



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2024

CORAM

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.23741 of 2017

and

W.M.P.(MD)No.19936 of 2017

Paulraj

: Petitioner

Vs.

1.The State Rep. by its,

Principal Secretary,

Government Home (Police) Department,

Fort St. George,

Chennai.

2.The Director General of Police,

O/o. The Director General of Police,

Chennai.

3.The Inspector General of Police,

O/o. The Inspector General of Police,

Chennai.

4.The Superintendent of Police,

Thoothukudi,

Thoothukudi District.

: Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the fourth respondent in C.No.H3/43552/2016 dated 26.12.2016, quash the same and consequently directing the respondents to pay the compassionate allowance to the petitioner.

For Petitioner : Mr.T.Indrachithu

For Respondents : Mr.S.Kameswaran

Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned order dated 26.12.2016 passed by the fourth respondent rejecting the petitioner's request for compassionate allowance. The petitioner claims that under Rule 40 of the Tamil Nadu Pension Rules, 1978, he is eligible to be paid compassionate allowance. The petitioner who was a Grade-I Police Constable was dismissed from service on 03.05.2000.

2. According to the petitioner, only due to his mental illness he did not seek for the relief immediately after he was dismissed from service. The first representation given by the petitioner seeking for grant of compassionate allowance under Rule 40 of the Tamil



Nadu Pension Rules, 1978 is only on 26.11.2015 ie., after a lapse of almost 15 years from the date when he was dismissed from service.

The same has been rejected under the impugned order passed by the fourth respondent on the ground that since the petitioner has been dismissed from service, he does not deserve to be paid compassionate allowance. Rule 40 of the Tamil Nadu Pension Rules, 1978 reads as follows:

“Rule 40. 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 gratuit or both which would have been admissible to him if he had retired on medical certificate.

Provided further that no allowance shall be granted to an officer under the rule-making control of the Government of India, other than those who are governed by the All India Services (Death-cum-Retirement Benefits) Rules, 1958, without further sanction.

Provided also that no compassionate allowance shall be granted in cases of Government servants dismissing or removed from service under the second proviso © to



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clause (2) of Article 311 of the Constitution of India, for overt, anti-national activities such as sabotage, espionage and like.

(2) A compassionate allowance sanctioned under the proviso the sub-rule (1) shall not be less than the limit specified in sub-rule (5) of Rule 43."

3.Learned Counsel for the petitioner relies upon proviso to Rule 40(1) as extracted supra and would submit that in deserving cases, sanction of compassionate allowance can be granted.

4.Admittedly, the petitioner has not sought for compassionate allowance either during the pendency of the disciplinary proceedings or immediately after the disciplinary proceedings got acquitted by the passing of the punishment order dismissing the petitioner from service. The petitioner was admittedly dismissed from service in the year 2000 itself and the said order had also attained finality. Eventhough, proviso to Rule 40 of the Tamil Nadu Pension Rules enables the competent authority to award compassionate allowance in cases where a delinquent has been dismissed from service, the said power is vested with the competent authority only at the time of dismissing the petitioner from service or atleast immediately thereafter. While dismissing the petitioner from service, no compassionate allowance was granted to the petitioner



considering the plight of the petitioner. The award of compassionate allowance is only a discretionary relief which the competent authority can grant. In the instant case, the competent authority thought it fit not to exercise its discretion by granting the relief of compassionate allowance to the petitioner while dismissing the petitioner from service in the year 2000 itself. The petitioner had also not challenged the order dismissing him from service and for the non-grant of compassionate allowance in the order passed by the respondents while dismissing the petitioner from service. Only for the first time, the petitioner for the reasons best known to him has given a representation seeking for compassionate allowance as per Rule 40 of the Tamil Nadu Pension Rules. The object of Rule 40 is not to enable any person to seek for compassionate allowance at any point of time, that too when admittedly in the instant case, the request for compassionate allowance was made by the petitioner only after a lapse of almost 15 years from the date when he was dismissed from service. The fourth respondent has rightly rejected the petitioner's request for appointment of compassionate allowance under the impugned order.

5.In the result, there is no merit in this writ petition.



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6.Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index :Yes / No
Internet : Yes / No
NCC : Yes/No
MR



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To

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O/o. The Director General of Police,
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ABDUL QUDDHOSE, J.

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