-trap memorandum at Saharsa on the night of 13.03.2007, were simultaneously present at Patna in connection with another vigilance case. Considering the distance between Patna and Saharsa and the travel time prevailing at the relevant period, their presence at Saharsa at the alleged time was impossible. Similar discrepancies also appear from the subsequent movement of the trap team reflected in the case diary of another vigilance case, thereby seriously affecting the credibility of the prosecution case.

6. It is further submitted that the complainant, Santosh Kumar Jha, neither signed the post-trap memorandum nor appeared before the Inquiry Officer despite repeated notices. Thus, there is no evidence to establish that the complainant actually paid any bribe to the petitioner. Learned counsel submits that although a departmental proceeding was initiated in 2007 culminating in the petitioner's dismissal from service in 2014, the said order of punishment was quashed by this Court in



CWJC No. 961 of 2015 with liberty to the authorities to proceed afresh in accordance with law. Pursuant thereto, instead of conducting a fresh proceeding as directed by this Court, the respondents merely relied upon the earlier charge memo dated 23.10.2007. It is submitted that once the Government itself decided to initiate a fresh proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'Bihar Pension Rules') it was incumbent upon the authorities to issue a fresh charge memorandum in conformity with Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules'). The respondents, however, proceeded on the basis of the old charge memo without framing fresh charges or following the mandatory procedure prescribed under Rule 17, thereby rendering the entire proceeding illegal.

7. It is further submitted that the charge memorandum itself is legally defective as it neither contains a proper statement of imputations nor the list of documents and witnesses as required under Rule 17(3) of the CCA Rules. Moreover, the memorandum of charge was issued by an authority incompetent to do so, as the petitioner had been appointed under the orders of the Governor.



8. Learned counsel further submits that the departmental proceeding initiated under Rule 43(b) of the Bihar Pension Rules is also barred by the proviso to Rule 43(b) Bihar Pension Rules, since it relates to an event of the year 2007 whereas the fresh proceeding was initiated only in 2018, beyond the prescribed period of four years. The legality of such initiation is already under challenge in CWJC No. 13140 of 2022, which is pending consideration before this Court. It is further submitted that during the fresh departmental inquiry, although several members of the trap team were examined, the complainant himself never appeared. Even the Inquiry Officer recorded that the concerned scheme was implemented through a Government agency and that the petitioner had already granted technical sanction before the alleged trap. Despite these findings, the Inquiry Officer proceeded to hold the charge proved solely on the basis of the statements of the trap team members, whose credibility itself is under serious cloud because of the admitted inconsistencies regarding their presence at the relevant place and time.

9. Learned counsel further submits that during the pendency of the earlier departmental proceeding, the State Government itself regularized the petitioner's services in the



year 2012, thereby indicating that the allegations were not considered so grave as to disentitle him from regularization. Having regularized the petitioner's services, the respondents cannot subsequently contend that the same allegations constitute grave misconduct warranting withholding of the petitioner's entire pension.

10. It is further submitted that while rejecting the petitioner's Memorial against the order of punishment, the respondents refused to examine the petitioner's principal defence regarding the falsity of the trap on the ground that the criminal case is still pending before the Vigilance Court. Having adopted such a stand, the respondents could not simultaneously rely upon the very same disputed evidence for sustaining the departmental punishment. Such contradictory reasoning renders the impugned order wholly arbitrary.

11. Lastly, learned counsel for the petitioner submits that the respondents failed to consider the law laid down by the Hon'ble Supreme Court in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.**, reported in **AIR 1999 SC 1416**, and ignored the substantial grounds raised by the petitioner regarding non-examination of the complainant, the inherent improbability of the prosecution case, and the procedural violations committed



during the departmental proceedings.

12. Learned counsel for the petitioner further relied upon the judgement rendered in the case of *State of Bihar and Ors. Vs. Mohd. Idris Ansari* reported in *1995 Supp (3) Supreme Court Cases 56*.

