IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.628 of 2023

In

Civil Writ Jurisdiction Case No.381 of 2023

CNR No. BRHC010379412023

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Dr. Vinod Kumar Singh S/o Late Surendra Prasad Singh residing at Baijnath Kidney Hospital, Makhaniyakua Road, Opposite Kartar Coaching Centre, Bankipore, Patna-800004.

... ... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Health Department, Government of Bihar, Vikas Bhawan Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Vikas Bhawan Patna.
3. The Joint Secretary, Health Department, Government of Bihar, Patna-Cum-Inquiry Officer.
4. The Additional Secretary, Health Department, Government of Bihar, Patna.
5. The Superintendent, Patna Medical College Hospital, Patna.
6. The Principal, Patna Medical College Hospital, Patna-Cum-Presenting Officer.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigank Mauli, Sr. Adv
Mr. Vikas Kumar, Adv

For the Respondent/s : Mr. S.D. Yadav (AAG-9)
Mr. Anil Kumar Verma, AC to AAG-9

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 18-11-2026

The present appeal has been filed against the order dated 02.03.2023, passed by the learned Single Judge of this Court in CWJC No.381 of 2023 whereby and whereunder the writ

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petition filed by the appellant herein has been dismissed.

2. The brief facts of the case, according to the appellant are that he being a Senior Doctor at the Patna Medical College and Hospital, Patna (hereinafter referred to as the “PMCH”) was appointed as the Head of the Department, Nephrology. In the meantime, a Public Interest Litigation (hereinafter referred to as the “PIL”) was filed by one Vikash Chandra Guddu Baba bearing CWJC No.16856 of 2010, *inter alia* alleging therein that there has been misappropriation of the funds allotted to PMCH, Patna in purchase of medicines etc. and in the financial year 2009-10 substantial irregularities have been committed by various Departments of PMCH inasmuch as those medicines which were purchased in the financial year 2008-09 at a reasonable rate and in reasonable quantity have been purchased in the next financial year at a much higher rate and in huge quantity resulting in the medicines purchased in the year 2009-10 remaining unutilized. A Ld. Division Bench of his Hon’ble Court, by an order dated 06.12.2010, passed in the said PIL, had directed the Principal Secretary to take appropriate action with the help of Vigilance Department resulting in show cause notice dated 06.01.2011 being issued to the appellant by the Joint Secretary, Health Department, i.e. the respondent no.3 herein,

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alleging therein that during the financial year 2009-10, irregularities have been committed in purchase of medicines, reagents, consumables and disposable items resulting in financial loss to the Government as also the kits purchased for the Nephrology Department have been purchased without obtaining the MRP of the kit or comparing the prices with the price of the said kit in the year 2008-09 and order was placed by the department head and the hospital administration for the kit without ascertaining its actual requirement. The appellant had then filed a reply dated 19.01.2011 clarifying the entire aspect of the matter and denying the allegation levelled against him.

3. The aforesaid PIL bearing CWJC No.16856 of 2010 was dismissed by the learned Division Bench of this Court vide order dated 04.01.2012 with an observation that as the matter is under supervision of Vigilance Department, the Principal Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna is directed to dispose of the representations filed by the petitioner of the said writ petition in accordance with law. The Vigilance Department had then filed an FIR bearing Patna Vigilance Case No.061/2013 dated 25.09.2013 wherein the appellant was named as one of the accused persons merely since he was a member of the Purchase

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Committee on account of being the Head of the Nephrology Department. It is the case of the appellant that the Superintendent of Police-cum-Investigator, Vigilance Investigation Bureau vide letter dated 09.10.2013 had sought for a clarification from him regarding the financial irregularities in purchase of medicines, reagents, machines and equipment's at PMCH during the financial years 2008-09 and 2009-10 to which he had submitted his reply and denied his role, vide letter dated 22.10.2013, however without conducting proper investigation and without considering the detailed reply filed by the appellant, the Vigilance Department had obtained sanction for prosecution vide order contained in Memo dated 22.05.2014 and the said vigilance case is still pending at the evidence stage. In fact, one another PIL bearing CWJC No.10303 of 2013 was also filed by Vikash Chandra Guddu Baba, however the same had also stood disposed of vide order dated 11.09.2014.

