

WRIT PETITION NO.2708 OF 2018

Smt. Prabha w/o Sharadchandra Ratnalikar Petitioner

Versus

The State of Maharashtra & others Respondents

Mr.Y.P. Deshmukh advocate for the petitioner
Mr.Y.G. Gujrathi, AGP for Respondent State
Mr. Golewar h/f Mr. A.R. Joshi for respondent No.4

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**CORAM : S. V. GANGAPURWALA
& ARUN M. DHAVALÉ, JJ.**

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(Date: March 29, 2019)

PER COURT :-

1 The petitioner has filed the present petition, challenging the order dated 14.3.2016 passed by the Secretary, Higher Education Department, Mantralaya, Mumbai, whereby the claim of the petitioner for sanction of compassionate pension, on account of removal of her husband from service, is rejected.

2 The husband of the petitioner Viz. Sharadchandra Ratnalikar was the Principal of Sarswati Bhuvan Science College, Aurangabad. He was removed from service as a Principal, pursuant to the departmental enquiry. The order of removal was confirmed up-to this Court. The husband of the petitioner was denied compassionate pension. He filed Writ petition No.5744/2004. This Court, under order dated 14.8.2015, directed the Competent Authority to reconsider the claim for compassionate pension and decide it by giving reasons.

Thereafter the respondent State again, under order dated 14.3.2016, denied the benefits of compassionate pension. Aggrieved thereby, the present petition.

3 Learned counsel for the petitioner Mr. Deshmukh submits that subsequently, a suit was filed by the employer against the husband of the petitioner. The husband of the petitioner has filed counter claim. Suit was compromised and petitioner deposited the amount, as directed and as per the compromise. The fact of compromise was not recorded in the service book of the husband of the petitioner and that was not considered while rejecting the claim for compassionate pension. Learned counsel submits that the husband of the petitioner was not dismissed from service but was removed from service and as such, was entitled for compassionate pension in accordance with Rule 101 of the Maharashtra Civil Services (Pension) Rules. According to learned counsel the petitioner is entitled for benefits of compassionate pension.

4 Learned AGP submits that, the management had leveled serious charges of misappropriation against the deceased Dr. Ratnalikar. The compromise in the civil suit and the payment of the amount, would not wipe-out the stigma of misappropriation. The Government has reconsidered and reviewed proposal of Dr. Ratnalikar and took decision on the basis of record in the service book.

5 We have considered the submissions.

6 It is not disputed that, the deceased Dr. Ratnalikar was removed from service and was not dismissed from service and as such, Rule 101 of the MCS (Pension) Rules, would be applicable.

7 The contention of the petitioner is that the deceased Dr. Ratnalikar had not committed misappropriation but was accused of irregularities. The deceased was an academician and not administrator. However, the fact of the deceased having been found guilty in the departmental enquiry was confirmed up to this Court in the earlier litigation. Subsequently, a civil suit has been filed by the employer against the deceased Dr. Ratnalikar. The suit is compromised. It is further submitted that, as per the compromise decree, the deceased had paid an amount of Rs.75,000/- to the employer. The fact of compromise is not probably recorded in the service book.

8 In case, where the delinquent is removed from service, it is the discretion of the State Government to consider the case of the said delinquent for compassionate pension. It appears that, while negating the claim for compassionate pension, the compromise entered into in the civil suit was not considered and solely on the basis of entry in the service book, the decision has been taken, negating the claim of compassionate pension.

Rule 101 of the MCS (P) Rules reads thus:-

"101. Grant of compassionate pension in deserving cases by Government -

(1) *When a Government servant is removed or required to retire from Government service, for misconduct or insolvency or is removed or required to retire from Government service on grounds of inefficiency before he is eligible for a Retiring or Superannuation Pension, Government may, if the case is considered deserving of special treatment, sanction the grant to him of a compassionate pension*

(2) *A dismissed Government servant is not eligible for compassionate pension. "*

9 The respondent State shall consider the compromise entered into and the amount deposited by Late Dr. Ratnalikar and consider his application for grant of compassionate pension fresh, on its own merit, within three months.

10 Writ Petition is disposed of accordingly.

(ARUN M. DHAVAL, J) (S. V. GANGAPURWALA, J)