

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 5750 OF 2021

1. Sau. Saroj Wd/o Magan Damare,
Age: 46 Years, Occupation: Household,
R/o.: House No. 4-14-56,
Adjacent to Cupboard Factory,
Kaisar Colony, Nizamuddin, Darga Road,
Jinsi, Aurangabad, District Aurangabad.
2. Sekhar Magan Damare,
Age: 21 Years, Occu: Labourer,
R/o. as above.

... **Petitioners**

Versus

1. The Superintending Engineer,
Aurangabad Irrigation Board,
Aurangabad, District Aurangabad.
2. The Sub Divisional Officer,
Minor Irrigation Sub Division No. 2,
Cada Office, Near Gajanan Mandir,
Aurangabad, District Aurangabad.
3. The Executive Engineer,
Nandur Madhmeshwar Canal Division,
Vaijapur, Tq. Vaijapur, Dist. Aurangabad.

... **Respondents**

...
Mr. S. P. Brahme, Advocate h/f Mr. G. D. Jain, Advocate for petitioners.
Mr. S. G. Sangle, AGP for Respondent No.1.
Mr. S. W. Munde, Advocate for Respondent No.3.

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 10th February, 2023.

J U D G M E N T : (Per Sanjay A. Deshmukh, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioners have prayed for granting of compassionate pension as petitioner No.1 is the widow of deceased Magan Damare, who had served with respondent No.3 as a Chaukidar / Watchman.

3. The petitioners contended that the husband of petitioner No.1 Magan Damare was serving as a watchman with respondent No.3 from 20th November, 1981. Magan Damare had served for about 22 years. However, due to his unauthorised absenteeism, a departmental enquiry was held against him and on 6th March, 2002, he was dismissed from service. Magan did not challenge that dismissal order. He died on 5th April, 2012. Petitioner No.1 and her family members suffered mentally and economically as they lost their bread earner. Petitioner No.1 had no source of income. She applied for a copy of the service book of her husband and got it on 28th September, 2012. On 16th November, 2012, petitioner No.1 prayed

for compassionate pension. However, by letter dated 21st November, 2012, it was communicated to petitioner No.1 that, as per Rule 45 of the Maharashtra Civil Services (Pension) Rules, 1982 her husband was dismissed from service and therefore, she is not entitled for pension. Petitioner No.1 again applied to respondent No.3 for re-considering of her request of compassionate pension vide communication dated 19th February, 2013. However, by letter dated 28th January, 2014, it is informed to petitioner No.1 that her application was not favourably considered and rejected. The petitioners, therefore, prayed for quashing and setting aside the impugned order dated 21st November, 2012 and prayed for issuing a Writ of Mandamus to direct respondent No.3 to grant compassionate pension.

4. By the Affidavit in reply, respondent No.3 contended that the husband of petitioner No.1 was dismissed from service by order dated 6th March, 2002 as per Rule 45 of the Maharashtra Civil Services (Pension) Rules, 1982. He was not entitled for pensionary benefits. Therefore, petitioner No.1 is also not entitled for the compassionate pension. It is lastly prayed to dismiss the writ petition.

5. We have considered the submissions of the learned

advocates for the petitioners and respondent No.3 so also the learned AGP on behalf of the State.

6. In *Mahinder Dutt Sharma Vs. Union of India & others, 2014 (11) SCC 684*, it was held by the Honourable Supreme Court that punishment order 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. In the present case, the husband of petitioner No.1, admittedly, dismissed from service, who is now no more. The dismissal of the husband of petitioner No.1 from service was not for any dishonest act or act of misappropriation or an act amounting to moral turpitude.

7. 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)”

8. 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.”

9. In *Mahinder Dutt Sharma (supra)*, the Honourable Supreme 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'."

10. Rule 41 is similar to Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. In the case in hand, the husband of petitioner No.1 was dismissed from service by way of punishment. Therefore, normally he would suffer forfeiture of the pension. However, no order of forfeiture has been passed. The compassionate pension would be permissible only on special consideration and circumstances. There is no straight jacket formula to evaluate the special circumstances. The Honourable Supreme Court expressed, what are the special circumstances in paragraphs 13 to 16 in *Mahinder Dutt Sharma* (supra), which read 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. The facts of this case are that, petitioner No.1 is a widow and there is no source of income to her. Further, her husband was not held liable for moral turpitude. He was dismissed only on account of unauthorised absenteeism. Therefore, the case of the petitioners

can be considered for compassionate pension as a special case. Therefore, petitioners are entitled for compassionate pension from the date of her application. The petition, therefore, deserves to be allowed. Hence, the following order:-

ORDER

- I. The writ petition is allowed.
- II. The impugned order dated 21st November, 2012 passed by respondent No.3, is quashed and set aside.
- III. We grant compassionate pension to the petitioners with effect from 16th November, 2012, strictly in accordance with the rules applicable.
- IV. Respondent No.3 shall process the papers and wherever needed, respondent No.3 would seek the assistance of the petitioners in completing the pension papers so as to ensure that the arrears of pension shall be paid to the petitioners, on or before 30th June, 2023. We are not granting any interest on the arrears as the Petitioners have approached the

Court vide this Petition, belatedly.

- V. The payment of regular pension shall commence, as expeditiously as possible and in any case with effect from 1st July, 2023.

12. Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE J.]

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