4. It is the further case of the appellant that he had retired from service on 31.05.2015 while working on the post of Professor Nephrology, Jawaharlal Nehru Medical College Hospital, Bhagalpur, whereafter departmental proceeding was initiated against him under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005

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(hereinafter referred to as the "Rules, 2005") vide Memo dated 17.08.2015 and the Joint Secretary Health Department was appointed as Inquiry Officer while the Principal, PMCH was appointed as the Presenting Officer as also charge-sheet in *Prapatra-'Ka'* & list of evidence was provided to the appellant to file his reply to the same. The allegations levelled in the aforesaid charge sheet, issued to the appellant are that during the financial years 2008-09 and 2009-10, irregularities have been committed in purchase of medicines, reagents, machines and equipment's at PMCH, Patna for which investigation has been carried out by the Vigilance Investigation Bureau, whereupon it has transpired that in collusion with the supplier, items have been purchased above the MRP, machines have been purchased at a rate much higher than the rate of the manufacturer, items have been purchased without ascertaining the actual requirement and much more than the required quantity resulting in misappropriation of government funds to the tune of Rs. 12,63,62,970/-.

5. The appellant had then, vide letter dated 12.08.2015 requested the Inquiry Officer to provide certain documents for enabling him to file a detailed reply to the charge memo, however the said documents were not provided to him and the

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Inquiry Officer continued with the departmental proceeding. In fact, the list of witnesses was also not provided along with the charge memo. Thereafter, the appellant vide letter dt. 22.09.2017, once again requested the Inquiry Officer to provide certain documents for enabling him to file a detailed reply and for properly representing his case, however despite several requests and reminders, the respondent authorities failed to provide the copies of evidence to the appellant, as a result he was constrained to file his reply vide letter dated 03.12.2018 without availability of the essential documents sought for by him. In the said reply, the appellant has stated as follows:-

> a. For the purpose of procuring medicines, reagents, equipment's etc., notice of tender is issued in newspaper by the Superintendent, PMCH.
>
> b. The Superintendent, PMCH is the President of the Purchase Committee.
>
> c. The lowest rate is declared from the technically qualified tenders.
>
> d. The role of the department head is to grant approval on the basis of the technical distinctiveness.
>
> c. The bill is paid under the signature of the Superintendent, PMCH.
>
> E. All 66 charges imposed upon the appellant regarding irregularities in purchase of equipment's are baseless.
>
> g. Purchase clerk, head clerk and accountant are responsible for carrying out the department orders in relation to finance.
>
> h. As per the guidelines issued by the Health Department,

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for any irregularity/shortcoming with respect to procedure of purchase only the Superintendent, PMCH is liable.

i. Even as per the letter dated 05.09.2013 issued by the Directorate Drug Control Administration, the appellant cannot be held responsible.

j. There is no allegation upon the appellant that despite the equipment's, reagents etc. being of sub-standard quality, approval was granted by the appellant.

6. The appellant had therefore, in his reply dated 03.12.2018, prayed before the Inquiry Officer to exonerate him from the charges. In the meanwhile, the appellant had sought for certain information from the PMCH under the Right to Information Act, 2005, in response whereof he had received information on 06.01.2016 from which it is evident that the Superintendent, PMCH is responsible for approving the purchase list and no other person has the authority to approve the same. Moreover, only with regard to the requirement of medicine, the head of the department is consulted and the inventory officer is responsible to provide a list of requirements of medicines on the basis of consumption of the medicines. It is also the case of the appellant that without considering the requests of the appellant for grant of copies of essential documents, the Additional Secretary, Health Depart., in his inquiry report contained in Memo No.145 dt. 29.07.2020, has found the appellant guilty of charges specified under the Charge

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Memo.

