

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

926 WRIT PETITION NO.1483 OF 2021

Smt. Godavari wd/o Digambar Jondhale,
Age: 41 Years, Occu : Household,
R/o. Govardhan Ghat, Nanded,
Tq. & District Nanded.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Additional Chief Secretary
Urban Development Department
Mantralaya, Mumbai-32.
2. The Nanded Waghala Municipal Corporation,
Nanded through its Municipal Commissioner,
Nanded, Tq & Dist. Nanded.
3. The Municipal Commissioner,
Nanded Waghala Municipal Corporation,
Nanded, Nanded, Tq & Dist. Nanded.

.. RESPONDENTS

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Advocate for the petitioner : Mr.V.G.Salgare
AGP for the respondent-State : Mrs.M.A.Deshpande
Advocate for Respondent no.2 : Mr.B.N.Gadegaonkar

...

**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 06.04.2022

P.C. :

1. By this petition, the petitioner has put forth prayer clauses-B, C and D, as under:

- B) By writ, order or directions the impugned order dated 13.02.2020 passed by the respondent No.2 and 3 rejecting to grant compassionate pension to the petitioner widow may kindly be quashed and set aside in the interest of justice.
- C) By writ, order or directions the he respondent No. 3 Municipal Commissioner, Nanded Waghala Municipal Corporation, Nanded, the competent authority may kindly be directed to sanction compassionate pension to the petitioner widow from the date of removal of her deceased husband from service in view of the Rule 101 (1) of the Maharashtra Civil Services (Pension) Rules 1982 in view of the Schedule-1 (14) of the Government Resolution dated 02.06.2003 and in view of the Judgment and Order passed by the Hon'ble Supreme Court of India in the case of Mahinder Datta Sharma V/s Union of India and others decided on 11.04.2014 and the Judgment and Order passed by this Hon'ble High Court on 09.04.2019 in Writ Petition No.12782/2018 referring the judgment and order of Hon'ble Supreme Court of India in the interest of justice.
- D) Pending hearing and final disposal of present Writ Petition the respondent No. 3 may kindly

be directed to deposit amount of compassionate pension entitled to the petitioner widow from the date of removal of her deceased husband from service in this Hon'ble High Court in the interest of justice.

2. We have considered the submissions of the learned Advocate for the petitioner and the learned AGP on behalf of the State. Though we have patiently granted a hearing to the learned Advocate for respondent nos. 2 and 3, we have not been rendered with any assistance.

3. The petitioner has approached this Court for the third time. In an early round in Writ Petition No.12782/2018, she had prayed for compassionate pension being a widow of an employee, who had otherwise put in qualifying service for pension, but was removed from employment by the order of punishment dated 13.02.2020. This Court had relied upon **Mahinder Dutt Sharma Vs. Union of India & others**, reported in **2014 (11) SCC 684** wherein it was held that punishment orders would operate as a disqualifying clause for grant of compassionate pension. Rule 101 of the Maharashtra Civil Services [Pension] Rules, 1982 provides for compassionate pension. This Court, therefore, relegated the petitioner before the Competent Authority of the Municipal Corporation with a direction that the Corporation would consider the case of

the petitioner since her deceased husband was removed from service and was not dismissed from service.

4. We have carefully gone into the two pages order of punishment dated 27.06.2013 issued to the deceased husband of the petitioner. He was alleged to be unauthorisedly absent from 23.06.2011. He was placed under suspension and was served with a charge sheet. After conducting a departmental enquiry it was concluded that he deserves to be removed from service under Section 56 (2) (g) of the Maharashtra Municipal Corporations Act, 1949. The word used in the Marathi order of punishment is “पदावरून कमी केले” which would mean in English that a person has been removed from his post. In Marathi language, the word ‘dismissed from service’ would appear as ‘पदावरून बडतर्फ केले’. The word dismissed in Marathi would be ‘बडतर्फ’. Apparently, the deceased was not dismissed from service. This has also been a view of the co-ordinate Bench of this Court in the case of this very petitioner in Writ Petition No.12782 of 2018 wherein it was held in paragraph 4 that the deceased was removed from service only on the ground of absenteeism. He was not dismissed from service. His removal was not for any dishonest act or act of misappropriation or an act amounting to moral turpitude.

