

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L. P. A. No. 358 of 2025

- 1. The State of Jharkhand, through the Principal Secretary, Water Resource Department, Ranchi
 - 2. The Joint Secretary, Water Resource Department, Government of Jharkhand, Ranchi
 - 3. The Engineer-in-Chief, Water Resource Department, Government of Jharkhand, Ranchi
 - 4. The Chief Engineer, Waterways Divisions, Water Resource Department, Hazaribagh
 - 5. The Superintending Engineer, Waterways Circle, Water Resource Department, Hazaribagh
 - 6. The Executive Engineer, Waterways Division, Water Resource Department, Hazaribagh
- Appellants

Versus

- 1. Nabin Narayan
 - 2. The Accountant General (A&E), Jharkhand, Ranchi
- Respondents

With

L. P. A. No. 719 of 2025

- 1. The State of Jharkhand, through the Principal Secretary, Water Resource Department, Ranchi
 - 2. The Joint Secretary, Water Resource Department, Government of Jharkhand, Ranchi
 - 3. The Engineer-in-Chief, Water Resource Department, Government of Jharkhand, Ranchi
 - 4. The Chief Engineer, Waterways Divisions, Water Resource Department, Hazaribagh
 - 5. The Superintending Engineer, Waterways Circle, Water Resource Department, Hazaribagh
 - 6. The Executive Engineer, Waterways Division, Water Resource Department, Hazaribagh
- Appellants

Versus

- 1. Ramchandra Rajak
 - 2. The Accountant General (A&E), Jharkhand, Ranchi
- Respondents

PRESENT

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJESH SHANKAR

- For the Appellants: Mr. Anish Kumar Mishra, A.C to Sr. S.C-I
Mr. Shahbaj Akhtar, A.C to A.A.G-III
 - For the Respondents: Mr. Amit Kr. Verma, Advocate
Ms. Shruti Shrestha, Advocate
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Reserved on 10.03.2026

Pronounced on 17.03.2026

Per: Rajesh Shankar, J

I.A No. 1797 of 2025 (in L.P.A No. 358 of 2025) has been filed under Section 5 of the Limitation Act, 1963 to condone the delay of 145 days occurred in filing the present appeal.

2. I.A No. 6797 of 2025 (in L.P.A No. 719 of 2025) has been filed for condonation of delay of 93 days occurred in filing the present appeal.

3. Having heard learned counsel for the appellants and on being satisfied with the reasons set out in the present interlocutory applications, the said delay occurred in filing the present appeals is hereby condoned.

4. The present interlocutory applications are accordingly disposed of.

Facts of the cases

5. L.P.A No. 358 of 2025 is directed against the judgment/order dated 20.08.2024 passed by the learned Single Judge in W.P.(S) No. 4959 of 2022 whereby the order as contained in Memo No. 4250 dated 08.08.2022 issued by the Joint Secretary, Water Resources Department, Government of Jharkhand (the appellant No.2) imposing penalty of 5% deduction from the pension of the respondent/writ petitioner (hereinafter referred to as the R1) for a period of two years, has been quashed observing that the initiation of departmental proceeding under Rule 139 of the Jharkhand Pension Rules, 2000 (hereinafter referred to as 'the Rules, 2000') can be exercised, if the entire service career of an employee has been found to be unsatisfactory.

6. L.P.A No. 719 of 2025 is directed against the judgment/order dated 20.08.2024 passed by the learned Single Judge in W.P.(S) No. 4967 of 2022 whereby the order as contained in Memo No. 4235 dated 05.08.2022 issued under the signature of the appellant No.2 imposing penalty of 5% deduction from the pension of the respondent/writ petitioner (hereinafter referred to as the R2) for a period of two years, has been quashed on the same reasons as mentioned hereinabove.

7. The R1 was appointed on the post of Assistant Engineer, Irrigation Department, Government of Bihar in the light of order as contained in Memo No. 399 dated 25.01.1979. He retired from the post of Engineer-in-Chief-I, Department of Water Resources, Government of Jharkhand on 30.04.2017 and his pension was also approved by the Office of the Principal Accountant General (A&E), Jharkhand, Ranchi.