7. The appellant being aggrieved by the aforesaid resolution dated 17.08.2015, initiating departmental proceeding against him as also by the resolution contained in Memo dated 30.06.2021, issued by the Joint Secretary, Health Department whereby and whereunder the departmental proceeding initiated against the appellant under Rule 17 of the Rules, 2005 has been belatedly converted to one under Rule 43(b) of Rules, 1950 had preferred a writ petition bearing CWJC No.381 of 2023, inter alia praying therein for quashing the aforesaid two resolutions dated 17.08.2015 and 30.06.2021 as also for quashing the entire departmental proceedings initiated against him, however the said writ petition has stood dismissed by an order dated 02.03.2023, passed by the learned Single Judge of this Court.

8. The learned Senior Counsel for the appellant, Mr. Mrigank Mauli has submitted by referring to the aforesaid inquiry report dated 29.07.2020 that there is no iota of evidence against the appellant and the inquiry officer has held the appellant guilty merely on the basis of the fact that the Vigilance Department in its letter, which forms basis of the institution of Vigilance Case No. 61/2013 against the appellant and others, has found *prima facie* case against the appellant. It is submitted that the appellant

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retired on 31.05.2015, however the departmental proceeding was wrongly initiated on 17.08.2015 under Rule 17 of the Rules, 2005 and in order to rectify the defect committed in initiation of the said proceedings, the Joint Secretary, Health Department vide Memo dated 30.06.2021, belatedly converted the said departmental proceeding to one under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the "Rules, 1950"), whereafter on 30.6.2021 itself, a 2nd show cause notice was issued to the appellant. In response to the said 2nd show cause notice, the appellant filed his reply dt. 8.9.2021, raising preliminary objection to the effect that in view of Rule 43(b)(a)(ii) of the Rules, 1950, departmental proceeding cannot be initiated against a retired employee in respect of an incident which had occurred more than four years before the institution of such proceedings, hence the action of the respondent authorities is baseless and without any legal force.

9. The Ld. Senior Counsel for the appellant has submitted that the learned Single Judge has failed to appreciate that after the retirement of the appellant on 31.05.2015, departmental proceedings could not have been initiated under Rules, 2005 since the same is applicable only in the case of a serving employee, hence the order contained in Memo dated 17.08.2015

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is not only illegal but also bad in law, hence is fit to be set aside. In fact, the learned Single Judge has failed to consider that since the master servant relationship in between the appellant and the respondents had come to an end on the date of his superannuation i.e. on 31.05.2015, no proceeding could have been initiated against the appellant under Rule 17 of the Rules, 2005.

10. The Ld. Senior Counsel for the appellant has next submitted that in view of Rule 43(b)(a)(ii) of the Rules, 1950, a departmental proceeding cannot be initiated against a retired employee with respect of an incident which has occurred more than four years before the institution of such proceedings and in the present case the incident is stated to have taken place during the financial years 2008-09 and 2009-10. It is thus submitted that after passage of almost six years of retirement of the appellant as also upon wrongful initiation of the departmental proceeding under Rule 17 of the Rules, 2005, the respondent authorities cannot be permitted to take advantage simpliciter by issuance of a notice dated 30.06.2021, converting the said departmental proceeding to one under Rule 43(b) of the Rules, 1950. In this regard reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***State of***

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Bihar vs. Mohd. Idris Ansari, reported in ***1995 Supp (3) SCC 56***, wherein it has been held that a departmental proceeding under Rule 43(b) of the Rules,1950 has to be in respect of misconduct, which took place not more than 4 years before the initiation of such proceedings.

11. The Ld. Senior Counsel for the appellant has also submitted that the judgment rendered by the learned Division Bench of this Court in the case of ***Urmila Singh @ Urmila Sharma vs. The State of Bihar and Ors***., reported in ***2010 (3) PLJR 845***, has been erroneously interpreted by the learned Single Judge, wherein it has been explicitly held that although during the time the employee and employer relationship existed there was no finding in any disciplinary proceeding or judicial proceedings that the employee concerned has caused pecuniary loss to the employer by his misconduct or negligence inasmuch as no proceeding was initiated to ascertain the same during the time the employee had not superannuated by issuing a charge sheet, still such a proceeding can be initiated by issuing a charge sheet after superannuation and upon conclusion thereof punishment by way of reduction of pension in full or in part may be awarded, however there is a time limit of four years to initiate such proceeding from the date of the 'event'. Moreover,