5. Section 56 (2) (g) of the Maharashtra Municipal Corporations Act, 1949 reads as under:

56. Imposition of penalties on municipal officers and servants.

(2) The penalties which may be imposed under this section are the following, namely :-

- (a)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f)*

(g) removal from municipal service which does not disqualify from future employment;

- (h)*

6. Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982, reads as under:

101. Grant of Compassionate Pension in deserving cases by Government.

(1) A Government servant who is removed from service shall forfeit his pension and gratuity :

Provided that if the case is deserving of special consideration, Government may sanction a Compassionate Pension not exceeding two-thirds of pension or

gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than the minimum pension as fixed by Government.

(3) A dismissed Government servant is not eligible for Compassionate Pension.

7. It is, therefore, apparent that a person who is dismissed from service is not eligible for compassionate pension. *Per contra*, a person, who is removed from service, would only suffer forfeiture of pension and gratuity subject to the proviso that in a case deserving special consideration, the Government may sanction compassionate pension.

8. In *Mahinder Dutt Sharma (supra)*, the Hon'ble Apex Court considered the Delhi Police (Punishment and Appeal) Rules, 1980 and Central Civil Services (Pension) Rules, 1972. Rule 41 providing compassionate allowances under the Central Civil Services Pension Rules, 1972, reads thus:

"41. Compassionate allowance

(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three hundred and seventy-five mensem.”

In his above representation dated 22.3.2005 the appellant asserted, that he had about 24 years of unblemished service during which he was granted 34 good entries, including 2 commendation rolls awarded by Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. He also placed reliance on his discharge certificate, whereunder the character of the appellant was described as ‘very good’.

9. It is quite apparent that Rule 41 is similar to Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. In short, a person, who is dismissed from service, would not be entitled for compassionate pension. A person, who is removed from service by way of punishment, would normally suffer forfeiture of pension. However,

compassionate pension would be permissible only on special considerations in certain circumstances. While evaluating what could be special circumstances, we are also of the view that there cannot be a cut and dried straight jacket formula to be applied in every case.

10. While defining special considerations, the Hon'ble Apex Court has illustratively expressed in paragraphs 13, 14, 15 and 16 in Mahinder Dutt Sharma (supra) as under:

13. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

(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.

14. *While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "... if the case is deserving of special consideration...". Where*

the delinquency leading to punishment falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term “deserving special consideration” used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency levelled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorised in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration.

15. *We shall now venture to apply the aforesaid criterion, to the facts and circumstances of the case in hand, and decipher therefrom, whether the appellant before this Court ought to have been granted compassionate allowance under Rule 41 of the Pension Rules, 1972. The appellant was punished by an order dated*

17-5-1996 with dismissal from service. The accusations levelled against the appellant were limited to his unauthorised and wilful absence from service from 18-1-1995 to 4-12-1995 (i.e. for a period of 320 days, 18 hours and 30 minutes). The above order of punishment also notices that not taking stern action against the appellant, would create a bad impression, on the new entrants in the police service. The punishing authority while making a choice of the punishment imposed on the appellant, also recorded, that the appellant's behaviour was incorrigible. Thus viewed, there can be no doubt, that the order of dismissal from service imposed on the appellant was fully justified. For determining the question of compassionate allowance, so as to bring it within the realm of the parameters laid down in Rule 41 of the Pension Rules, 1972, it is first necessary to evaluate, whether the wrongdoing alleged against the appellant, was of a nature expressed in para 13 of the instant judgment. Having given our thoughtful consideration on the above aspect of the matter, we do not find the delinquency for which the appellant was punished, as being one which can be described as an act of moral turpitude, nor can it be concluded that the allegations made against the appellant constituted acts of dishonesty towards his employer. The appellant's behaviour was not one which can be expressed as an act designed for illegitimate personal gains, from his employer. The appellant, cannot also be stated to have indulged in an activity to harm a third-party interest, based on the authority

