

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.29724 OF 2018

DATED :05.09.2018

Between :

Saleha Begum Widow of late Md.Abdul Bari,
(Removed from service),
Aged about 73 yrs, Occu : Household,
R/o.H.No.4-3-57, Dhobi Galli Street,
Siricilla, Siricilla Rajanna District,
Telangana State.

.. Petitioner

And

The State of Telangana,
Rep., by the Secretary to the Government,
Agriculture Department, Secretariat,
Hyderabad 500022 & others.

.. Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

Heard learned counsel for the petitioner and learned Government pleader for Services-1 (TG) for the respondents.

2. This writ petition is filed by the wife of late Md. Abdul Bari, claiming compassionate allowance. The facts on record would disclose that pursuant to the disciplinary proceedings taken against late Md. Abdul Bari, by order dated 18.12.1981 he was dismissed from service. After the dismissal he died on 08.09.1989. In the year 2015 petitioner claimed to have submitted application for grant of compassionate allowance under Rule 40 of the Telangana Revised Pension Rules, 1980 (for short 'the Rules 1980'). The said request of the petitioner was rejected by order dated 03.08.2016. Hence, this writ petition.

3. According to learned counsel for the petitioner by the time of dismissal from service, the husband of petitioner rendered 20 years of service and therefore, in recognition of the said service rendered by her husband, the compassionate allowance claim of the petitioner ought to have been granted and denying the same is illegal. She would further submit that similarly situated person was granted the compassionate allowance and denial of the same benefit to a person similarly situated would amount to arbitrary exercise of power and authority and on that ground also the action impugned is liable to be set aside.

4. In support of her contention she placed reliance on the decision of Delhi High Court in the case of ***Additional Deputy Commissioner Vs Ms.Anju in W.P.(C) No.20885 of 2005*** dated 06.04.2011.

5. The facts are not in dispute. Rule 40 of the Rules, 1980 provides for compassionate allowance. According to this Rule, a government servant who is dismissed or removed from service should forfeit his pension and gratuity. However, the *proviso* appended to the Rule carves out exception and vests discretion in the competent authority to grant compassionate allowance if the case is “deserving of special consideration”. Thus, to attract *proviso* to Rule 40, two conditions are required to be complied. They are, (i) The employee should apply by explaining his personal difficulties in eking out living and persuade the authority to grant compassionate allowance, even though he was already dismissed or removed from service; and ii) the authority should hold that the claim deserves special consideration and then sanction.

6. As fairly submitted by learned counsel for the petitioner, the husband of petitioner did not apply while he was alive and petitioner also applied for this benefit in the year 2015 i.e., after 26 years of the death of her husband and 34 years after dismissal from service.

7. A bare perusal of *proviso* to Rule 40 makes it clear that no right vests even in an employee to claim compassionate allowance. It is an exception carved out to the normal rule of denying pension and gratuity in case of dismissal or removal. Thus, it is not a matter of course a person can claim compassionate allowance,

more so, in the instant case, the claim was set up not by the employee but by the wife and that too after 34 years.

8. Even assuming that the decision of Delhi High Court may have bearing to come to the rescue of petitioner, it is seen from the facts of the case that the employee was unauthorisedly absent for long time and during the unauthorized absence period he was removed from service and within two years thereafter, he died. His wife applied for compassionate appointment. However, having come to know of dismissal from service, immediately she applied for provision of compassionate allowance. Considering the facts of the case, the Central Administrative Tribunal granted relief and the same was upheld by the Division Bench of Delhi High Court.

9. The said case is distinguishable on facts, noted above. Therefore, the said decision does not come to the aid of the petitioner. Having regard to the rule position, I do not see any error committed by the competent authority rejecting the claim of the petitioner for grant of compassionate allowance warranting interference by this Court.

10. Accordingly, the Writ Petition is dismissed. Pending miscellaneous petitions shall stand closed.

5th September, 2018
Rds

P.NAVEEN RAO,J