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the learned Division Bench has held that it is the date of the event which has to be considered and the concept of knowledge of the event is impliedly ousted. At this juncture, it would be relevant to reproduce paragraph nos. 2, 5, 8 and 9 of the judgment rendered in the case of ***Urmila Singh @ Urmila Sharma*** (supra) herein below:-

> ***"2.*** *Chapter-III of the Rules deals with the general provisions relating to grant of pension. Section-I of the said Chapter deals with general aspects. Regard being had to the controversy in issue, it is apposite to produce Rule 43 in entirety.*
>
> > *"43.(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.*
> >
> > *(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 proceeding to have been*

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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 Govt. 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

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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."

5. *In this connection, we may refer with profit to the decision rendered in Bihar State Electricity Board v. Sharda Prasad Sinha in LPA No. 446 of 1998 with LPA No. 759 of 2005 decided on 21.5.2007 wherein a contention was advanced that four years as mentioned in Rule 43(b) of the Rules should be counted from the date of knowledge of the incident resulting in loss inasmuch as the word 'event' has been used in the said Rules. The Division Bench, after scanning the anatomy of Rule 43(b), has held thus:—*

"A look at 43(b) of the Pension Rules, therefore, amply demonstrates that if a disciplinary proceeding has been initiated by issuing a charge-sheet against the employee for pecuniary loss caused to the employer either by misconduct or negligence and if such disciplinary proceeding could not be concluded before superannuation of the charge-sheeted employee, the

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same may be concluded by directing stoppage of full or a part of the pension otherwise payable to the employee. In the event before superannuation no disciplinary proceeding is initiated by issuing a charge-sheet, or by ordering suspension, even then, if pecuniary loss has been caused to the employer by misconduct or negligence, disciplinary proceeding may be initiated by issuing a charge-sheet against such employee and upon conclusion of the proceedings pension payable to him may be stopped to the extent of full or a part thereof. In addition to that if an employee is guilty of causing pecuniary loss to the employer as has been found in a judicial or disciplinary proceeding as a result of gross conduct, then also full or a part of pension payable to him can be stopped. Therefore, the Rule envisages three different situations. If already there is a finding in a disciplinary or judicial proceeding that an employee has caused gross misconduct resulting in pecuniary loss, his pension can be stopped in full or in part, which is the first, situation. Secondly, if there is an allegation that by misconduct or negligence an employee has caused pecuniary loss to the employer and in order to get into the truth and substance of such allegation, charge-sheet has been issued, but the proceeding pursuant to the charge-sheet could not be completed before superannuation, the proceeding may be concluded after superannuation of the employee concerned by awarding punishment of reduction of his pension either in full or in part. The 3rd situation is when there was no finding in any

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disciplinary proceeding or judicial proceedings during the time the employee & employer relationship existed, that the employee concerned has caused pecuniary loss to the employer by his misconduct or negligence and at the same time no proceeding was initiated to ascertain the same during the, time the employee had not superannuated by issuing a charge-sheet, such proceeding may be initiated by issuing a charge-sheet after superannuation and upon conclusion thereof punishment by way of reduction of pension in full or in part may be awarded. In relation to the 3rd situation, there is a time limit of four years to initiate the proceeding from the date of "event". The "event" must be such which resulted in misconduct or negligence and that has caused pecuniary loss to the employer. This "event" may be of one day or may be continuing from day to day. What is required to the ascertained is whether by reason of the "event" the misconduct or the negligence of the employee stands established resulting in pecuniary loss to the employer. If there are series of "events" then the last of such events should be taken into consideration upon determining the starting point of the time limit. Therefore, if actions are such that one action resulted in another action & that resulted in yet another action, then all actions taken together should be deemed to be the "event" and cut of date would be the last date of that action which completed the "event".

