



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

986 WRIT PETITION NO. 8239 OF 2018

Shivaji S/o Ramrao Bhosle
Age : 57 years, Occ : Nil,
R/o Handargulli, Tq. Udgir,
Dist. Latur.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through its Secretary,
Agricultural, Animal Husbandry,
Dairy & Fishery Development Department,
Mantralaya, Mumbai-32.
2. The Registrar
The Vasantrao Naik Marathwada Agricultural
University, Parbhani, Administrative Building,
Vasmat Road, Parbhani.

..RESPONDENTS

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Advocate for the Petitioner : Mr. S.K. Chavan
AGP for Respondent/State : Mr. A.S. Shinde
Advocate for Respondent no.2 : Mr. M.N. Navandar

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CORAM : NITIN B. SURYAWANSHI AND

VAISHALI PATIL - JADHAV, JJ.

DATED : 1st OCTOBER, 2025.

JUDGMENT (PER NITIN B. SURYAWANSHI, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.
2. By this petition filed under Article 226 of the Constitution of India, petitioner challenges order dated 22.12.2017 passed by

respondent no.2, thereby refusing compassionate pension to the petitioner.

3. Admitted facts on record are that on 11.06.1980, the petitioner was appointed as Steno-Typist with respondent no.2 university in the pay scale of Rs.335-680/-. On 23.12.1985, he was promoted as Stenographer in the pay scale of Rs.395-800/-. For absence without leave, the petitioner's services were terminated w.e.f. 03.05.2001 by order dated 10.10.2002. The petitioner challenged his termination order in Complaint (ULP) No.28/2007 along with delay condonation application. The Labour Court rejected the delay condonation application.

4. Petitioner challenged the said order by filing Writ Petition No.7172/2012, which was dismissed by the learned Single Judge of this Court on 13.12.2012.

5. Petitioner requested the University vide representations dated 05.02.2007 and 24.08.2016 for grant of pensionary benefits. Petitioner then filed Writ Petition No.4508/2017 seeking directions to the University to consider his claim under rule 101 of Maharashtra Civil Services (Pension) Rules. This Court on 26.09.2017 passed the following order :-

"3. Considering the contentions raised by the petitioner, the respondent university is directed to consider the claim of petitioner recorded in representation tendered by the petitioner on 24.08.2016, on its own merits and in accordance with law. The respondent university may consider request of the petitioner within frame work of Rules 101 of Maharashtra Civil Services (Pension)

Rules, 1982, and shall not turn down the request merely on the ground that the petitioner has quoted any erroneous or inapplicable provision.

4. *It would be open for the university to forward the proposal to the State Government if the claim of petitioner is found to be admissible, and on receipt of such proposal it would be open for State Government to consider the same and it shall be considered expeditiously and preferably within period of four (04) months from the date of its receipt. The university shall consider the representation tendered by the petitioner within period of three (03) months from today."*

6. Pursuant to the directions of this Court, by the impugned order, the respondent - university rejected the claim of the petitioner by quoting rule 101(2) of the said Rules. Hence the petition.

7. Heard learned Advocate for the petitioner, learned Advocate for the respondent-University and learned A.G.P. for the respondent-State.

8. Learned Advocate for the petitioner in support of his arguments has relied on the decision of the Apex Court in the case of ***Mahinder Dutt Sharma Vs. Union of India and others, (2014) 11 SCC 684*** and the judgment of this Court in the matter of **Saroj Magan Damare and another Vs. Superintending Engineer, Aurangabad Irrigation Board and others, 2023(3) Mh.L.J. 711.**

9. Learned Advocate for the University has strenuously opposed the petition contending that the authorities are justified in

denying the compassionate pension to the petitioner by relying on rule 101 of said Rules.

10. Learned A.G.P. submits that the decision in ***Mohinder (supra)*** is in respect of Central Pension Rules, and therefore, it should not be relied upon.

11. Before considering the merits of this case, it is apposite to consider the relevant Rule 101 which reads thus :-

"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."

12. ***In Saroj Magan Damare (supra)***, the petitioner's husband was dismissed from service for unauthorized absence of 320 days. This Court observed :-

"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."

13. With the above observations this Court quashed the impugned order dated 21st November, 2012 and granted compassionate pension to the petitioner w.e.f. 16th November, 2012, strictly in accordance with rules applicable.

