

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

WRIT PETITION NO. 2167 OF 2015

Shaikh Yunus Ismail,
Age : 58 Years, Occu. : Nil,
R/o Plot No. 61, Aqsa Nagar,
Near Masjid-E-Umer, Mehrun,
Jalgaon.

.. Petitioner

Versus

1. Life Insurance Corporation of India,
Through its Zonal Manager,
Zonal Office, Bombay Mutual Building,
‘Yogakshemym’, Jeevan Bima Marg,
Mumbai 400 021.
2. The Senior Divisional Manager,
Life Insurance Corporation of India,
Nasik Divisional Office, Golf Club Ground,
R. G. Gadkari Chowk, Nasik – 422 002. .. Respondents

Shri Ajay S. Deshpande, Advocate for the Petitioner.

Shri Ajit D. Kasliwal, Advocate for the Respondent Nos. 1 and 2.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 08.09.2022.

ORAL JUDGMENT (*Per Sandeep V. Marne, J.*) :-

. By the present petition, the petitioner challenges communications dated 31.05.2014 and 06.08.2014, by which the respondent corporation has stopped payment of compassionate allowance/pension. By communication dated 31.05.2014, it has been directed to stop payment of compassionate allowance, however, the compassionate allowance already paid to the

petitioner was directed not to be recovered. By communication dated 06.08.2014, the payment of compassionate allowance has been stopped from 01.06.2014.

2. Facts of the case in nutshell are as under :

The petitioner was appointed as assistant in the respondent corporation in October 1982 on a post earmarked for the Scheduled Caste category on the basis of his claim that he belongs to Khatik (Scheduled Caste) category. By order dated 27.05.1998, the Scrutiny Committee invalidated caste claim of the petitioner. After issuance of show cause notice, services of the petitioner came to be terminated by order dated 16.01.2008.

3. The petitioner filed Writ Petition No. 606 of 2009 challenging the order of termination and also the order passed by the Scrutiny Committee. It is the claim of the petitioner that on account of assurance given by the association/union of employees of the respondent corporation, that he would be paid pension, he withdrew the Writ Petition No. 606 of 2009. Thereafter order dated 23.04.2011 came to be passed sanctioning compassionate allowance at the rate of 2/3 of normal pension with effect from 18.01.2010. The petitioner was accordingly paid arrears of compassionate allowance as well as commuted value. By communication dated 31.05.2014, it was directed that the compassionate allowance which was been paid to the petitioner should be stopped without recovering the payments already made. Accordingly by communication dated 06.08.2014 payment of compassionate allowance has been stopped with effect from

01.06.2014.

4. The petitioner challenges said communications dated 31.05.2014 and 06.08.2014 in the present petition. By way of interim order dated 20.10.2015 passed in the present petition, the respondent corporation was directed to continue to pay compassionate allowance. Accordingly during the pendency of the petition, the petitioner has been receiving compassionate allowance.

5. Appearing on behalf of the petitioner, Mr. Deshpande, learned counsel submits that the writ petition was withdrawn on the basis of specific assurance given to him that pension would be paid to him. He would submit that having given assurance to the petitioner, the respondent corporation could not have latter stopped payment of compassionate allowance. He submits that, by letter dated 31.05.2014 speaking order was directed to be passed and that no reasons are recorded in the subsequent communication dated 06.08.2014. He would further submit that names of officials of Nashik Division, who had sanctioned compassionate allowance were called by the Regional Manager. However, there is nothing on record to indicate any action was taken against them. Lastly, he would submit that a negligible amount of Rs. 9,000/- has been paid to the petitioner towards compassionate allowance and that in the peculiar facts and circumstances of the case, same need not be stopped.

6. Per contra, Mr. Kasliwal, learned counsel appearing for the respondent Nos. 1 and 2 corporation supports the impugned

communications. He contends that there was a mistake on the part of the officials of the corporation in sanctioning compassionate allowance to the petitioner. He submits that once it is established that the petitioner does not belong to the S.C. category, he is not entitled to retain any benefits that he derived of the resolution. He would submit that the respondent corporation has shown gesture by not recovering amount already paid to the petitioner.

7. After hearing learned counsel for the parties at length, we find that the petitioner has not been able to produce any specific provision under which compassionate allowance can be sanctioned to an employee who is terminated from service. We therefore find that the respondent corporation ought not to have sanctioned compassionate allowance to the petitioner after his termination.

8. The petitioner's caste claim has been invalidated and the order has attained finality. As held by the Apex Court in the case of **Chairman and Managing Director Food Corporation of India Vs. Jagdish Balaram Bahira** reported in **(2017) 8 SCC 670** benefits secured by the petitioner on the basis of his invalidated caste certificate are required to be withdrawn. Therefore, the petitioner cannot be permitted to retain the benefit of payment of compassionate allowance after invalidation of his claim.

9. So far as the submission that assurance was given to the petitioner for payment of compassionate allowance on account of which he withdrew the writ petition, we are not able

to find any documentary evidence to that effect on record. Even otherwise there cannot be any estoppel against law. If the petitioner is not entitled to receive compassionate allowance, even if some officials of the respondent corporation gave some assurance or sanctioned compassionate allowance. Such action would not bind the respondent corporation. Payment of compassionate allowance is governed by the Rules and Regulations and not by an action of the officials of the respondent corporation. In absence of any provision for payment of compassionate allowance to a terminated employee, the same could not have been paid to the petitioner.

10. So far as the contention that speaking order was not passed in pursuance of the communication dated 31.05.2014, we have heard Mr. Deshpande in depth and have come to a conclusion on merits that the petitioner has not been able to make out any case. Therefore, non recording of reasons in the communication dated 06.08.2014 has become inconsequential. Since the petitioner is unable to point out his entitlement to receive compassionate allowance upon his termination, even if no reasons are recorded in the communication dated 06.08.2014, the same cannot be set aside on that ground alone. So far as the contention about no action being taken against the officials of the Nashik Division is concerned, we feel that this is an internal matter of the respondent corporation and if at all no such action is taken, the petitioner will not be able to derive any benefit out of the same. So far as the quantum of compassionate allowance is concerned, the same would not make any difference. So long

as the petitioner is unable to establish his entitlement under the Rules and Regulations to receive such compassionate allowance, the quantum thereof is inconsequential.

11. We are therefore of the view that the impugned orders passed by the respondent corporation are perfectly in order. Present petition deserves to be dismissed and is dismissed. However we are mindful of the fact that the petitioner has been receiving compassionate allowance during pendency of the present petition on account of interim order dated 20.10.2015. The interim order directed continuance of compassionate allowance subject to final decision of the petition and since we are dismissing the petition, we would have been justified in directing refund of amount of compassionate allowance paid during pendency of the petition to the petitioner. However, considering the advanced age of the petitioner and the fact that the amount of compassionate allowance might have been already utilized by him, we are refraining ourselves from directing refund of compassionate allowance paid during pendency of this petition. We, therefore, deem it appropriate that the respondent corporation would not recover the amount of compassionate allowance already paid to the petitioner till date.

12. With these observations, the writ petition is dismissed, however, without any orders as to the costs. Rule is discharged.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]