13. It is, therefore, submitted that the impugned orders withholding **100% of the petitioner's pension** are arbitrary, contrary to the statutory provisions and settled principles of law, and are liable to be quashed.

14. Per contra, learned counsel appearing for the State submits that while the petitioner was posted as Assistant Engineer, NREP, Saharsa, he was caught red-handed by the Vigilance Team on 14.03.2007 while accepting illegal gratification of Rs.2,000/-, pursuant to which Vigilance P.S. Case No. 35 of 2007 was instituted against him. Consequent upon his arrest, the petitioner was placed under suspension vide Notification No. 5489 (S) dated 26.04.2007. Thereafter, departmental proceeding was initiated against him under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 vide Resolution No. 12404 (S) dated 26.10.2007. Upon his release from judicial custody and submission of joining on 15.11.2007, the petitioner was again



placed under suspension vide Notification No. 14585 (S) dated 14.12.2007.

15. Learned counsel further submits that after conclusion of the departmental enquiry, the Enquiry Officer found the charge proved and submitted his enquiry report. On the basis thereof, the competent authority imposed the punishment of dismissal from service vide Notification No. 3928 (S) dated 20.05.2014. It is submitted that the petitioner challenged the said order of dismissal before this Court in CWJC No. 961 of 2015, which was allowed by judgment dated 16.04.2018. While quashing the order of dismissal and granting consequential benefits, this Court expressly reserved liberty to the respondents to proceed afresh against the petitioner in accordance with law. Pursuant to the liberty so granted, the respondents withdrew the earlier order of punishment vide Notification No. 7159 (S) dated 17.09.2018 and decided to proceed against the petitioner under Rule 43(b) of the Bihar Pension Rules. Simultaneously, by Notification No. 7161 (S) dated 17.09.2018, the petitioner was treated to have remained under suspension from 20.05.2014 till his date of retirement, i.e., 31.12.2014, and was held entitled only to subsistence allowance for the said period.



16. Learned counsel further submits that vide Resolution No. 7165 (S) dated 17.09.2018, as subsequently modified by Resolution No. 7465 (S) dated 26.09.2018, a fresh departmental proceeding under Rule 43(b) of the Bihar Pension Rules was initiated. Thereafter, by Resolution No. 8174 (S) dated 26.10.2018, the Departmental Enquiry Commissioner was appointed as the Conducting Officer for conducting the enquiry.

17. It is submitted that the enquiry was thereafter conducted strictly in accordance with law by affording full opportunity to the petitioner. During the course of the enquiry, witnesses were examined and cross-examined, and on appreciation of the oral and documentary evidence, the Enquiry Officer-cum-Departmental Enquiry Commissioner submitted his report dated 21.04.2023, holding the charge of demand and acceptance of illegal gratification to be proved.

18. Learned counsel further submits that on receipt of the enquiry report, the petitioner was served with a second show-cause notice vide Letter No. 2890 (S) dated 25.05.2023, along with a copy of the enquiry report. The petitioner submitted his reply on 22.06.2023, which was duly considered by the disciplinary authority. Thereafter, by Notification No. 1953 (S) dated 02.05.2024, the petitioner was inflicted with the



punishment of withholding of 100% pension under Rule 43(b) of the Bihar Pension Rules.

19. It is further submitted that the petitioner preferred a memorial against the aforesaid order and also filed CWJC No. 13953 of 2024, which was disposed of by this Court on 12.09.2024 with a direction to the Additional Chief Secretary, Road Construction Department, to decide the memorial within the stipulated period. In compliance thereof, the memorial was considered in detail and ultimately rejected vide Notification No. 2496 (S) dated 20.03.2025.

20. Learned counsel submits that the impugned orders, the charge memorandum and the enquiry report do not suffer from any legal or procedural infirmity. According to him, the departmental proceeding was conducted after strictly following the prescribed procedure, adequate opportunity of hearing was afforded to the petitioner, and the punishment of withholding the petitioner's full pension has been imposed only after the charge stood duly proved on the basis of cogent evidence.

21. It is lastly submitted that this Court, while deciding CWJC No. 961 of 2015, had merely quashed the order of dismissal and granted liberty to the respondents to proceed



afresh in accordance with law. The charge memorandum dated 23.10.2007 was never set aside by this Court. Therefore, there was no legal impediment in continuing the fresh departmental proceeding on the basis of the same charge memorandum, and the respondents have acted strictly in accordance with the provisions of the Bihar CCA Rules and the Bihar Pension Rules. Accordingly, the present writ petition deserves to be dismissed.

22. After hearing the learned counsel for the parties and upon perusal of the materials available on record, it transpires to this Court that the petitioner has approached this Court on several occasions, namely in CWJC No. 3835 of 2014, CWJC No. 961 of 2015, CWJC No. 13140 of 2022, CWJC No. 13953 of 2024, MJC No. 491 of 2025, and the present writ petition, CWJC No. 7855 of 2025.

23. It further transpires that, except **CWJC No. 961 of 2015**, none of the aforesaid proceedings was adjudicated on the merits of the controversy.

24. This Court further finds that in paragraphs 13, 14 and 15 of the judgment dated 16.04.2018 passed in CWJC No. 961 of 2015, liberty was granted to the respondents to proceed afresh against the petitioner strictly in accordance with law. Paragraph 13, 14 and 15 whereof reads as under :-



“13. In view of the aforesaid findings, this Court is left with no option but to quash the order of the disciplinary authority dated 20.05.2014 bearing memo no. 3928 whereby and where under the services of the petitioner has been terminated. As a result of quashing of the order of termination, the order passed on the petitioner’s review dated 14.11.2014 are also quashed.

14. As a result of quashing of the order of punishment, the petitioner would be entitled to his consequential benefits. This order however, will not preclude the respondents from proceedings afresh after observing the procedure prescribed in law.

15. The writ petition is allowed to the extent indicated hereinabove.”

25. Pursuant thereto, the State Government initially issued Resolution No. 7165 (S) dated 17.09.2018, deciding to convert the earlier departmental proceeding into a proceeding under Rule 43(b) of the Bihar Pension Rules. However, within a short span, the Government reconsidered the matter and, by Memo No. 7465 (S) dated 26.09.2018, withdrew the earlier decision and consciously resolved to initiate a fresh departmental proceeding against the petitioner under Rule 43(b) of the Bihar Pension Rules.

26. In the considered opinion of this Court, once such a conscious decision was taken by the Government to initiate a fresh departmental proceeding, the respondents were required to strictly comply with the mandatory requirements of Rule 43(b)



of the Bihar Pension Rules. The proceeding could not have been continued merely on the strength of the charge memorandum issued in the year 2007, which formed the basis of the earlier departmental proceeding.

27. In support of the aforesaid contention, learned counsel for the petitioner has rightly placed reliance upon the judgment of the Hon'ble Supreme Court in ***The State of Bihar & Others v. Mohd. Idris Ansari (supra)***, wherein the Hon'ble Supreme Court has elaborately considered the scope and ambit of Rule 43(b) of the Bihar Pension Rules. Paragraphs 5, 6 and 7 of the said judgment, being relevant for the adjudication of the present controversy, are reproduced hereinbelow:

“5. The counsel for the respondent combated these submissions and contended that the notice that initiated proceedings under Rule 139 did not allege that power was sought to be exercised by the authority under Rule 139 as service record was not thoroughly satisfactory. That power was sought to be invoked only on the basis of misconduct and there was no proof of misconduct against the respondent which can justify the impugned order of 13-12-1993. That there is no question of remanding of proceedings against the respondent for the simple reason that the notice of 27-9-1993 relied on alleged misconduct of the respondent during 1986-87 which was prior to four years from the date of the notice and hence, the notice was invalid and could not support any fresh proceedings. The earlier proceedings got terminated as per High Court's order. Hence even the earlier notice dated 17-10-1987 did not survive.



