



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 23 OF 2025
IN
WRIT PETITION NO. 5750 OF 2021

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
Maharaj Mandir, Aurangabad
district Aurangabad
 3. The Executive Engineer,
Nandur Madhmeshwar Canal
Division, Vaijapur,
Tq. Vaijapur, district Aurangabad
- ...Applicants
(Ori. Respondents)

Versus

1. Sau. Saroj wd/o Magan Damare
Age 46 years, Occ. 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, Occ. Labourer,
R/o. As above
- ...Respondents
(Ori. Petitioners)

.....
Mr. A.S. Shinde, A.G.P. for the applicants
Mr. G.D. Jain, advocate for the respondents
.....

**CORAM : S. G. MEHARE AND
SANJAY A. DESHMUKH, JJ.
DATE OF RESERVING THE : 14.02.2025
ORDER
DATE OF PRONOUNCING : 19.03.2025
ORDER**

O R D E R (PER SANJAY A. DESHMUKH, J.):-

1. Heard finally with the consent of the learned counsel.
2. This application is filed for a review of the judgment dated 10.02.2023, passed by this Court, in a writ petition No.5750 of 2021. The said writ petition was filed by the wife and son of the employee late Magan Damare, for compassionate pension, who was serving as a watchman with the applicants herein. His services were terminated and he was dismissed on account of absenteeism after conducting departmental enquiry.
3. The husband of respondent No.1 and father of respondent No.2 was serving with the applicants from 20.11.1981. He served there for 22 years. On account of continuous absenteeism, a departmental enquiry was conducted against him. He was dismissed from service. He did not challenge the dismissal order passed by the applicants. He died on 5.4.2012. The respondent Nos.1 and 2 filed applications/representations dated 21.11.2012 and 28.01.2014 for granting compassionate pension. The said applications were rejected

by the applicants. The said orders were challenged before the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, vide Original Application No. 936 of 2019. The said application was withdrawn on 26.02.2020. Thereafter, writ petition No.5750 of 2021 was filed by the respondents. It was allowed, by setting aside an order dated 21.11.2012, passed on the representation of respondent No.1.

4. Learned A.G.P. for the applicants submitted that the impugned judgment delivered by this court is contrary to the provisions of law. He pointed out the judgment of Hon'ble Supreme Court in the case of ***Mahinder Dutt Sharma vs. Union of India and others; 2014 (11) SCC 684***, wherein it was held that the petitioners therein were entitled for compensatory pension in view of Delhi Police (Punishment and Appeal) Rules, 1980 and Central Civil Services (Pension) Rules, 1972 (hereinafter for the sake of brevity referred to as "the Rules of 1972"). He further submitted that Central Legislation is not applicable to the case of the respondents. Therefore, the said case law is also not applicable to the facts of the claim of respondents which was relied upon by this Court while deciding said writ petition. He also submitted that this court erred in relying upon the said judgment. He submitted that Rule 41 of the Rules of 1972, which provides for compassionate allowance, is altogether different

from Rule 101 of the Maharashtra Civil Service (Pension) Rules 1982 (hereinafter for the sake of brevity referred to as “the Rules of 1982”). He submitted that these two rules are different. The word ‘dismissal’ or ‘dismissed’ is not used in Sub-Rule (1) of Rule 101 of the Rules of 1982, however, in Sub Rule (3) of Rule 101, it is specifically stated that dismissed Government servant is not eligible for compassionate pension. So far as Rule 41 of the Rules of 1972 is concerned, the dismissed servant is entitled for compassionate allowance, which was not legally and properly considered by this court. This court erred in relying upon the judgment of the Hon’ble Supreme Court in the case of ***Mahinder Dutt Sharma (supra)*** which is not applicable to the case of the respondents. Rule 41 of the Rules of 1972 is erroneously applied to the case of the respondents. He submitted that the said error committed by this court is an error of law and therefore, review application be allowed. He prayed to allow the review application and dismiss the writ petition.

5. Learned advocate for the respondents submitted that by applying the correct provisions of law, the claim of the respondents is rightly considered and allowed by this court. The husband of respondent No.1 had completed 22 years of service with the applicants. His punishment of dismissal is disproportionate, harsh and against the principles of natural justice. Learned advocate for the

respondents placed reliance on the judgment of this court dated 24.02.2018 delivered in writ petition No. 145 of 2013, ***Shakuntala Yuvraj Patil vs. The State of Maharashtra and others***, in which it is held that the compassionate pension can be granted even though the employee is dismissed from service as the punishment of dismissal is harsh. He submitted that the review application deserves to be rejected, as there is no patent illegality.

6. Whether there is any scope for interference in the impugned judgment by exercising the powers of review under Section 114 r.w. Order XLVII of the Code of Civil Procedure, 1908 (for short C.P.C.), is the question before this Court.

7. We have perused the grounds raised in this application and the impugned judgment.

8. As far as ambit and scope of review is concerned, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Sanjay Kumar Agarwal and others vs. State Tax Officer (1) and others, MANU/SC/1198/2023***. Para 16 of the said judgment reads as under:-

“16. The gist of the afore-stated decisions is that:

(1) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction Under Order 47 Rule 1 Code of Civil Procedure, it is not permissible for an erroneous decision to be "reheard and corrected."

(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

(vi) Under the guise of review, the Petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review."

