



W.P(MD)No.22549 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.22549 of 2016
and W.M.P. (MD) No.16138 of 2023

D.Amutha

...Petitioner

Vs.

1. The Director General of Police,
O/o. The Director General of Police,
Beach Road,
Chennai.

2. The Superintendent of Police,
O/o, the Superintendent of Police,
Tirunelveli District,
Tirunelveli.

....Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to Impugned Order in C.No.F1/18397/2013 dated 08.10.2016 signed on 12.10.2016 on the file of the Respondent No.2 and quash the same as illegal and consequently directing the Respondent No.2 to provide



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compassionate allowance to the petitioner as per Rule 40 (1) of the Tamil Nadu Pension Rules, 1978 within the time stipulated by this Court.

For Petitioner : Mr.I.Pinaygash
For Respondents : Mr.P.Subbaraj
Special Government Advocate

ORDER

This Writ Petition has been filed against the endorsement in C.No.F1/18397/13, dated 08.10.2016 issued by the 2nd respondent, wherein the request of the petitioner to provide compassionate allowance to the petitioner as per Rule 40(1) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as “the 1978 Rules”) has been rejected.

2. No counter affidavit has been filed by the respondents.

3. The case of the petitioner is that the husband of the petitioner worked as Constable. He was dismissed from service on 08.01.2002. Aggrieved by the same, he preferred appeal before the 1st respondent. During the pendency of the said appeal, he died on



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09.06.2009. On 25.03.2013, the petitioner sent a representation to respondents 1 and 2 to provide compassionate allowance as per Rule 40 of the 1978 Rules. The 2nd respondent by order dated 22.04.2013, rejected the representation of the petitioner stating that the petitioner's husband was dismissed from service on 08.11.2001 and as per the 1978 Rules, pension cannot be provided to the person, who had been dismissed from service. Aggrieved by the said order dated 22.04.2013, the petitioner filed W.P.(MD) No.10366 of 2013.

4. On 05.08.2016, this Court set aside the order dated 22.04.2013 passed by the 2nd respondent with an observation that the termination of service *ipso facto* does not itself entitle compassionate allowance as provided under Rule 40(1) of the 1978 Rules and from the impugned order, this Court found that the 2nd respondent has not applied his mind as to the eligibility of the petitioner in terms of Rule 40(1) of the 1978 Rules and accordingly, while disposing of the Writ Petition, set aside the impugned order therein and directed the 2nd respondent to consider the application of the petitioner afresh in the light of Rule 40(1) of the 1978 Rules and pass appropriate orders on merits and in



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accordance with law, after affording opportunity of hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of the order.

5. In compliance of the said order, the present impugned order is passed.

6. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the records.

7. The learned counsel for the petitioner would submit that the second respondent failed to observe the aim and object in providing the proviso to Rule 40(1) of the 1978 Rules in proper perspective. Rule 40(1) of the the 1978 Rules, is provided for empowering the competent authority to consider the deserving cases for special consideration to sanction compassionate allowance, in the cases, where employees are dismissed or removed from service by treating them as they retired on medication certificate.



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8. The learned counsel for the petitioner would submit that the husband of the petitioner expired in the year 2009 during the pendency of the appeal filed against his dismissal order dated 08.01.2002. After sudden demise of her husband, the petitioner has to survive with two children. As the husband of the petitioner was dismissed from service, the petitioner is not getting any family pension and other benefits from the respondents to come out from the indigent condition the family of the petitioner is facing. They requested the respondents to consider to sanction compassionate allowance as provided under Rules. But the second respondent, without considering all the aspects, erroneously rejected the claim of the petitioner for granting compassionate allowance by the impugned order, which is liable to be set aside.

9. On behalf of the second respondent, a counter affidavit has been filed. The contention of the second respondent is that by taking all the mitigating circumstances into account, found that the case of the petitioner is not deserving for special consideration and therefore, rejected the request of the petitioner. It is further contended that the second respondent has considered the representation dated 23.03.2013 of



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the petitioner in the light of the established principle of law and rules and as such, there is no illegality in passing the impugned order and sought to dismiss the Writ Petition.

10. The learned Special Government Pleader appearing for the respondents contends basing on the averments made in the affidavit filed by the second respondent that there are no grounds or any reason to consider the petitioner's request for special consideration warranting sanction of compassionate allowance. In view of the fact that the husband of the petitioner had deliberately neglected his duty and indulged in misbehaviour as enumerated in the charge and got dismissed from the force. The learned Special Government Pleader further contended the contention of the petitioner will not hold good and it is not sustainable under law and sought to dismiss the Writ petition.

