IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7874 of 2023

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Suresh Prasad Sah Son of Late Doma Sah, resident of Mohalla - Chandpur Bela, P.S. Jakkanpur, Patna, P.O. - GPO, Patna, District – Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Industry, Government of Bihar, Patna.
3. The Principal Secretary, Industry Department, Government of Bihar-cum-Chairman, Bihar State Khadi and Village Industries Board, East Gandhi Maidan, Patna - 04.
4. The Bihar State Khadi and Village Industries Board, through its Chief Executive Officer, East Gandhi Maidan, Patna - 04.
5. The Chief Executive Officer, Bihar State Khadi and Village Industries Board, East Gandhi Maidan, Patna - 04.
6. The Public Information Officer-cum-Assistant Account Officer, Bihar State Khadi and Village Industries, Board, East Gandhi Maidan, Patna - 04.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vishwambhar Prasad, Adv.
For the State	:	Mr.Subhash Pd. Singh, GA 3
		Mr. Indeshwari Pd. Mandal, Adv.
For the Khadi Board	:	Dr. Anand Kumar, Adv.
		Ms. Vijeta Kumari, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 07-07-2026

Heard Mr. Vishwambhar Prasad, learned Advocate for the petitioner and Dr. Anand Kumar, learned Advocate for the Bihar State Khadi and Village Industries Board. Learned Advocate for the State, Mr. Indeshwari Mandal is also present.

2. The petitioner has approached this Court seeking a direction upon the respondent authorities to ensure payment of

his retiral benefits such as unutilized leave salary, amount of insurance and gratuity.

3. During the pendency of the writ petition, certain subsequent events have taken place, inter alia, in pursuant to the order of the Bihar State Khadi and Village Industries Board (hereinafter referred to as the 'Board') fresh charges have been framed against the petitioner for the alleged financial irregularity and accordingly initiated a departmental proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules,1950'), which action of the respondents have been put to challenge by filing Interlocutory Application bearing I.A. No. 1 of 2024. Before proceeding further it is worth noting here that except gratuity, all the admissible amount has been paid to the petitioner.

4. Coming to the merit of the writ petition, it would be pertinent to bring short facts of the case which would be helpful to decide the issue involved herein. The Bihar State Khadi and Village Industries Board was established as per the provisions contained in the Bihar State Khadi and Village Industries Board Act, 1956 and in terms with the Rules as well as Circulars issued by the State Government except pension, all the benefits were made available to the employees of the Board. The

petitioner after serving the Board for about 38 years, retired as a Routine Clerk on 31.12.2021; upon superannuation, all the admissible amount, including the amount of gratuity to the tune of Rupees Ten Lakhs has been sanctioned in favour of the petitioner. Despite the amount having been sanctioned, when the same has not been paid, the petitioner has filed several representations but to no avail and, thus, the present writ petition.

5. A counter affidavit has been filed on behalf of the Board and it is submitted that with regard to certain serious irregularities, including financial misappropriation the petitioner was subjected to a departmental proceeding which culminated into six penalties. However, said departmental proceeding was kept pending against the petitioner, so far defalcation of Rupees Eight Lakhs is concerned, allegedly caused by him in the year 2010, the date on which the petitioner was working as a Routine Clerk, as also the custodian of official records. It has also been made clear that in the earlier departmental proceeding the petitioner was placed under suspension vide Board's letter No. 81 dated 08.06.2009 and memo of charge was served upon him. After full fledged departmental proceeding, the petitioner was inflicted with a punishment that he shall not be entitled to get

any other amount during pendency of the suspension, except subsistence allowance, the promotion of the petitioner has also been withheld, besides his increment of salary with cumulative effect as well as inflicted with censure. The order of punishment also contemplated that there was some financial irregularity with respect to training of the other employees and the same shall be verified through a Chartered Accountant whereupon action shall be taken separately.

6. When this matter was take up on 19.12.2023, this Court had considered the case of the petitioner and directed to clarify the position. Accordingly a supplementary counter affidavit has been filed and this Court has been informed that an Enquiry committee consisting of three members has been constituted vide Memo No. 429 dated 16.12.2021 prior to the retirement of the petitioner for the alleged causing of financial loss to the Board and also to review the payment made to the petitioner against arrears of salary. It is further submitted that since the petitioner has already superannuated, thus departmental proceeding under Rule 43(b) of the Rules, 1950 has been initiated and a fresh memo of charge contained in Memo No. 836 dated 26.09.2023 has been served upon the petitioner along with list of documents and witnesses.

