

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO. 4613 OF 2016**

Godavari Digambar Jondhale

.. **Petitioner**

**Versus**

The State of Maharashtra and another

.. **Respondents**

Shri Vitthal G. Salgare, Advocate for the Petitioner.

Mrs. A. V. Gondhalekar, Addl. G. P. for Respondent No. 1.

Shri R. K. Ingole Patil, Advocate for Respondent No. 2.

**CORAM : S. V. GANGAPURWALA &  
MANGESH S. PATIL, JJ.**

**DATE : 21<sup>st</sup> September, 2017**

**PER COURT :**

1. Mr. Salgare, the learned counsel for the petitioner submits that the husband of the petitioner was Class-IV employee of respondent No. 2. He had completed more than 13 years of his service and on charge of absenteeism was removed from service on 27.6.2013. The husband of the petitioner died on 30<sup>th</sup> March, 2015, prior to his death he had requested for his continuation in service. After the death of the husband of the petitioner the petitioner moved an application with the commissioner i.e. respondent No. 2 for grant of the fund accumulated of the husband and also compassionate appointment.

2. The learned counsel submits that, the petitioner is entitled for compassionate pension in view of Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. The learned counsel relied on the judgment of the Apex Court in a case of, **Mahinder Dutt Sharma Vs. Union of India** reported in **2014 (11) SCC 684**.

3. Mr. Ingole, the learned counsel submits that, compassionate pension cannot be claimed as of right. For the said purpose, the learned counsel relied on the judgment of the Division Bench of this court in a case of **Baliram Ramchandra Majgaonkar Vs. district & Sessions Judge & another** reported in **2003 (4) Bom. C. R. 584**.

4. It is not disputed that the husband of the petitioner was removed from service, the removal was by way of punishment.

5. Be that as it may, the person who is not dismissed but removed from service is entitled for compassionate pension in deserving cases as per Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. The employer has to consider the circumstances existing, the purpose for which the employee was removed and take decision as to grant of compassionate pension.

6. In the present case, the petitioner has not made any application for grant of such pension with the respondent No. 2.

The respondent No. 2 has no occasion to apply his mind and consider the circumstance so as to grant / non grant the compassionate pension.

7. The petitioner may make an application / representation with the respondent No. 2 for grant of compassionate pension as claimed. On receipt of such an application / representation from the petitioner the respondent No. 2 shall take decision upon the said application / representation on its own merits, expeditiously and preferably within 3 months from the date of receipt of application / representation.

8. The writ petition is accordingly disposed of. No costs.

**[MANGESH S. PATIL, J. ]**

**[S. V. GANGAPURWALA, J. ]**

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