

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

910 WRIT PETITION NO.5530 OF 2019

Ashabai Subhash Patil

.. Petitioner

Versus

The State of Maharashtra and Others

.. Respondents

...

Advocate for Petitioner : Mr. Prakashsing B. Patil

AGP for Respondent / State : Mrs. R.P. Gour

Advocate for Respondent Nos.3 & 4 : Mr. V.V. Gujar

...

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

DATE : 13-09-2022

ORAL ORDER (*PER* SANDEEP V. MARNE, J.) :

. By the present petition, the petitioner challenges the order dated 15.03.2007 by which the penalty of removal from service was imposed on the husband of the petitioner. The petitioner also seeks prayer for grant of family pension / compassionate pension.

2. The petitioner's husband was appointed as Assistant Teacher in Zilla Parishad, Jalgaon on 17.03.1992. He remained unauthorizedly absent from 15.07.2003, on account of which memorandum of Charge-sheet dated 04.12.2004 was served upon him alleging unauthorized absence from 15.07.2003 to 03.12.2004.

After conducting disciplinary proceedings, order came to be passed on 15.03.2007 imposing the punishment of removal from service on her husband. Admittedly, the petitioner's husband did not file any appeal against the said punishment order. He expired on 30.11.2015. After his death, the petitioner applied for family pension, which request was rejected by the Zilla Parisad on 31.07.2017. The petitioner has accordingly filed this petition challenging the order of removal from service passed on 15.03.2007.

3. Mr. Patil, learned advocate appearing for the petitioner relied upon the judgment of this Court in **Shakuntala Yuvraj Patil Vs. The State of Maharashtra & Others, Writ Petition No.145 of 2013 decided on 24.02.2018**. We have gone through the said decision and find that the same is distinguishable on several counts. Firstly, the petitioner therein had put in unblemished service of more than 29 years. As against this, the service of the husband of the petitioner was not unblemished as the Zilla Parishad has averred in its reply that he was imposed punishment of stoppage of one increment in the year 1995. Another punishment of bringing down his pay to the basic of the pay scale was also imposed on him. In para - 4 of the affidavit-in-reply, the Zilla Parishad has given details of various periods during which the petitioner's husband remained absent from the duty.

4. As against the period of 29 years of pensionable service put in in the case of **Shakuntala Yuvraj Patil** (supra), the petitioner's husband has put in service of only about 11 years before remaining unauthorizedly absent. We, therefore, find that the decision in **Shakuntala Yuvraj Patil** (supra) cannot be applied to the case of the petitioner.

5. The petition suffers from laches as the petitioner's husband never questioned the order of removal from service by adopting departmental remedies nor challenged the same during his life time. It is only after the death of her husband that the petitioner has filed this petition on 28.06.2018 i.e. after a period of 11 long years from the date of imposition of the penalty. In these circumstances, we are not inclined to interfere in the order of removal from service imposed on the husband of the petitioner.

6. Mr. Patil has relied upon Rule - 23 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as the 'Rules of 1982') in support of the prayer for grant of compassionate pension.

7. We find that during his life time the petitioner's husband

never made any application for grant of compassionate pension under Rule - 23. Furthermore, the facts of the case are such that compassionate pension could otherwise not have been sanctioned as the petitioner's husband remained unauthorizedly absent for a long period from 15.07.2003 till the date of his removal on 15.03.2007. Even during the period from 1992 to 2003 he was frequently absent from duty. We, therefore, do not find that any exceptional circumstances exist for application of Rule - 23 of the Rules of 1982 for sanction of any compassionate pension. Therefore, the prayer of the petitioner in this regard also deserves to be rejected.

8. The petition being devoid of merits is liable to be dismissed and it is dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)