7. Mr. Vishwambhar Prasad, learned Advocate for the petitioner while assailing the action of the respondent Board in initiating the departmental proceeding after superannuation of the petitioner has submitted that the issuance of fresh memo of charge contained in Memo No. 836 dated 26.09.2023 is hopelessly barred in terms with rule 43(b)(a)(ii) of the Rules, 1950. Reliance has also been placed on a decision rendered by the Hon'ble Supreme Court in the case of the ***State of Bihar & Ors. Vs. Mohd. Idris Ansari [AIR 1995 SC 1853].*** Further referring to a decision passed by the Division Bench of this Court in the case of ***Bihar State Khadi & Village Industries Board Vs. Pritam Singh Marwaha & Anr. (LPA No. 246 of 2010]***, wherein the learned Division Bench has, affirmed the order of the learned Single Judge who vide its order dated 29.10.2009, quashed the order of recovery to the tune of Rs.2,03,121/- which has been sought to be recovered after retirement of the employee concerned. It is further contended that once the Board has already concluded the departmental proceeding long back in the year 2010, the Board further cannot be allowed to initiate a fresh departmental proceeding, with respect to an event which has taken place in 2008-09, after superannuation of the petitioner. In any view of the matter,

initiation of a departmental proceeding is bad and wholly illegal and thus the petitioner is entitled to get gratuity.

8. On the other hand, learned Advocate for the Board taking this Court through the order contained in Memo No. 410 dated 28.10.2010 has submitted that the present proceeding which has been initiated after superannuation of the petitioner is not a fresh proceeding rather continuance of the earlier proceeding as is evident from the punishment order dated 28.10.2010, which clearly suggests that so far financial irregularity is concerned, a separate action shall be taken after verification of the record by the Chartered Accountant. Prior to the superannuation of the petitioner, a Three Men Enquiry Committee was constituted and once it was found that huge amount of the Board has been defalcated by the petitioner, a fresh memo of charge has been issued giving liberty to the petitioner to file his response. The petitioner has misused his post while working as Routine Clerk, who was the custodian of the records, besides he was only entitled for subsistence allowance but has also obtained the other benefits contrary to the order of punishment passed in the year 2010. To strengthen his submissions, reliance has been placed on the decisions rendered by the Division Bench of this Court in the cases of

Yogendra Prasad Singh Vs. The State of Bihar & Ors. [2015 (2) PLJR 470]; ***Nityanand Kumar Singh Vs. The State of Bihar & Others [2016 (2) PLJR 315]***; ***Krishna Chandra Jha Vs. The State of Bihar & Ors. [2017 (2) PLJR 571]*** as well as the decision in the case of ***Shailendra Kumar Pandey Vs. The State of Bihar & Ors. [LPA No. 186 of 2020],*** which came to be disposed of on 29.11.2023. Referring to the aforesaid decisions, Dr. Anand Kumar further contended that since on account of financial irregularity caused by the petitioner, severe pecuniary loss has been suffered by the Board and since the action was required to be taken after proper verification done by the Chartered Accountant, the same has been done later on; therefore Rule 43(b)(a) (ii) of the Rules, 1950 would not be applicable in this case.

9. After giving careful consideration of the submissions advanced by learned Advocates for the parties and upon perusal of the materials available on record, the question which has emerged before this Court, in the case at hand, is as to whether any departmental proceeding can be kept pending with respect of some of the charges and concluded with respect to others by inflicting punishment.

10. It is not in dispute that with respect to certain

irregularity having financial impact over the Board as also on account of disobedience of the higher authorities, the petitioner was placed under suspension and subjected to a departmental proceeding after serving a memo of charge under Memo No. 219 dated 29.07.2009. For conducting the departmental proceeding one Shivkant Jha, District Khadi Gramodyog Officer was appointed as Conducting Officer, whereas Sri Pradip Kumar, Incharge Accountant, Khadi Gramodyog Office, Bhagalpur was appointed as Presenting Officer. The petitioner on receipt of the memo of charge filed his written defence and thereupon enquiry Officer submitted his report, besides recommendation to recover the misappropriated amount, as is evident from the enquiry report dated 29.04.2010, which is appended to the counter affidavit filed on behalf of the respondents No. 3 to 6. Based upon such enquiry report, the disciplinary authority inflicted punishment upon the petitioner vide order bearing No. 410 dated 28.10.2010. However, while inflicting punishment noted in the aforegoing paragraph, it has further been observed that so far the financial irregularity allegedly committed during the training programme, action shall be taken after verification of the statement of accounts done by the Chartered Accountant.

11. It is needless to observe that if the charge memo inter alia contains the imputation with respect to any misappropriation while carrying out training programme, which necessitated initiation of a departmental proceeding along with other charges, then it ought to be concluded based upon the materials available on record. Once the Khadi Gramodyog Board has accepted that the service condition and the disciplinary proceeding with respect to its employees shall be conducted in accordance with the prevalent rules which are applicable to the cases of other Government employees and thus certainly guided by the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the statutory prescription provided under Rules 2005 must be followed. Since the subsequent proceeding has been initiated after attaining the age of superannuation of the petitioner by taking the shelter of Rule 43(b) of the Bihar Pension Rules, 1950, it need not requires any clarification that the proceeding 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 the proceeding on which an order of dismissal from service may be made, as mandated under proviso (iii) of Rule 43(b).