Respondents therein preferred Review Application No.23/2025. This Court while dismissing the review by order dated 19.03.2025 has made following observations :-

*"13. In the above judgments the High Courts have relied upon the judgment of the Hon'ble Supreme Court in the case of **Mahinder Dutt Sharma (supra)**, though it is about Central Pension Rules. Granting compassionate allowance/pension is at the discretion of the authority concerned as per Rule 41 of the Rules of 1972 and Rule 101 of the Rules of 1982. In the case of **Government of N.C.T. of Delhi and others vs. Late Shri Ashok Kumar Singh (supra)**, it is held that the authority has to exercise the discretion. For that, the authority concerned has to consider for what kind of misconduct the employee/government servant has been dismissed from service and was there a moral*

turpitude to deny such compassionate pension. The husband of respondent No.1 was terminated for absenteeism. There was no moral turpitude to terminate him. The punishment of his termination is harsh in nature and against the principles of natural justice. The authority has to exercise the discretion on the basis of nature of misconduct of the Government servant and not mechanically. It was not properly exercised by these applicants which was vested with them as per proviso to Sub-Rule (1) of Rule 101 of the Rules of 1982. The discretion is implicit which can be inferred by applying logic. The logic has important role in the interpretation of the Statutes and Rules. The abstract law requires aid of logic to interpret the Statute and Rules. In that sense, logic is a part and parcel of law which plays important role in deciding the cases rationally. The authority i.e. the applicants have not given proper and acceptable reasons for it. The proper reasons are soul of every decision either of the authority or of the Court. This court by the impugned judgment granted compassionate pension to the respondents as the authority failed to exercise the administrative discretion properly and observed that granting compassionate pension is necessary as it is a special case, as the husband of respondent No.1 was not held liable for moral turpitude.

14. No doubt Sub-Rule (3) of Rule 101 of the Rules of 1982 provides that a dismissed Government

servant is not eligible for compassionate pension, but merely because the appeal is not preferred by the husband of respondent No.1 against the decision of dismissal, the respondents cannot be deprived from the right to get the compassionate pension. It is because it is a social legislation and cannot be construed strictly. Sub-Rule (3) will not prevail over Sub Rule (1) of the Rules of 1982. The proviso to Sub Rule (1) provides discretion not expressly but impliedly. It has to be inferred by applying logic as the word may is used in proviso. While deciding the writ petition, the said aspect was considered and discussed by this Court in para 11 of the impugned judgment. The discretionary relief, as per proviso of Rule 101 of the Rules of 1982, is granted by this Court as the authority failed to assign the reasons as to why it did not exercise discretion in favour of the respondents, as there was no moral turpitude on the part of husband of respondent No.1."

14. Since the above observations are made in similar facts, these observations are squarely applicable to the petitioner's case.

15. Coming to the facts of the present case, it is not in dispute that the petitioner has rendered 20 years, 10 months and 22 days of service. Admittedly, his termination is not on account of his involvement in an act of moral turpitude nor dishonesty or his act was designed for personal gains, he did not deliberately harm a third party interest. Therefore, in view of the observations made in **Saroj**

Magan Damare (supra) and in the order passed in review application, the petitioner deserves to be granted compassionate pension.

16. Fact remains that the impugned order is a non-speaking order. Provision quoted in the impugned order i.e. 101 (2) is not applicable to the facts of the present case. On plain reading of rule 101, it is clear that university has misdirected itself in placing reliance on sub-rule (2) of rule 101 of the said Rules for rejecting the compassionate pension to the petitioner. The impugned order therefore is also vitiated on the ground of non-application of mind.

17. For the aforesaid reasons, we are of the considered view that the petitioner is entitled for compassionate pension as his services are not terminated on the ground of an act involving moral turpitude, gross administrative lapses, financial irregularities, mal-practices etc. Petition, therefore, deserves to be allowed. Hence the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned order dated 22.12.2017 passed by respondent no.2 is quashed and set aside.
- (iii) We direct respondents to grant compassionate pension to the petitioner with effect from 05.02.2007 i.e. the date of his first application, with all consequential benefits as per rules with 12 weeks from the date of uploading of this order.
- (iv) If the admissible dues as per rules are not paid within stipulated time, the respondents shall pay interest at the rate of 7% p.a. till realization of the amount.

18. Rule is made absolute in the above terms.

(VAISHALI PATIL-JADHAV,J.)

(NITIN B. SURYAWANSHI,J.)

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