9. The Hon'ble Supreme Court in the case of **Delhi Administration vs. Gurdip Singh**, reported in, **(2000) 7 SCC 296**, held that greater care, seriousness and restraint is needed while

deciding the review application. The word restraint is emphasized. It is based on an equitable principle, which is borrowed from the court of equity. The condition precedent is thus, there must be a patent illegality to rectify the mistake as held by the Supreme Court in the case of ***Board of Control for Cricket, India vs Netaji Cricket Club; AIR 2005 SC 592.***

10. Rule 41 of the Rules of 1972 and Rule 101 of the Rules of 1982 are mostly similar i.e. *pari materia*. This court had not applied the Rule 41 of the Rules of 1972 meant for Central Government employees but the authority of ***Mahinder Dutt Sharma (supra)*** under that Rules is relied upon as per the principle of *pari materia* as held in the following authorities:-

(I) The Hon'ble Supreme Court in the case of ***State of Assam and others Vs. Deva Prasad Barua and others, MANU/SC/0098/1968***, in para 6, observed as under:-

“6. It has been urged that the words “at any time” should be given a limited meaning and should be confined to the year of assessment, namely, that the return should be made at any time within the year of assessment and not later in which case sub-section (3) would not apply and the provision of section 30 would be at once attracted. This contention has only to be stated to be rejected. In the first place, if sub-section (3) has to be read in the manner suggested, it would become ambiguous and almost

unintelligible. Secondly, according to the ordinary canons of interpretation, the words employed must be given their proper and plain meaning. Moreover, section 19 is in pari materia with section 22 of the Income-tax Act and the law which has been laid down by this court, while interpreting the provisions of that section, must govern the construction of provisions of section 19 as well. The High Court, in giving the reasons on which the petitions were allowed, was not alive to all these matters and the view taken by it is clearly unsustainable.”

(II) The Orissa High Court in the case of **Niranjan Panigrahi vs. Pratap Naik; MANU/OR/0088/1980**, in para 8, observed as under:-

“8.

Where there are different statutes in pari materia, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other.

Dealing with a similar situation Oraise on Statute Law (6th Edition, page 103) observes:

The effect of this is in one sense to supply the equity of the statute; but in truth no more is done than to construe the statute according to its plain language, though the effect of the construction is incidentally and equitably to deny to local authorities an overriding privilege, such as would exempt them from all forms of injunction.

I will refer to another passage, in this connection, from Bindra's Interpretation of Statutes, 5th Edition, page 292 which runs as follows:

Statutes which relate to the same subject, the same person or things, or the same class of persons or things are deemed to constitute one system of law; they are considered as one statute, subsequent laws are regarded as supplementary or complementary to the earlier enactments. When enacting a new law the Legislature is presumed to have had in contemplation the existing statutes on the same subject, and to have framed its enactment with reference thereto. This is the real basis for the rule in pari materia. Dwaris observe's:

It is to be inferred, that a code of statutes relating to one subject was governed by one spirit and policy and, intended to be consistent and harmonious in its several parts and provisions. It is therefore an established rule of law, that all Acts in pari materia are to be taken together as if they were one law; and they are directed to be compared in the construction of statutes, because they are considered as framed upon one system, and having one object in view."

11. As held in above case laws, it is well settled that review application has limited scope and cannot be decided like appeal. It is also well settled that the judgment and order once pronounced, is final and cannot be altered or changed unless there is a glaring omission, patent illegality or grave error to exercise the power of review.

12. It would be relevant to consider the following authorities

in which issue of compassionate pension was considered by relying upon the judgment of the Supreme Court delivered in ***Mahinder Dutt Sharma (supra)***:-

(I) The Delhi High Court in the case of ***Government of N.C.T. of Delhi and others vs. Late Shri Ashok Kumar Singh***, in W.P.(C) 4835/2017 @ CM APPL.20858 of 2027 decided on 12.10.2022, in para 26 has observed as under:-

“26. Though, we are in agreement with the conclusion that the Compassionate Allowance is akin to pension that a Government Employee may be entitled to, but, we are of the view that unlike pension, receipt of which is a matter of right, Compassionate Allowance is not a right and it is at the discretion of the Competent Authority accordingly the discretion as to the date from which it may be granted, would necessarily vest with the Competent Authority granting the same, on a case to case basis. However, it is further clarified that such discretion would obviously be open to judicial review.”

(II) The Rajasthan High Court in the case of ***Om Prakash vs. Union of India and others, MANU/RH/1855/2022***, in para 8, observed as under:-

“8. Indisputably, the petitioner was not removed from service on account of any act of moral turpitude or dishonesty towards his employer. The absence was also not on account of any personal gain or to intentionally

cause harm to any third person.”

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.

15. The granting of compassionate allowance/pension is a discretionary relief and therefore, exercising the discretion cannot come within the purview of review as per section 114 and Order XLVII of the C.P.C. The exercise of discretion by this Court is certainly not a patent illegality to interfere in it. Therefore, the judgment in the case of ***Mahinder Dutt Sharma (supra)*** relied upon by learned A.G.P. for the applicants is not helpful to the applicants. On the contrary, it is helpful to the respondents on the principle of ***pari materia*** as discussed and held above. Therefore, the ratio of the said judgment is applicable to the case of the respondents even though it is a Central Statute. It is not that both the Rules of State and Central Governments are contrary to each other. On the contrary, those are mostly similar as far as compassionate allowance/pension rights are concerned, as held in the case of ***State of Assam and others (cited supra)*** and ***Niranjan Panigrahi (cited supra)***. The Rule 41 of the Rules of 1972 is not applied by this Court to the said case. On the contrary, Rule 101 of the Rules of 1982 was considered and invoked. We found no patent illegality or glaring

mistake in the impugned judgment. There is no scope for interference in the impugned judgment under Section 114 r.w. Order XLVII of the C.P.C. There is no substance in the grounds of objections raised in this review application. Hence, we are not inclined to allow this review application. The review application is devoid of merits and it deserves to be rejected. Hence, the following order:-

O R D E R

- I) The application is rejected.
- II) No costs.

(SANJAY A. DESHMUKH, J.)

(S. G. MEHARE, J.)

rlj/