vested in him, nor was the behaviour of the appellant depraved, perverted, wicked or treacherous. Accordingly, even though the delinquency alleged and proved against the appellant was sufficient for imposition of punishment of dismissal from service, it does not fall in any of the classifications/categories depicted in para 13 of the instant judgment. Therefore, the availability of compassionate consideration, even of a lesser degree should ordinarily satisfy the competent authority, about the appellant's deservedness for an affirmative consideration.

16. *We shall only endeavour to delineate a few of the considerations which ought to have been considered, in the present case for determining whether or not, the appellant was entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972. In this behalf it may be noticed, that the appellant had rendered about 24 years of service prior to his dismissal from service, vide order dated 17-5-1996. During the above tenure, he was granted 34 good entries, including 2 commendation rolls awarded by the Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. Even though the charge proved against the appellant pertains to his unauthorised and wilful absence from service, there is nothing on the record to reveal, that his absence from service was aimed at seeking better pastures*

elsewhere. No such inference is even otherwise possible, keeping in view the length of service rendered by the appellant. There is no denial that the appellant was involved, during the period under consideration, in a criminal case, from which he was subsequently acquitted. One of his brothers died, and thereafter, his father and brother's wife also passed away. His own wife was suffering from cancer. All these tribulations led to his own ill-health, decipherable from the fact that he was suffering from hypertension and diabetes. It is these considerations, which ought to have been evaluated by the competent authority, to determine whether the claim of the appellant deserved special consideration, as would entitle him to compassionate allowance under Rule 41 of the Pension Rules, 1972.

11. In the light of above, we had expected the Corporation, under our earlier order dated 9th April, 2019 delivered in Writ Petition No.12782/2018, to assess the fact situation. We are surprised that when we had concluded that the deceased was not dismissed from service and was merely removed for unauthorised absenteeism by the impugned order dated 13.02.2020, the Deputy Commissioner, Administration of the Corporation concluded that the deceased was dismissed from service. We find such conclusion to be not only unjustified, casual and indicating non application of mind, but, being atrocious. The Assistant Commissioner, Administration, could not have sat over the

order passed by this Court dated 9th April, 2019 wherein we had concluded that the deceased was not dismissed from service and was simply terminated. There was no act of moral turpitude.

12. Considering the above, we find that the case of the widow would fall under special circumstances which would render her entitled for pension. The issue that would crop up at this stage is as to whether arrears of the compassionate pension should be paid to her when her husband had not sought compassionate pension. We cannot ignore the fact that the deceased husband was removed from service on 27.06.2013 and he met with an untimely death on 30.03.2015. It is stated that he was under great psychological stress and was distraught at the time of his death. We would, therefore, grant compassionate pension to the petitioner widow from the date when she made an application for the first time for such pension on 02.11.2015.

13. In view of above, this petition is allowed. The impugned decision dated 13.02.2020 delivered by the Assistant Commissioner, Administration, Nanded Waghala Municipal Corporation, Nanded is quashed and set aside, with the following directions :-

a) We grant compassionate pension to the petitioner with effect from 02.11.2015.

b) The respondent – Corporation shall process the papers and wherever needed, they would seek the assistance of the petitioner in completing the pension papers so as to ensure that the arrears of pension are paid on or before 30th June, 2022.

c) The payment of regular pension shall commence, as expeditiously as possible and in any case with effect from 1st July, 2022.

14. Since we have noted that the petitioner was required to make four rounds to this Court by filing four Writ Petitions and the present Petition in fact was not warranted in the light of our order dated 9th April, 2019, that we deem it appropriate to impose cost of Rs.10,000/- to be paid to the petitioner by the Corporation, on or before 31st May, 2022.

[S.G.DIGE, J.]

[RAVINDRA V. GHUGE, J.]

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