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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.1748 of 2021

Dr.Samuel Johnson

...Appellant

Vs.

1. The Government of Tamil Nadu,
Rep by its Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Secretariat, Chennai - 9.
2. Tamil Nadu University of Veterinary and Animal Sciences,
Madhavaram, Chennai - 51.
3. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

...Respondents

Prayer: Writ Appeal filed under clause 15 of the Letters Patent to set aside the order in W.P.No.9233 of 2020 dated 15.07.2020.

Prayer in WP.No.9233 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified Mandamus to call for the records in pursuance of the order in NO.L.O/W.P.42302/2016 dated 20-01-2020 passed by the 3rd Respondent and quash the same and consequently direct the 3rd respondent to sanction compassionate allowance to the petitioner under Rule-40 of the Tamil Nadu Pension Rule and pass such other orders as this Hon'ble Court deems fit and proper, in the circumstances of the above case.

For Appellants : Mr.D.Muthukumar
for M/s.Paul and Paul

For Respondent-1 : Mr.C.Jayaprakash
Government Advocate



JUDGMENT

(Judgment of Court was delivered by PUSHPA SATHYANARAYANA, J.)

The Writ Appeal is directed against the order dated 15.07.2020 passed by the learned Single Judge in W.P.No.9233 of 2020.

2. The appellant, who was a Veterinary Doctor, joined the service in January 1962 and worked till such time, he was posted in the King Institute of Preventive Medicine, by the Dean of the Madras Veterinary College in August 1962. Thereafter, he was promoted as Senior Veterinary Officer in 1974. He was permitted to go to the United States of America from 01.03.1978 to 31.08.1978 on condition that he should not seek any employment there. Thereafter, he applied for study leave for a period of 3 years from 01.09.1978 to 31.08.1981 for undergoing post graduate studies. But, this leave was refused and he was directed to join the duty on or before 10.05.1980. However, the appellant did not join duty. Therefore, a show cause notice was issued on 25.01.1983 seeking for explanation for the unauthorized absence from 01.09.1978. The explanation of the appellant was not accepted by the authorities and his request for voluntary retirement was also refused. Finally, by order dated 15.05.1983, he was imposed the punishment of removal from service, with effect from 25.02.1978.

3. Admittedly, there is no challenge to the order of removal from service. Only during 2016, the appellant had applied for sanction of compassionate allowance, in the light of the provisions contained in the first proviso to Rule 40 of the Tamil Nadu Pension Rules, seeking to consider the services rendered by him between 16.01.1962 and 01.03.1978. He has also made representations on 19.01.2016 and 14.03.2016 to the respondents 1 and 2 in that regard. As the said representations were not considered, the appellant filed a Writ Petition in W.P.No.42302 of 2016 and sought for issuance of Mandamus to consider the same. Pursuant to the direction of this Court dated 29.04.2019 in the said Writ Petition, after affording an opportunity of personal hearing, the impugned order dated 20.01.2020 was passed stating that there were serious lapses on the part of the appellant and various charges were framed against him, based on his overstay in the foreign country and unauthorized absence from service, which was not on the medical grounds. Aggrieved by the same, W.P.No.9233 of 2020 was filed by the appellant, wherein, the Writ Court dismissed the same condemning the act of the appellant by stating that the appellant had managed to stay away from his public responsibility for decades and is seeking the compassionate allowance at his own convenience.

4. The learned counsel appearing for the appellant would



contend that while considering proviso to Rule 41 of the said Rules, certain criteria had to be adopted as has been laid down by the Hon'ble Supreme Court in 2014 (11) SCC 684 [Mahinder Dutt Sharma - vs- Union of India and others], wherein, in paragraph 13, it has been held as follows:

"13. We are of the considered view that the adjudication by the courts below with reference to Rule 41 of the Pension Rules, 1972 is clearly misdirected. The Rule itself contemplates payment of compassionate allowance to an employee who has been dismissed or removed from service. Under the punishment rules, the above punishments are of the severest magnitude. These punishments can be inflicted only for an act of extreme wrongdoing. It is on account of such wrongdoing, that the employee concerned has already been subjected to the severest form of punishment. Sometimes even for being incorrigible. Despite that, the Rule contemplates sanction of a compassionate allowance of up to two-thirds of the pension or gratuity (or both), which would have been drawn by the punished employee if he had retired on compassionate pension. The entire consideration up to the present juncture, by the courts below, is directly or indirectly aimed at determining whether the delinquency committed by the appellant was sufficient and appropriate for the infliction of the punishment of dismissal from service. This determination is relevant for examining the veracity of the punishment order itself. That, however, is not the scope of the exercise contemplated in the present consideration. Insofar as the determination of the admissibility of the benefits contemplated under Rule 41 of the Pension Rules, 1972 is concerned, the same has to be by accepting that the delinquency committed by the punished employee was of a magnitude which is sufficient for the imposition of the most severe punishments. As in the present case, unauthorised and wilful absence of the appellant for a period of 320 days has resulted in the passing of the order of dismissal from service. The punishment inflicted on the appellant has been found to be legitimate and genuine as also commensurate to the delinquency of the appellant. The issue now is the evaluation of claim of the punished employee under Rule 41 of the Pension Rules, 1972."...



5. The learned counsel for the appellant further argued that the claim of the appellant under Rule 40 relating to the Compassionate Allowance in the Tamil Nadu Pension Rules, ought to have been considered by evaluating the circumstances under which he had to stay away from his work.

6. The learned Single Judge clearly held that because of the act of the appellant, who is in public service, as a Senior Veterinary Doctor, in staying away from service for personal reasons, he is not entitled for compassionate allowance. It has been specifically found that, even though he was asked to report to work, he has not done so. He has also not challenged the order of removal from service. He was removed from his service in the year 1983 with effect from 1978. But, he has moved this Court only in the year 2020, i.e. almost after three and a half decades.

7. The appellant, who is an octogenarian Doctor, is not expected to have behavior, which is lackadaisical, derelict, detrimental and insincere. The appellant may have so many reasons in support of his contentions, but in the absence of any material, it can only be viewed that his absence was only for his personal gains. There is no reason for the appellant to have moved this Court claiming the compassionate allowance, after such an inordinate delay. If such kind of claims are entertained, it would only cause damage and prejudice to the institution. The conduct of the appellant shows that he had scant regard to the Conduct Rules of the Government Servants, and thus, he would not be entitled for such compassionate consideration.

8. The plea of the learned counsel for the appellant that the claim of the appellant has to be evaluated based on the circumstances cannot be appreciated after this length of time.

9. As the delinquency levelled against the appellant is proved and he was also punished, he cannot take advantage of his own wrong and claim the compassionate allowance.

10. In the light above, there is no reason to interfere with the order of the learned Single Judge and the Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar



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To

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1. The Secretary to Government,
Government of Tamil Nadu,
Animal Husbandry, Dairying and Fisheries Department,
Secretariat, Chennai - 9.
2. Tamil Nadu University of Veterinary and Animal Sciences,
Madhavaram, Chennai - 51.
3. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

+1cc to M/s.Paul and Paul, Advocate, S.R.No.35514

+1cc to the Government Pleader, S.R.No.35963

W.A.No.1748 of 2021

PM(CO)
CB(23/08/2021)