6. Having given our anxious considerations to these rival contentions, we find that the decision of the High Court on the facts of the present case is unexceptionable. The earlier notice dated 17-7-1993 by which fresh departmental proceedings were sought to be initiated was rightly quashed by the High Court as it was based on the alleged misconduct of the respondent during 1986-87 which was more than four years prior to the issue of the said notice. Such a notice seeking to initiate fresh departmental proceedings after the retirement of the respondent, was clearly hit by the proviso to sub-rule (b) of Rule 43 of the Rules. Rule 43(b) reads as under:

“(b) The State Government 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 proceedings 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;”

7. A mere look at these provisions



shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired government servant, it must be shown that in departmental proceedings or judicial proceedings the government servant concerned is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b), in connection with the alleged misconduct, as it alleged to have taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years' old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27-9-1993. It was clearly stated therein that no action can be taken under Rule 43(b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17-10-1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition No. 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice dated 17-10-1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17-10-1987 but initiated fresh departmental inquiry by the impugned notice dated 27-9-1993. Consequently it is not open to the learned advocate for the appellant to rely upon the said earlier notice dated 17-10-1987."

28. Upon consideration of the facts and circumstances of the case, the rival submissions advanced on behalf of the



parties, the materials available on record, and the law laid down by the Hon'ble Supreme Court of India, this Court finds that the original charge memo against the petitioner was issued on 23.10.2007. It is an admitted position that after the State Government took a conscious decision vide Memo No. 7465 (S) dated 26.09.2018 to initiate a fresh departmental proceeding under Rule 43(b) of the Bihar Pension Rules, no fresh charge memo was ever issued. Instead, the respondents proceeded with the departmental inquiry on the basis of the original charge memo dated 23.10.2007.

29. In the considered opinion of this Court, once the Government itself resolved to initiate a fresh departmental proceeding under Rule 43(b) of the Bihar Pension Rules, the respondents were under a legal obligation to commence such proceeding afresh in accordance with law by issuing a fresh charge memorandum. Continuation of the proceeding on the strength of the earlier charge memo is in clear violation of Rule 43(b) of the Bihar Pension Rules and cannot be sustained.

30. The law on the point is no longer *res integra*. The Hon'ble Supreme Court in ***The State of Bihar & Others v. Mohd. Idris Ansari (supra)*** has categorically held that where a fresh departmental proceeding is initiated after retirement under



Rule 43(b), it must strictly conform to the statutory requirements governing such proceedings. The ratio laid down in the said decision squarely applies to the facts of the present case.

31. Accordingly, this Court holds that the initiation and continuation of the fresh departmental proceeding under Rule 43(b) on the basis of the charge memo dated 23.10.2007 is illegal, arbitrary and unsustainable in law.

32. Consequently, the charge memo dated 23.10.2007 issued under the signature of the Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Government of Bihar, Patna; the Inquiry Report dated 21.04.2023; Notification No. 1953 (S) dated 02.05.2024 issued by the Deputy Secretary, Road Construction Department, Government of Bihar, Patna, whereby the petitioner's entire pension was withheld; and Notification No. 2496 (S) dated 20.03.2025 issued by the Special Secretary, Road Construction Department, Government of Bihar, Patna, rejecting the petitioner's memorial are hereby set aside.

33. The respondents are directed to release all admissible retiral and pensionary benefits, including all consequential monetary benefits, to the petitioner within a



period of three months from the date of receipt/production of a copy of this judgment. In the event of failure to comply within the stipulated period, the petitioner shall be entitled to consequential benefits in accordance with law.

34. With the aforesaid observations and directions, the writ petition stands allowed.

(Dr. Anshuman, J)

Ashwini/Manshi

AFR/NAFR	
CAV DATE	NA
Uploading Date	19.06.2026
Transmission Date	NA