8. Subsequently, an explanation was sought from R1 vide letter No. 2993 dated 14.07.2018 issued under the signature of Special Secretary to the Government, Water Resources Department with respect to the alleged irregularities committed in restoration works of three schemes pertaining to disposal of desilting soil accumulated after Canal Bed Clearance during his period of posting as Superintending Engineer, Waterways Circle, Hazaribagh in the year 2014-15.

9. The R1 replied the said letter by attaching the copy of charge report wherein it was stated that he had taken the additional charge of Superintending Engineer, Water Ways Circle, Hazaribagh from his predecessor-in-office w.e.f 31.01.2015 and was relieved on 14.10.2016 (afternoon).

10. However, a second show cause notice was served on him vide letter No. 2712 dated 28.06.2021 issued under the signature of the appellant No.2 stating that his reply to the earlier show cause notice was not accepted and in the light of Rule 139 of the Jharkhand Pension Rules, 2000, it was proposed to award him punishment of deduction of 5% of his pension for a period of two years.

11. Finally, the R1 was awarded punishment of deduction of 5% of his pension for a period of two years vide the order as contained in Memo No. 4250 dated 08.08.2022 issued under the signature of the appellant No.2.

12. Aggrieved thereby, the R1 filed a writ petition being W.P.(S) No. 4959 of 2022 which was allowed vide impugned order dated 20.08.2024 quashing the order as contained in Memo No. 4250 dated 08.08.2022.

13. The R2 was appointed on the post of Assistant Engineer, Water Resources Department, Government of Bihar vide Memo No. 2323 dated 20.06.1987 and he retired from service on 31.01.2018 from the post of Chief Engineer, Water Resources Department, Hazaribagh.

14. An explanation was sought from the R2 vide letter No. 2992 dated 14.07.2018 issued under the signature of Special Secretary to the Government whereby he was directed to submit reply on the alleged irregularities committed by him in the restoration works of three schemes pertaining to disposal of desilted soil during his period of posting as Chief Engineer, Waterways Division, Hazaribagh in the year 2014-15. In the meantime, his pension was approved in the light of the letter as contained in Memo No. 2403 dated 07.08.2018 issued under the signature of Deputy Secretary to the Government, Water Resources Department, Government of Jharkhand.

15. The second show cause notice was served on the R2 vide letter No. 2711 dated 28.06.2021 issued under the signature of the appellant No.2 stating that his reply to the earlier show cause notice was not accepted and in the light of the Rule 139 of the Rules, 2000, it was proposed to award him punishment of 5% deduction from his pension for a period of two years.

16. Finally, the R2 was awarded punishment of deduction of 5% of his pension for a period of two years vide the order as contained in Memo No. 4235 dated 05.08.2022 issued under the signature of the appellant No.2.

17. Aggrieved thereby, the R2 filed a writ petition being W.P.(S) No. 4967 of 2022 which was allowed vide impugned judgment dated 20.08.2024 quashing the order as contained in Memo No. 4235 dated 05.08.2022 passed by the appellant No.2.

Argument on behalf of the appellants

18. Learned counsel for the appellants submits that the learned Single Judge has failed to appreciate the fact that in view of the report submitted by

the departmental flying squad, the allegation made against the respondents pertained to excess/irregular payment in disposal of desilted soil during the financial year 2014-15 when they were posted as Superintending Engineer, Waterways Circle, Hazaribagh and Chief Engineer, Water Ways Division, Hazaribagh respectively.

19. It is further submitted that the learned Single Judge has also failed to appreciate that though the respondents denied the charges levelled against them, they did not specifically mention the work done by them and thus a detail report was sought from the then Executive Engineer of the concerned department with respect to responsibility undertaken and work done by different Engineers in the scheme in question. The report submitted by the Executive Engineer suggested that the respondents were responsible for granting sanction of disposal plan of desilted soil at higher rate.

