

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2063 OF 2025

Mohammad Shafique Rafiq Ahmed Shaikh

Age : 50 years,

R/at : New Gautam Nagar, Plot No.1,

Opp. Sunni Baraili Masjid,

P.L. Lokhande Marg, Gowandi,

Mumbai : 400043.

... Petitioner

Versus

1. The Chairman,
Mumbai Port Trust
CP & IRM's Office, Port Bhavan,
S.V. Marg, Fort, Mumbai- 400001.

2. The Assistant Traffic Manager
Labour Administration On board Labour
Port Bhavan, Ballard Estate,
Mumbai 400001

....Respondents

Mr. Abhijeet P. Kulkarni a/w Ms. Shweta Shah a/w Mr.
Abhishek Roy a/w Mr. Shreyas Zarkar a/w Mr. Gourav Shahane
a/w Mr. Krushna Jaybhoy, for the Petitioner.
Mr. Subhash Bhalwal a/w Mr. Kundanlal Patil i/b M/s. Vyas Bhalwal, for
Respondents.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

**RESERVED ON:- 29TH APRIL, 2025
PRONOUNCED ON:- 09TH MAY, 2025**

JUDGMENT (PER ASHWIN D. BHOBE, J.):

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

2. By the present petition, the Petitioner questions the rejection of his application dated 27.09.2023, for grant of compassionate pension and retirement benefits under Rule 35 (1) of the Municipal Port Trust Pension Regulation Rules, 2001, by the Respondent No.1, as communicated by the Respondent No.2, vide communication bearing No.OBL/LA/ESTT/524/2024 dated 15.10.2024.

3. Brief facts of the case are that the Petitioner was an employee of the Respondent Management, who was appointed on 01.09.1986. On account of his absenteeism for a period of 646 days, Petitioner was issued charge-sheet dated 11.02.2005 by the Respondent Management, calling upon the Petitioner to explain as to why the disciplinary inquiry should not be conducted against the Petitioner for violating Regulation 3 (1A), (ii), (xii) of MBPT Employees (Conduct) Regulations, 1976. In response to the charge-sheet, Petitioner by his reply submitted that his absentee from duty was on account of an accident, trauma due to disturbance in family, psychological impact and illness. Petitioner was made to face disciplinary inquiry in which, the

charge of unauthorized absenteeism was held to be proved and vide order dated 29.08.2005, Petitioner awarded penalty of removal from service.

4. Petitioner unsuccessfully challenged his removal from service by taking recourse to the departmental appeal / revision / review. Industrial Dispute bearing Reference No.CGIT-2/13 of 2010 raised under the Industrial Dispute Act, 1947 was dismissed by the Central Government Industrial Tribunal No.2, Mumbai, vide order dated 09.11.2016. Writ Petition No.4268 of 2018 filed against the order dated 09.11.2016 passed by the Industrial Tribunal was disposed off by this Court on 29.08.2023. Though, this Court did not interfere with the order of removal from service, however, the Respondents were directed to consider Petitioner's case for grant of compassionate allowance under the provisions of Rule 35(1) of the Mumbai Port Trust Pension Regulations, 2001, liberty was granted to the Petitioner to make a representation to that effect.

5. Petitioner by his application dated 27.09.2023, addressed to the Respondent No.2, sought for consideration of his case for compassionate pension and retirement benefits. By communication dated 15.10.2024, Respondent No.2 informed the Petitioner that his

representation was rejected by the Respondent No.1. Aggrieved, Petitioner is before this Court seeking the following substantial relief:-

“b. This Hon’ble Court be pleased to quash and set aside the reference no. OBL/LA/ESTT/524/2024 passed by the Assistant Traffic Manager, Labour Administration On Board labour dated 15.10.2024 and further be pleased to allow the Petitioners Application dated 27.09.2023 for grant of Compassionate pension and retirement benefits.”

6. Respondents have appeared and filed affidavit-in-reply dated 21.04.2025, opposing the petition. Contentions of the Respondents are that though this Court in its order dated 29.08.2023 relied upon provisions of the 35(1) of Mumbai Port Trust Pension Regulation, 2001, sanction to the said pension Regulations 2001 granted by the Respondent-Board vide TR No.11 dated 09.01.2001 was subject to Government sanction. That the Central Government had not granted sanction to the Mumbai Port Trust Pension Regulation 2001 as such provisions of Regulation No.35(1) was not applicable. Reliance was placed on Regulation 10(a) of MBPT Pension Regulations, 1965 to contend that the Petitioner being removed from service was not entitled for compassionate allowance. Respondents justified the penalty of removal of the Petitioner from service due to the misconduct. Representation made by the Petitioner was placed before the Respondent -Board and in the meeting held on 20.09.2024, the Board observed that

there was no exemplary contribution on the part of the Petitioner, as such request for compassionate pension was rejected.

