

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.621 of 2025
In
Civil Writ Jurisdiction Case No.51 of 2022

1. The State of Bihar through Principal Secretary, Department of Health, Bihar, Patna.
2. The Joint Secretary, Department of Health, Bihar, Patna.
3. The Director, Health Services Directorate, Bihar, Patna.
4. The Chief Medical Officer cum Civil Surgeon, Khagaria.
5. The Treasury Officer, Khagaria.

... .. Appellant/s

Versus

1. Dr. Shameem Shohrey Afaque Son of Choudhary Mushtaque Hassan, Resident of Village- Choti Balia, Upper Tola P.S.- Balia, District- Begusarai.
2. Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Behari Sinha, GA-8
Mr. Suryakant Kumar, AC to GA-8
For the Respondent No. 1 : Mr. Pankaj Kumar Sinha, Advocate
Mr. Rajiv Kumar Singh, Advocate
For the Respondent no. 2 : Mr. Ram Kinkr Choubey, SC IA & AD

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-01-2026

The Letters Patent Appeal has been filed by the State of Bihar and Others, challenging the judgment dated 12.12.2024, passed in CWJC No. 51 of 2022.

2. The aforesaid writ petition was filed by the Respondent Dr. Shameem Shohrey Afaque with following prayer:-

“1. (A) A writ in the nature of Certiorari or any other appropriate writ, order, direction quashing the order dated 11.8.2021 as dispatched through



Memo No. 589(9)/Swa. Patna dated 13.8.2021 showing No. Vividh-13-28/2018 (Swa)/Patna dated. Stopping the payment of pension amount and 10% amount of gratuity permanently.

(B) A writ in the nature of Mandamus or any other appropriate writ, order, direction commanding the respondents to act in accordance with law and make payment of petitioner's pension and 10% amount of gratuity.

3. After issuance of notice, the Respondents No. 1, 2 and 3 filed the counter affidavit. Another counter affidavit was also filed by the Respondent No. 4. The learned Single Judge, after hearing the learned counsel for the respective parties and going through the averments taken in the writ petition as also in the counter affidavit, has been pleased to hold as follows:-

“9. Having heard the learned counsel for the respective parties and after meticulous examination of the materials available on record, this Court finds that admittedly the petitioner went on leave on account of the serious ailment of his wife on 01.04.2003 and remained absent to 13.12.2010. During the interregnum period, the petitioner has neither been served with any notice nor any proceeding has been initiated in terms of Rule 76 of the Bihar Service Code. The petitioner has been allowed to join in the Headquarter and later on he was posted vide notification dated 30.06.2012 and further he has been allowed to superannuate unconditionally on 28.02.2019. The proceeding, if any, for the charge of unauthorized absence, has been initiated after the retirement of the petitioner under Rule 43(b) of the Rules, 1950 by serving a copy of the memo of charge with respect to an incident which



took place in between 01.04.2003 and 13.12.2010. Though, the petitioner in response to the memo of charge has submitted his explanation and participated in the proceeding under Rule 43(b) of the Rules, 1950, however, the petitioner cannot be precluded to challenge the proceeding, if the same is wholly without jurisdiction.

10. Before parting with this case, it would be worth benefiting to reproduce the prescriptions as provided under Rule 43(b)(a)(ii), which reads as follows:

“43.(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 order 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.

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

*11. The issue with regard to the bar as provided under Rule 43(b) of the Rules, 1950 has come up for consideration before the Apex Court in **State of Bihar and Others v. Mohd. Idris Ansari [1995 Supp(3) SCC 56]**. The relevant part of paragraphs-7 and 10 are encapsulated 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, 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.



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 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).....”

12. Further, Rule 76 of the Bihar Service Code, nonetheless, empowers the competent authority to remove a government servant, who has remained



absent from his post continuously for more than five years but such order of removal/dismissal cannot be validly passed without any departmental proceeding and giving proper opportunity of hearing to the concerned government servant. Had the respondents so sanguine about the unauthorized absence of the petitioner, they should have been immediately proceeded against the petitioner in a valid departmental proceeding and pass appropriate order in accordance with law, much less before the petitioner has been allowed to superannuate on 28.02.2019.