20. It is also contended that the replies filed by the respondents were duly considered by the appellant No.2 and it was found that the excess payment at higher rate was made pursuant to technical sanction of the disposal plan of desilted soil with respect to the schemes in question and the R1 and R2 being part of the sanction process were held responsible as per the report of the departmental flying squad. On perusal of the record relating to the schemes in question, it was further found that the said respondents were also in the channel of Engineers, who had granted approval to such sanction of the schemes in question wherein a higher rate than applicable was approved by them resulting in excess and irregular payment to the contractors causing loss to the government exchequer.

21. It is further submitted that the appellant No.2, after having carefully considered the entire record of the case, came to a conclusion that the defence taken by the respondents was not acceptable and their involvement in excess payment was found proved. As such, the order of punishment of deduction of

5% pension for a period of two years was imposed upon the respondents after taking due approval of the competent authority.

22. It is finally argued that the learned Single Judge while passing the impugned judgment, has failed to appreciate that punishment of deduction from pension of the respondents was imposed by the appellant No.2 after due compliance of the provisions of law particularly by issuing show cause notices to them and the punishment was also proportionate to the charges levelled against them. Further, the principles of natural justice were not violated by any of the authorities while conducting the aforesaid proceedings against the respondents, rather they were provided ample opportunities to submit their replies on the allegations levelled against them, which were duly availed by them.

23. On the contrary, learned counsel for the R1 & R2 while putting much reliance on a judgment of the Division Bench of this Court rendered in the case of **Swetabh Kumar Vs. State of Jharkhand & Ors.**, reported in **2024 SCC OnLine Jhar 2256**, submits that initiation of departmental proceeding under Rule 139 of the Jharkhand Pension Rules, 2000 can be exercised after retirement, if the entire service career of concerned government servant has been found to be unsatisfactory and his service cannot be declared to be unsatisfactory for guilt of only one misdemeanour.

24. It is further submitted that the learned Single Judge has rightly quashed the orders of deduction from the respondents' pension by relying on the judgment of **Swetabh Kumar** (Supra) case and as such the impugned order may not be interfered by this Court.

25. It is also submitted that the orders of deduction from pension of the respondents were passed in a mechanical manner without initiating full-fledged departmental proceedings to prove the grave misconduct on their part during their service tenure.

Finding of the Court

26. Heard learned counsel for the parties and perused the relevant materials available on record.

27. Before delving into the merit of the rival contentions of the parties, it would be appropriate to refer herein Rule 43(b) and Rule 139 of the Jharkhand Pension Rules, 2000 which read as under:-

"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 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 proceeding;

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made."

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during reemployment, shall have been instituted in accordance with subclause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed. Explanation. For the purposes of the rule (a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and (b) judicial proceedings shall be deemed to have been instituted:-

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

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

"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 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."

28. On perusal of the Rule 43(b) of the Rules, 2000, it would emerge that the State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or a judicial proceeding. The State Government also reserves the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if such loss is caused by misconduct or negligence committed during service tenure of the pensioner including service rendered by him on re-employment after retirement.

29. The proviso of Rule 43(b) deals with certain conditions for initiation of departmental proceedings and the period of limitation within which such proceedings can be initiated. It provides that if departmental proceeding was not instituted while the government servant was on duty either before retirement or during re-employment, the same shall be instituted only with the sanction of the State Government that too, for an event which took place not more than four years before the institution of such proceeding. It further provides that such proceedings shall be conducted by the enquiry officer in

accordance with the procedure applicable to the proceedings on which an order of dismissal from service may be made. It also adds that departmental proceeding shall be deemed to have been instituted when the charges framed against the concerned pensioner are issued to him or, if the government servant has been placed under suspension from an earlier date, on such date.

30. Rule 139(c) of the Rules, 2000 empowers the State Government to revise 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. However, before exercising such power, the pensioner should be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension. The period of limitation for exercising such power is fixed as three years from the date of passing the order of sanctioning the pension.

31. Thus, there are two circumstances under which the State Government is empowered to reduce the pension of a pensioner. The first circumstance is that when the service of the pensioner was not thoroughly satisfactory and the second is that there is a proof of grave misconduct on his part while in service.