12. This Court has carefully examined the relevant provisions of CCA Rules, 2005 as well as the Bihar Pension Rules, however, could not come across any provision which empowers the authority concerned that the departmental proceeding can be kept pending with respect to some of the charges and concluded with respect to others by inflicting punishment. Such action of the authority will go to the root of the fairness in public policy and would not withstand the test of Article 14 of the Constitution of India. It need not require any emphasis that a retired Government servant or even an employee of the Khadi Board can be held guilty of grave misconduct committed during his service career in a departmental proceeding 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 four years of initiation of such departmental proceeding against him. The materials available on record admit that the charges with respect to financial irregularity in conducting training programme was of prior to 2009 and with respect to such incidence, no fresh memo of charge can be framed after superannuation of the petitioner from Khadi Board on 31.12.2021, much beyond the period of limitation prescribed

under proviso (ii) of Rule 43(b) which clearly stipulates that if the departmental proceeding is not instituted while the Government servant was on duty either before retirement or during re-employment shall not be instituted in respect of an event which took place not more than four years before institution of such proceeding. It is also pertinent to take note of Clause (i) thereof which mandates that the same could be instituted only with the sanction of the State Government.

13. The stand of the Khadi Gromodyog Board that the proceeding initiated under Rule 43(b) of the Bihar Pension Rules under Memo No. 836 dated 26.09.2023 is continuance of the earlier proceeding, which culminated with certain penalties, does not find merit consideration for two reasons; firstly if it was continuance of the earlier proceeding there was no need of framing of fresh charges and; secondly the procedure adopted by the Khadi Gramodyog Board is unknown to the service jurisprudence. Further the decisions relied upon by the learned Advocate for the Khadi Gramodyog Board in the case of ***Yogendra Prasad Singh*** (supra) , it is pertinent to state here that the said matter is concerned only with the Court's power while exercising power of judicial review in matters of disciplinary proceeding, wherein the learned Division Bench had reinforced

that the power of judicial review is limited to the review of procedure and error of law and the Court would not reverse the findings of an enquiry authority on the ground that evidence adduced is insufficient. The Court would not assess the evidence and findings of the disciplinary authority or substitute their findings by its own finding, unless the findings are perverse.

14. Similarly, in the case of ***Nityanand Kumar Singh*** (supra), the learned Division Bench while highlighting the provisions of Rule 43(a) and 43(b) observed that such future conduct is not related to his service period at all and it has come into play after retirement and applies till pensioner breathes his last. There can be no question of time limitation for exercise of such power because this Rule is not at all connected with any departmental proceeding. Hence, it cannot be governed by proviso (a)(ii) to Rule 43(b). Further the Court clarified that Rule 43(b) confers power upon the State Government to withhold or withdraw a pension or any part of it, if the pensioner is found in a departmental or judicial proceeding guilty of grave misconduct or to have caused pecuniary loss to the Government by misconduct or negligence during his service but it cannot be in respect of an event which took place more than four years before the institution of such proceeding. So far

the case of ***Krishna Chandra Jha*** (supra) is concerned, that was with respect to quantum of punishment which is held to be within the exclusive jurisdiction of the disciplinary/appellate authority and the Court ruled that once charge has been proved and not denied, the Court under judicial review would not interfere with the discretion of the Disciplinary Authority to impose a particular punishment. Now coming to the decision of ***Shailendra Kumar Pandey*** (supra), in this case the learned Division Bench has held that the unammended rule has not restricted the Rule 43(B) to be invoked only if there is financial loss is caused to the State government by the employee; the other aspects are also warranted for invoking the rule in the light of the language employed in the rule.

15. Having gone through the decisions cited by the learned Advocate for the respondents Khadi Board, this Court with utmost regard, comes to the opinion that they are not applicable in the facts of the present case.

16. On the other hand, the decision whereupon the learned Advocate for the petitioner has placed reliance especially in the case of ***Mohd. Idris Ansari*** *(supra),* the ratio whereof have material bearing over the issue wherein the Hon'ble Supreme Court reinforced that proviso (ii) to Rule

43(b) clearly bars initiation of a departmental proceeding with respect to any incidence constituting misconduct which have taken place beyond four years of initiation of such proceeding. Further, any enquiry with respect to alleged financial irregularity conducted in absence of the petitioner without furnishing audit report is wholly unsustainable and violates the principles of natural justice and as such the decision rendered in the case of ***Pritam Singh Marwaha*** (supra) adds premium to the stand of the writ petitioner.

17. In view of the discussions made hereinabove and the settled position of law, this Court has no hesitation to hold that the very initiation of a departmental proceeding against the petitioner under memo of charge contained in Memo No. 836 dated 26.09.2023 is wholly unsustainable and barred by limitation in terms with Rule 43(b)(ii) of the Bihar Pension Rules, 1950 and thus is hereby set aside. Upon setting aside the memo of charge, this Court directs the respondent authorities to ensure payment of all the remaining amount under the head of gratuity, keeping in mind the provisions prescribed under the Payment of Gratuity Act 1972 along with statutory interest, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

18. The present writ petition stands allowed.

19. However, there shall be no order as to cost.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	13 .07.2026
Transmission Date	