(Emphasis supplied)

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8. *In Mohd. Ansari (supra), their Lordships have held that the power under Rule 43(b) can be exercised in connection with alleged misconduct and the same is 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 proceeding. In our considered opinion, the interpretation placed by their Lordships is absolute luminescent that misconduct should have taken place not more than four years back. Thus, the view expressed in Sharda Prasad Sinha (supra) is in accord with the decision rendered by their Lordships in Mohd. Idris Ansari (supra).*

9. *In this context, we may also state that the language employed in the Rule is that in respect of an event which took place and, therefore, the concept of knowledge is not attracted to such a situation and, in fact, on the contrary the concept of knowledge of the event is impliedly ousted. The Rule is clear & it has a purpose, that is, a Govt. employee has been protected after his superannuation. When one adds from the date of knowledge, one is actually reading something to the Rule by providing words. In this context, we may profitably refer to the decision of State of Jharkhand v. Govind Singh, (2005) 10 SCC 437 wherein their Lordships, have held as follows:-*

> *"15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court" to innovate or take upon itself the task of amending or altering the statutory provisions. In that*

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situation the Judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so" (See Frankfurter: "Some Reflections on the Reading of Statutes" in Essays on Jurisprudence, Columbia Law Review, p. 51)".

12. It is thus submitted by the learned Senior Counsel for the appellant that the provision of the statute has to be read as a whole and the Court cannot supplant its view and read into the statute to give it a meaning which is not the intent of the legislature. Hence, it is submitted that the learned Single Judge has wrongly opined that the appellant cannot be allowed to take advantage of the period spent by the competent authority in taking final decision to proceed against the appellant under Rules, 1950 and the State cannot be precluded from proceeding ahead under Rule 43(b) of the Rules, 1950 in view of the orders of the learned Division Bench in the aforementioned PIL, since any interference by the Court with the proceeding under the Pension Rule would be against the spirit of the order of the learned Division Bench in the said PIL.

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13. The learned Senior Counsel for the appellant has next submitted that Rule 43(b)(a)(ii) of the Rules, 1950 postulates that the statutory period for commencement of proceeding is within four years of the date on which the misconduct was committed in the case of a retired employee, thus the departmental proceeding which has been initiated against the appellant under Rule 43(b) of the Rules, 1950 after six years of his retirement, i.e. on 31.05.2015, by an order dated 30.06.2021, pertaining to an occurrence of alleged misconduct of the financial years 2008-09 and 2009-10 is clearly not permissible under Rule 43(b)(a)(ii) of the Rules, 1950, hence the Ld. Single Judge has committed a grave error in not quashing the said resolution dt. 30.6.2021 as also the resolution dt. 17.08.2015 by which a departmental proceeding was initiated against the appellant under Rules, 2005 which is not applicable in the case of a retired employee like the appellant, thus the order dated 02.03.2023, passed by the Ld. Single Judge is fit to be set aside.

14. *Per contra,* the learned counsel for the respondents has feebly tried to support the impugned order dated 02.03.2023, passed by the learned Single Judge by submitting that on account of the orders passed from time to time in the aforesaid PIL filed by Vikash Chandra Guddu Baba, the

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departmental proceeding was initiated against the appellant vide resolution dated 17.08.2015, and thereafter the same was converted into one under Rule 43(b) of the Rules, 1950 vide resolution contained in Memo dated 30.06.2021, however the Ld. Counsel for the respondents has fairly admitted that no departmental proceeding could have been initiated under Rules, 2005 against the appellant after his superannuation inasmuch as master servant relationship had stood ceased. The learned counsel for the respondents has also not been able to show from the records that the departmental proceeding has been initiated against the appellant under Rule 43(b) of the Rules, 1950 in respect of an event which took place not more than four years before the institution of such proceeding as per the mandate of Rule 43(b)(a)(ii) of the Rules, 1950.

15. We have heard the learned Senior Counsel for the appellant and the learned counsel for the respondents as also have gone through the materials on record, from which we find that the facts of the present case lie in a narrow encompass inasmuch as on account of commission of alleged financial irregularities in the financial years 2008-09 and 2009-10, in purchase of medicines, reagents, machines, equipment’s etc. at a rate higher than the MRP and in huge quantity which caused

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grave financial loss to the State Government, a departmental proceeding was initiated against the appellant (after his retirement) vide resolution dated 17.08.2015, issued under the pen and signature of the Additional Secretary, Health Department, Government of Bihar, Patna under Rule 17 of the Rules, 2005. It appears that upon realizing the fact that no departmental proceeding could have been initiated against a retired employee under the Rules, 2005, the Joint Secretary to the Government, Health Department, Govt. of Bihar, Patna vide amended resolution contained in Memo dated 30.06.2021 had converted the pending departmental proceeding to one under Rule 43(b) of the Rules, 1950, whereafter inquiry had taken place. It appears that prior to conversion of the departmental proceeding initiated against the appellant under the Rules, 2005 into one under Rule 43(b) of the Rules, 1950, the Additional Secretary, Health Department, Bihar, Patna had already submitted his inquiry report dt. 29.07.2020, finding the charges to have been proved qua the appellant. The Joint Secretary to the Government, Health Department, Govt. of Bihar, Patna vide letter dt. 30.06.2021 had then issued a second show cause notice to the appellant which was replied to by the appellant on 8.9.2021 raising a preliminary issue regarding maintainability of

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the departmental proceeding. The appellant had then challenged the aforesaid two resolutions dated 17.08.2015 and 30.06.2021 by filing a writ petition bearing CWJC No.381 of 2023 as also praying therein for quashing of the entire departmental proceeding initiated against him, however the same was dismissed by the Ld. Single Judge by an order dated 02.03.2023.

16. We find that the issues which arise for consideration in the present appeal is as to whether a different interpretation can be given to the word “event” and whether the bar of four years can be relaxed for initiating a departmental proceeding against a retired employee under proviso (ii) of Rule 43(b)(a) of the Rules, 1950 for justifying the continuance of a departmental proceeding against the appellant. At this juncture, it would be relevant to refer to Rule 43(b) of the Rules, 1950. A bare perusal of Rule 43(b)(a)(ii) of the Rules, 1950 would show that a departmental proceeding can be instituted after superannuation of a government servant not only after sanction of the State Government but also in respect of an event which took place not more than four years before the institution of such proceedings. The law in this regard is no longer res integra as has been held unequivocally by the learned Division Bench of this Court in the case of ***Urmila Sharma @ Urmila Singh*** (supra) to the effect

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that the aforesaid rule is very clear and there is no obscurity much less any ambiguity inasmuch as the rule has a purpose, i..e. to protect a government employee after his superannuation and though the power under Rule 43(b) can be exercised in connection with the alleged misconduct, however the same is subject to the rider that such departmental proceeding has to be in respect of a misconduct which took place not more than four years before the initiation of such proceeding. In fact, this aspect of the matter has also been conclusively decided by the Hon'ble Apex Court in the case of ***Mohd. Idris Ansari*** (supra), paragraph nos. 7 to 10 whereof are reproduced herein below:-

> ***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,*

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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.

8. *There remains the question whether any assistance can be derived by the appellant authorities from Rule 139 of the Rules. The said Rule 139 reads as under:*

> *"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.*
>
> *(c) The State Government reserve to themselves the*

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powers of revising an order relating to pension passed by subordinate authorities under their 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, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

9. *So far as that rule is concerned, it empowers the State Authorities to decide the question whether full pension should be allowed to a retired government servant or not in the circumstances contemplated by the rule. The first circumstance is that if the service of the government servant concerned is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of the government servant concerned while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principles of natural justice and*

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secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture:

1. A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

2. Even if the service record of the officer concerned is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the officer concerned during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

10. *So far as the second type of cases are concerned the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the*

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requirements of Rule 43(b). Consequently a retired government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31-1-1993 and the show-cause notice was issued on the ground of grave misconduct on 27-9-1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up to 31-1-1993 when the respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27-9-1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint

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reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13-12-1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after the expiry of four years from 1986-87, as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show-cause notice dated 27-9-1993 will have to be treated as stillborn and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs."