32. The words "thoroughly satisfactory" under the first circumstance makes it mandatory that before passing the order of deduction of pension of a pensioner, the State Government should take into consideration the entire service record of the pensioner and not a particular instance of committing irregularity. So far as the order of deduction of pension on the ground of proved grave misconduct is concerned, the State Government has to satisfy itself that in departmental or judicial proceeding, it has been proved that the pensioner is guilty of grave misconduct. Mere allegation of irregularity is not sufficient to order deduction of pension in exercise of power under Rule 139(c) of the Rules, 2000.

33. It would be profitable to refer herein the judgment of the Hon'ble Supreme Court rendered in the case of **State of Bihar & Ors. Vs. Mohd. Idris Ansari**, reported in **1995 Supp (3) SCC 56** wherein it has been held that with respect to the second type of cases, the proof of grave misconduct on the part of the concerned government servant 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 the departmental proceedings, which may be initiated even after his retirement, but such departmental proceedings will have to comply with the requirements of Rule 43(b) of the Rules, 2000.

34. Reverting back to the present case. The R1 retired from the post of Engineer-in-Chief, Water Resources Department, Government of Jharkhand on 30.04.2017 and the R2 retired on 31.01.2018 from the post of Chief Engineer, Water Resources Department, Hazaribagh. The pensions of the said respondents were also approved by the competent authority. Moreover, no departmental proceedings were initiated against them during their entire service career.

35. However, after their retirement, the appellant No.2 passed the orders of reduction of 5% of their pension for a period of two years in exercise of the power conferred under Rule 139 of the Rules, 2000 by alleging irregularities committed by them in re-establishment works under three schemes for the financial year 2014-15. By citing a particular instance of irregularity, the orders of reduction of pension of the respondents were passed. It was however not alleged against them that their services were thoroughly unsatisfactory.

36. We are of the view that by looking to a single instance of irregularity, the authority cannot form an opinion that the service of an employee was thoroughly unsatisfactory so as to exercise the power under Rule 139(c) of the Rules, 2000, rather the authority has to examine the entire service record of

such employee. Thus, the first circumstance for taking action against the said respondents reducing their pensions is not fulfilled in the present case.

37. Now, the question before this Court is as to whether the charges of grave misconduct has been proved against the said respondents so as to reduce their pension by the State Government in exercise of power conferred under Rule 139(c) of the Rules, 2000.

38. It is evident from the record that for the allegation of irregularities committed by the said respondents during the year 2014-15, the explanations were called from them after their retirement and on receiving their replies, the second show cause notices under Rule 139 of the Rules, 2000 were issued to them. Thereafter, the orders of reduction of pension were passed. Thus, neither full-fledged departmental proceedings were initiated against the respondents by issuing charge memos nor the criminal proceedings were set in motion against them. Moreover, neither proper inquiry for the alleged irregularities was conducted by appointing inquiry officer(s) nor the respondents were afforded due opportunity of hearing in a full-fledged enquiry proceeding. Thus, the charge of grave misconduct cannot be said to be proved against the respondents, which is a pre-condition for exercise of power under Rule 139(c) of the Rules, 2000 by the State Government.

39. We are of the view that mere allegation of irregularities is not sufficient to exercise the power conferred under Rule 139(c) of the Rules, 2000, rather the same has to be proved in a departmental proceeding or a criminal proceeding by giving due opportunity of hearing to the person concerned. It is a settled law that where a power is conferred to do a certain thing in a certain way, the thing must be done in that way or not at all.

40. It has specifically been provided under Rule 43(b) of the Rules, 2000 that the order of withholding or withdrawing pension of a pensioner has to be passed by the authority in accordance with the procedure applicable to the

proceedings on which an order of dismissal from service may be made. We are of the considered view that the same condition is also applicable for reduction of pension of a pensioner in exercise of power under Rule 139(c) of the Rules, 2000.

41. From the aforesaid facts, it transpires that condition precedent for exercising power under Rule 139(c) of the Rules, 2000 is not fulfilled in the present cases and as such the orders deducting 5% pension of the respondents were rightly quashed by the learned Single Judge, which need no interference by this Court.

42. Both these appeals are, accordingly, dismissed.

43. Consequently, all the pending interlocutory applications also stand dismissed.

(M. S. SONAK, C.J)

(RAJESH SHANKAR, J)

March 17, 2026
Satish/A.F.R
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