11. Having heard the submissions of the respective counsels and upon perusal of the materials available on record, there is no dispute with regard to the admitted facts in this case. The only issue to be considered in this Writ Petition is whether the petitioner is entitled for



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the compassionate allowance as per Rule 40 of the 1978 Rules or not in view of the facts and circumstances of the case.

12. For proper adjudication of the case, it is relevant to look into the Rule 40(1) of the Tamil Nadu Pension Rules as extracted herein under:

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

I[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 medical certificate:]

13. On plain reading of sub rule (1) of Rule 40 of the 1978 Rules, it is clear that a Government servant, who is dismissed or removed from service, shall forfeit his pension and gratuity.



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Admittedly, in this case, the husband of the petitioner expired in the year 2009 during the pendency of the appeal filed against his dismissal order. Accordingly, the petitioner, who is the wife of the dismissed employee, cannot get any family pension and other benefits in view of the fact that her husband was dismissed from service.

14. It appears that the proviso is provided in sub rule (1) of Rule 40 of the 1978 Rules to consider the deserving cases for special consideration to sanction a compassionate allowance subject to certain conditions. The question of considering the deserving cases for special consideration for sanctioning of compassionate allowance arises only in the cases where any employee was dismissed or removed from service. It is an admitted fact that where the employee was charged with serious allegations, they would be dismissed or removed from service. Though it is treated that serious charges are levelled against the petitioner and due that reasons he



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was dismissed from service, thereafter also the petitioner's request can be considered as deserving case in view of the facts and circumstances of the case.

15. In the counter affidavit it is contended by the second respondent that taking all the mitigating circumstances into account, it is found that the case of the petitioner is not deserving for special consideration. But what are the facts considered by the second respondent coming to that conclusion that the petitioner is not deserving for special consideration are not found in the impugned order or in the averments in the counter affidavit.

16. Definitely, after sudden demise of the husband of the petitioner in the year 2009, when his appeal against dismissal order was pending before the first respondent, the petitioner could not get any family pension or other benefits, which are available to all other employees due to the reason that the husband of the petitioner was



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dismissed from service. The indigent condition of the petitioner and her children and also the financial problems being faced by them ought to have been taken into consideration by the second respondent while rejecting the request of the petitioner for compassionate allowance. In the considered opinion of this Court, the proviso to sub rule (1) of Rule 40 of the Rules 1978 is provided only to consider the mitigating circumstances of the family of the employee, who was dismissed or removed from service, as a social security measure to support those employees and their family to come out from their hardships there being faced under such circumstances.

17. It is pertinent to note that the second respondent is under the impression that he is granting compassionate allowance to the husband of the petitioner, who died in the year 2009. That approach itself proves that the second respondent failed to understand the aim and object behind introducing the proviso to



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the Rule 40(1) of the Rules 1978.

18. On considering all the facts and circumstances of the case, in the considered opinion of this Court, the second respondent failed to consider all these aspects including the hardships being faced by the family of the petitioner after sudden demise of the bread winner of the family in the year 2009, at the relevant period of time, when the appeal filed by the husband of the petitioner was pending. The impugned order was passed mechanically without understanding the aim and object of introducing proviso to Rule 40 (1) of the Tamil Nadu Pension Rules 1978 which is illegal, arbitrary, unjust and irrational and violation of principles of natural justice.

19. For the above mentioned reasons, in the considered opinion of this Court, the order impugned in this Writ Petition is unsustainable under law and the same is liable to be set aside.



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20. Accordingly, this Writ Petition is allowed with the following directions:

i) The order impugned in this Writ Petition in C.No.F1/18397/2013 dated 08.10.2016 signed on 12.10.2016 on the file of the Respondent No.2 is hereby set aside.

ii) The second respondent is directed to provide compassionate allowance to the petitioner as per proviso to Rule 40(1) of the Tamil Nadu Pension Rules 1978 within four weeks from today.

21. No costs.

22. Consequently, connected miscellaneous petition is closed.

07.09.2023

Index : Yes / No
NCC : Yes / No
CM



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To,

1. The Director General of Police,
O/o. The Director General of Police,
Beach Road,
Chennai.

2. The Superintendent of Police,
O/o, the Superintendent of Police,
Tirunelveli District,
Tirunelveli.



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BATTU DEVANAND, J.

CM

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and W.M.P. (MD) No.16960 of 2023

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