17. We find from the language used in Rule 43(b) of the Rules, 1950 that the same is absolutely clear and there is no scope for the Court to innovate or take upon the task of amending or altering the statutory provisions in absence of there being any ambiguity, thus we are of the view that the learned

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Single Judge has, in the impugned order dated 02.03.2023 erroneously held that the State cannot be precluded from proceeding ahead under Rule 43(b) of the Rules, 1950 against the appellant on account of the orders passed by the learned Division Bench of this Court in the aforesaid PIL, since the same would be against the spirit of the orders of the learned Division Bench. In this regard, it would suffice to state that in none of the orders passed by the learned Division Bench of this Court in the aforesaid PIL, any direction has been issued to act contrary to the prevailing law apart from the fact that said PIL has stood dismissed long time back by an order dated 04.01.2012. In any view of the matter, the orders dt. 06.12.2010, 01.04.2011 and 03.2.2011 passed by the learned Division Bench of this Court in the aforesaid PIL, referred to by the learned Single Judge in the impugned order dated 02.03.2023, pertains to taking administrative action as also criminal action against the concerned person/officer/staff immediately, however till the date of retirement of the appellant i.e. 31.05.2015, even after lapse of about four and a half years of passing of the first order dated 06.12.2010 by the learned Division Bench of this Court, no departmental proceeding was initiated against the appellant, however only after his retirement, a departmental proceeding

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was initiated on 17.08.2015, that too under a wrong provision of law i.e. under Rule 17 of the Rules, 2005 which was/is illegal and bad in law inasmuch as on account of cessation of master servant relationship, the Rules, 2005 had become inapplicable to the appellant. Moreover, the conversion of the departmental proceeding initiated against the appellant under the Rules, 2005 into one under Rule 43(b) of the Rules, 1950, vide resolution contained in Memo dated 30.06.2021 is also illegal inasmuch as no departmental proceeding could have been initiated against the appellant in respect of a misconduct which took place more than four years before the initiation of such proceeding, particularly considering the fact that in the present case the alleged misconduct pertains to the financial years 2008-09 and 2009-10. Thus, we find that the Ld. Single Judge could neither have expanded the scope of Rule 43(b) of the Rules, 1950 nor could have on the pretext of the orders of the Hon'ble Division Bench passed in the aforesaid PIL opined that any interference by the Court with the proceeding under the Pension Rules would be against the spirit of the said orders passed by the learned Division Bench, especially since the said PIL bearing CWJC No.16856 of 2010 had stood dismissed on 04.01.2012.

18. It would be pertinent to mention here that the

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departmental inquiry which was held qua the appellant was in pursuance to an illegally initiated departmental proceeding by the respondents vide resolution dated 17.08.2015 and the same had culminated into submission of an inquiry report dated 29.07.2020 by the Additional Secretary, Health Department, Bihar, Patna, even prior to conversion of the said proceeding into one under Rule 43(b) of the Rules, 1950 vide amended resolution dated 30.06.2021, hence the entire inquiry proceedings including the inquiry report dated 29.07.2020 is on the very face of it per se illegal, thus the same has also got no legs to stand resulting in the second show cause notice dated 30.06.2021 being also bad in law.

19. Having regard to the facts and circumstances of the case and for the foregoing reasons, we find that the resolution dated 17.08.2015, issued under the pen and signature of the Additional Secretary, Health Department, Government of Bihar, Patna by which the departmental proceeding was initiated against the appellant under Rule 17 of the Rules, 2005 and the amended resolution issued by the Joint Secretary to the Government, Health Department, Government of Bihar, Patna contained in Memo dated 30.06.2021, converting the pending departmental proceeding into one under Rule 43(b) of the Rules,

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1950 are bad in law, hence are quashed. Consequently, the order dated 02.03.2023, passed by the learned Single Judge in CWJC No.381 of 2023 is set aside.

20. In the result, the appeal stands allowed.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

Kanchan/.-

AFR/NAFR	AFR
CAV DATE	12.08.2026
Uploading Date	18.11.2026
Transmission Date	NA

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