13. Now coming to the impugned order, which speaks that had the department been knowing the fact of unauthorized absence of the petitioner, he would have been certainly dismissed from service, but since the petitioner has already superannuated and has been allowed 90% Gratuity, in such circumstances, full pension and 10% of Gratuity may be withheld; this observation of the disciplinary authority is in the opinion of this Court, is wholly unsustainable in facts and the law. The materials available on record speaks otherwise. Not only the joining of the petitioner was accepted on 14.12.2010, he was posted vide order dated 30.06.2012 and allowed to superannuate on 28.02.2019. Further, even if, for the sake of argument, it is accepted that the respondents have resorted the proceeding rule 43(b) of the Rules, 1950, there is no finding with regard to any pecuniary loss caused to the government or the petitioner is found to have been guilty of grave misconduct in a departmental or judicial proceedings.

14. Having considered the admitted facts and the settled legal position, this Court finds that the very initiation of the departmental proceeding against the petitioner under rule 43(b) of the Rules, 1950 with respect to an event which took place in between 01.04.2003 and 13.12.2010, is wholly time barred in terms of rule 43(b)(a)(ii) and, as such, this Court has



no hesitation to set aside the impugned order dated 11.08.2021 as contained in Memo No. 589(9) dated 13.08.2021 (Annexure-21 to the writ petition).

4. The learned Single Judge passed the direction directing the respondent authorities to ensure full pension and 10 per cent gratuity amount within a period of 12 weeks from the date of receipt / production of the copy of the order. It is submitted by the Ld. Counsel for the Appellants that the learned Single Judge was not justified in observing that the petitioner has neither been served with any notice nor any proceeding has been initiated in terms of Rule 76 of the Bihar Service Code and that he was allowed to superannuate on un-conditionally on 28.2.2019.

5. It is the contention of the learned counsel for the appellants that the proceeding was initiated against the Respondent on 15.3.2018, which was admittedly before the date of the superannuation of the Respondent, however this Court finds that no such specific stand has been taken in the counter affidavit and no document thereto has been annexed to show that the petitioner was served with any notice of the proceeding in terms of the relevant Rules, as pointed out by the learned Single Judge. This belated plea taken by the learned counsel for the appellants cannot be entertained at this stage.

6. We further find that in view of paragraph no. 4 of the



memo of appeal, the submission which is advanced by the learned counsel for the appellants is not acceptable. Paragraph no. 4 of the appeal memo reads as follows:-

“4. That before Health Department's resolution bearing Memo No.1259(9) dated 23.09.2019 for initiation of departmental proceeding could be issued on the basis of memo of charge dated 15.03.2018, the petitioner superannuated from service w.e.f. 28.02.2019.”

7. A Letters Patent Appeal, as permitted under the Letters Patent, is normally an intra-Court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a Subordinate Court. In such appellate jurisdiction, the High Court exercises the powers of a Court of Error. (Ref: (1996) 3 Supreme Court Cases 52, Baddula Lakshmaiah -Vrs. Shri Anjaneya Swami Temple). The Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law. This scope of interference is within a narrow compass. Appellate jurisdiction under Letters Patent is really a corrective jurisdiction and it is used rarely only



to correct errors, if any made.

8. In the case of *B. Venkatamuni -Vrs.- C.J. Ayodhya Ram Singh*, reported in (2006) 13 Supreme Court Cases 449, it is held that in an intra-court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge. Even a Court of first appeal which is Court of appeal on fact may have to exercise some amount of restraint. Similar view was taken in the case of *Umabai -Vs.- Nilkanth Dhondiba Chavan*, reported in (2005) 6 Supreme Court Cases 243.

9. In the case of *Management of Narendra & Company Pvt. Ltd. Vs. Workmen of Narendra & Company*, reported in (2016) 3 Supreme Court Cases 340, while considering the scope of the intra-Court appeal, the Hon'ble Supreme Court has held that in an Intra-Court appeal, on a finding of fact, unless Appellate Bench reaches a conclusion that finding of the Single Judge are perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the



Single Judge, unless both sides agree for fairer approach on relief.

10. In essence, a Letters Patent Appeal provides internal check and balance, ensuring judicial accountability and oversight and protects citizens rights allowing for a more thorough review of a Single Judge's decision.

11. After hearing the learned counsel for the respective parties and in view of the settled position of law, we find no perversity in the impugned judgment dated 12.12.2024 passed in CWJC No. 51 of 2022 and therefore, we are not inclined to grant any relief to the appellants in this Letters Patent Appeal.

12. Accordingly, the Letters Patent Appeal stands dismissed.

(Sangam Kumar Sahoo, CJ)

(Mohit Kumar Shah, J)

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