

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12604 OF 2016**

Smt. Mangla Devraj Wadji	]
Age 58 years,	]
B/304, Riddhi Vinayak Apartment,	]
Hanuman Nagar, Umelmaan	]
Vasai Road (West) 401202,	]
Dist. Palghar (Mah.)	].. Petitioner

Vs.

1) Union of India, through	]
The Deputy Secretary (Admn.)	]
Office of the Registrar General	]
of India, 2/A, Mansingh Road,	]
New Delhi - 110 011	]
	]
2) Director of Census Operations,	]
Govt. of India, Ministry of Home	]
Affairs, Directorate of Census	]
Operations, Mah. Exchange Bldg.	]
2 nd Floor, Sir Shivsagar Ramgulam	]
Marg, Ballard Estate, Mumbai	]
400 001	].. Respondents

....

Mr. Rajendra Prakash Saxena Advocate for Petitioner
None for Respondents

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**CORAM : SMT.V.K.TAHILRAMANI AND
SANDEEP K. SHINDE, JJ.
DATED : JULY 20, 2017**

ORAL JUDGMENT [PER SMT. V.K.TAHILRAMANI, J.]:

1 Heard the learned counsel for the petitioner. Rule.

Rule made returnable forthwith.

2 The petitioner's husband was appointed as a temporary Chowkidar on 2.3.1981 in the office of Respondent no.2 i.e. Director of Census Operations, Government of India, Ministry of Home Affairs. He came to be terminated on 6.9.2000. He expired on 30.7.2003. Thereafter on 27.4.2009 the petitioner preferred an application for sanction of compassionate allowance on the ground of penury and indignant condition. The said application was rejected by reply dated 29.6.2009. Thereafter, she preferred a fresh application seeking sanction of compassionate allowance on 11.8.2009. This was rejected by reply dated 8.10.2009. Being aggrieved thereby, the petitioner approached the Tribunal with a prayer that her representation for compassionate allowance be reconsidered. The said Original Application was disposed of with direction that her representation be considered by the authority. Thereafter again she received reply rejecting her representation by order dated 16.8.2011, hence, she preferred Original Application. The said Original Application came to be dismissed, hence, this petition.

3 To substantiate the claim that the petitioner is entitled to compassionate allowance, the learned counsel for the petitioner is relying on Rule 41 of the Central Civil Services (Pension) Rules, 1972, which reads as under:

"41. Compassionate allowance:

(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two - thirds of pension or gratuity or both which would have been admissible to him if he had retired on [compensation pension].

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of ²[Rupees three hundred and seventy five] per mensem".

[EMPHASIS SUPPLIED]

4 In the present case there is nothing to show that the

husband of the petitioner was deserving of any special consideration, in fact during his period of service, he was absent for 7 years. Thus no benefit can be given in view of Rule 41.

5 The learned counsel for the petitioner also placed reliance on a decision of the Supreme Court in the case of ***Mahinder Dutta Sharma Vs. Union of India and others*** reported in ***(2014) 11 S.C.C. 684***. He placed reliance on paragraph 14 thereof. In this decision, the parameters to consider entitlement to grant the benefit of compassionate allowance were laid down. The Rule itself states that if the case is deserving of special consideration, then in such case compassionate allowance can be allowed. In the present case, it is seen that husband of petitioner was absent for 7 years from duty. The record shows that the appointment of the husband of the petitioner was not as a permanent Government servant. Hence, Rule 41 of the C.C.S. (Pension) Rules is not applicable in this case. His services were terminated under Rule 5 of C.C.S. (Temporary Service) Rules. Rule 5 enables Government to dispense with the services of the temporary employees. In such

cases, the Government is not liable for payment of any allowance or family pension. Even in cases of permanent Government employee to whom the C.C.S. (Pension) Rules, 1972 are applicable, grant of compassionate allowance in the case of dismissal or removal from service is not mandatory. The provision made under Rule 41 of C.C.S. (Pension) Rules is for cases deserving special consideration. The petitioner's husband was neither covered under the said Rule nor did he deserve any special consideration given his unauthorized absence for 7 years leading to his termination from service under Rule 5 of C.C.S. (Temporary Service) Rules.

6 Moreover, the husband of the petitioner died on 30.7.2003 i.e. after about 3 years of his termination under C.C.S. (Temporary Service) Rules. After about nine years of his termination and six years of his demise, the petitioner who is his widow, vide representation dated 27.4.2009 claimed compassionate allowance to the deceased employee under Rule 41 of C.C.S. (Pension) Rules and also family pension to herself. It is pertinent to note that the husband of the petitioner expired on 30.7.2003 i.e. about 3 years after his termination, however,

during his lifetime, he did not prefer any application / representation seeking compassionate allowance. The petitioner after inordinate delay of nine years after termination of her husband preferred the application seeking compassionate allowance. Even otherwise, it is clear that petitioner's husband is not entitled for any compassionate allowance or any pension or any such relief. The Tribunal has taken all these facts into consideration and thereafter dismissed the Original Application.

7 Looking to the facts on record, we do not find any error in the order of the Tribunal, hence, writ petition is dismissed. Rule is discharged.

[SANDEEP K.SHINDE J.]

[SMT.V.K.TAHILRAMANI, J.]