

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

WRIT PETITION NO. 12782 OF 2018

Godavari Digambar Jondhale

.... Petitioner

Versus

The State of Maharashtra & Anr.

..... Respondents

..

Shri. Vitthal G. Salgare, Advocate for the petitioner

Shri. S. B. Pulkundwar, AGP for respondent/State

Shri. R. K. Ingole, Advocate for respondent No. 2

..

**CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVAL, JJ.**

DATE : 9TH APRIL, 2019

ORAL ORDER:

1. The husband of the petitioner was the employee of respondent-Municipal Corporation as a filed worker under Malaria Division. The husband of the petitioner was removed from service on account of continuous absenteeism. He eventually died. The petitioner claims compassionate pension within the meaning of Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "Pension Rules").

2. Shri. Salgare, learned counsel for the petitioner submits that, the husband of the petitioner was removed only on the ground of absenteeism and not for any misappropriation. In view of that, he is entitled for the benefit of Rule 101 of the Pension Rules. He relies on the Apex Court's judgment in the case of **Mahinder Dutt Sharma Versus Union of India and Ors.** reported in 2014(11) SCC 684.

3. Shri. Ingole, learned counsel for respondent No. 2 submits that, as the petitioner has been removed from the service, he is not entitled for compassionate pension.

4. Upon perusal of the order removing the petitioner's husband from service, it is manifest that the removal of the petitioner is only on the ground of absenteeism. The removal was not on account of any act of dishonesty towards the employer nor on the ground of misappropriation. It has also not been shown that the behaviour of the husband of the petitioner was incorrigible. The Apex Court in a case of Mahinder Sharma (supra) has considered the similar case wherein the employee was removed on the ground of absenteeism and the Apex Court directed the authority to consider the claim of the appellant. The apex Court laid down following parameters to be considered.

- (i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.
- (ii) *Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.*
- (iii) *Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.*
- (iv) *Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul*

play, would fall in this category.

- (v) *Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.*

5. The circumstances deserving special consideration has to be considered by the respondent-authority in the light of the observations made supra.

6. In light of the above, the respondent shall consider the claim for compassionate pension on account of removal of the husband of the petitioner from service on the ground of absenteeism under Rule 101 of the Pension Rules. It is made clear that, the petitioner is governed by the Rule 101(1) of the Pension Rules. Sub-rule 3 of Rule 101 would not apply to the case of the petitioner as it is a case of removal and not dismissal. The decision shall be taken accordingly by the respondents within a period of three months.

7. The Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE