

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7813/2019

(SURENDRA WAMANRAO DESHMUKH **VERSUS** THE STATE OF MAHARASHTRA & ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri G.S. Sengar, Appointed counsel for the petitioner.
Mrs. K.R. Deshpande, A.G.P. for the R-1.
Shri D.R. Bhoyar, counsel for the R-2.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : MARCH 15, 2022.

By this writ petition, the petitioner has challenged the orders dated 03.02.2018 and 18.12.2018 by which the request made by him for grant of compassionate pension under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, 'the Rules of 1982') has been disallowed.

It is the case of the petitioner that he was appointed as Gram Sevak at Panchayat Samiti, Deoli. During the course of service, he was suspended by the order dated 17.12.1994. Enquiry was held against him on the ground of misappropriation. Though the petitioner was taken back in service, he was again suspended on 04.07.1996 and a fresh enquiry commenced on 14.12.1998. In those proceedings his increment was withheld for a period of two years with cumulative effect. An amount of Rs.30,036/- was directed to be recovered in twenty equal instalments and the period of suspension was treated as the petitioner being placed under suspension. Thereafter again in the year 2002 he was placed under suspension and a fresh enquiry for misappropriation was held against him. At the conclusion of the enquiry he was compulsorily retired from service and recovery of Rs.65,134/- was ordered. This order was maintained in Writ Petition No.6141 of 2005 by dismissing the said writ petition on 07.12.2005. In the Civil Appeal preferred by the petitioner, the recovery of Rs.65,134/- was set aside but rest of the order was maintained. The petitioner thus was in service for a period of 9 Years 4 Months 14 Days. The petitioner sought grant of compassionate pension by contending that another employee Smt.Bhavika Lokhande who had also rendered service which did not amount to qualifying service had been granted compassionate pension and he was

similarly situated to her. The petitioner thus filed Writ Petition No.243 of 2015 seeking such relief. That writ petition was however dismissed on 21.09.2015. The petitioner challenged this order before the Hon'ble Supreme Court and on 31.03.2017 the petitioner was permitted to make a representation with the State Government for grant of compassionate pension. Such representation having been made the same was rejected by the Deputy Secretary of the Urban Development Department on 03.02.2018. The petitioner then approached the Hon'ble Minister by filing an appeal under Rule 21 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964. The Hon'ble Minister on 18.12.2018 dismissed that appeal. Hence this writ petition.

The learned counsel for the petitioner submits that since the respondents had granted compassionate pension to a similarly situated employee who was also compulsorily retired and who had not completed qualifying service of ten years they ought to have granted similar treatment to the petitioner. There was no distinction between the case of the petitioner and that of Smt.Bhavika Lokhande. The respondents without any justifiable reason had denied such treatment to the petitioner which was thus violative of Article 14 of the Constitution of India. It is submitted that the petitioner ought to be granted compassionate pension under Rule 101 of the Rules of 1982.

The learned Assistant Government Pleader for the respondent no.1 as well as the learned counsel for the respondent no.2-Zilla Parishad have opposed these submissions. It is submitted that the petitioner was removed from service on account of misappropriation. The case of the petitioner was not similar to that of Smt.Bhavika Lokhande as the allegations against her were with regard to unauthorized absence and disobeying the orders of the senior officers. Since the conduct of the petitioner was such that he was required to be dismissed from service on the ground of misappropriation he was rightly not granted compassionate pension under Rule 101 of the Rules of 1982. The learned Assistant Government Pleader placed reliance on the decision in *Baliram Ramchandra Majgaonkar Versus The District & Sessions Judge* [2003(1) CLR 684] and submitted that no interference with the impugned order was called for.

Having heard the learned counsel and having perused the documents on record, it becomes clear that the petitioner rendered service of 9 Years 4 Months 14 Days which is less than the prescribed qualifying service. The removal of the petitioner is on account of financial misappropriation which amounts to moral turpitude. The order of removal has attained finality upto the Hon'ble Supreme Court. Merely because another employee has been granted benefit of compassionate pension, the same would not be the reason to grant it to the petitioner. Smt.Bhavika Lokhande was removed from service on account of unauthorized absence and disobeying the orders of senior officers. The case of the petitioner therefore cannot be compared with her case. The respondent no.1 has considered all these aspects while refusing to grant relief to the petitioner. We find that the order passed on 03.02.2018 that is impugned in the writ petition is in accordance with law and the same does not deserve to be interfered with. The writ petition is dismissed. No costs.

The fees of the Appointed counsel are quantified at Rupees Five Thousand.

(SMT. M.S. JAWALKAR, J.)

(A. S. CHANDURKAR, J.)

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