7. Mr. Abhijit P. Kulkarni, learned Advocate for the Petitioner submits that the rejection of the Petitioner's request for compassionate pension and retirement benefits by the Respondents is harsh, illegal and arbitrary. He submits that the Respondents were parties to the Writ Petition No.4268 of 2018 and therefore, ought to have considered the observations made by this Court in its order dated 29.08.2023. He further submits that Petitioner was not removed from service on account of any kind of misconduct or misbehavior or misappropriation. Reasons for removal of the Petitioner was on account of his absenteeism, which according to the Petitioner was out of medical conditions/mental conditions of the Petitioner, during the said period. He further submits that the Petitioner had rendered unblemished service for 17 years and as such, the Respondents ought to have considered the case of the Petitioner. He places reliance on the following decisions:

- a) Saroj Magan Damare and Anr. Vs. Superintending Engineer, Aurangabad Irrigation Board and Ors.¹
- b) Anna Deoram Londhe Vs. State of Maharashtra²

¹ 2023 SCC OnLine Bom 512

² 1998 SCC OnLine Bom 213

8. Per contra, Mr. Subhash Bhalwal, learned Advocate for the Respondents, submits that the Petitioner was removed from service upon the charge of misconduct being proved. He submits that challenge to the order of removal of service was maintained by all the Authorities including this Court. He submits that the Regulation 35(1) of Mumbai Port Trust Pension Regulation 2001 referred to in the order dated 29.08.2023 passed in Writ Petition No.4268 of 2018, is not in force, as such not applicable to the case of the Petitioner. He relies on the provisions of Regulation 10(a) of MBPT Pension Regulation, 1965 to submit that the Petitioner being removed from service would not be entitled to compassionate allowance / pension. He further submits that no case was made out by the Petitioner in his representation dated 27.09.2023 and therefore, the same was rightly rejected by the Respondents. He relies on the statements made in the affidavit in reply dated 21.04.2025 and prays that the petition be dismissed.

9. We have perused the records placed before us and considered the submissions of the learned Advocates for the Petitioner and the Respondents.

10. Petitioner relies on Regulation No.35 (1) of Mumbai Port Trust Pension Regulation, 2001 and the order dated 29.08.2023 passed

by this Court in Writ Petition No.4268 of 2018. The Respondents are on oath to state that the Central Government till date, has not accorded its sanction to the Mumbai Port Trust Pension Regulation, 2001, as such, Regulation No.35(1) of Mumbai Port Trust Pension Regulation, 2001 is not applicable. Petitioner having referred and relied on the order dated 29.08.2023 passed in Writ Petition No.4268 of 2018, paragraph nos. 5 and 6 of the order are transcribed herein under:

“5. After having heard the submissions canvassed by the learned counsels for the parties, no fault can be found with regard to the findings of proof of charges against Petitioner. The fact that Petitioner remained unauthorizedly absent from duties for 646 days, is not really disputed. The only contention that is raised by the Petitioner is about proportionality of penalty. It is well settled law that Courts/Tribunals cannot direct reduction of penalty unless they arrive at a conclusion that the penalty imposed is shockingly disproportionate. In the present case, since Petitioner remained unauthorisedly absent for about two years, it cannot be said the penalty is shockingly disproportionate. Therefore, there is no question of reduction of penalty to that of compulsory retirement.

6. However, it appears that under the provisions of Rule 35(1) of the Mumbai Port Trust Pensions Regulations 2001 there is a provision under which the authority which passes order of removal from service is empowered to sanction compassionate allowance depending on facts and circumstances of each case. Petitioner can therefore make a request in that regard. In my view therefore, the present Petition can be disposed of by directing the authority which imposed the penalty of removal from service to consider the Petitioner’s case for grant of compassionate allowance. In that view of the matter, liberty is granted to the Petitioner to make a representation for grant of compassionate allowance under Pension Regulations. If such a representation is made within a period of four weeks from today, the concerned authority shall consider the same sympathetically by taking into account the fact that the misconduct proved against Petitioner relates only to absenteeism and also the fact that the Petitioner rendered long service during 1986 to 2002/2003. The authority is directed to take a decision on the representation so made within a period of eight weeks from the date of receipt of the representation. The order passed by the Industrial Tribunal accordingly stands modified.”

11. Respondents rely on MBPT Pension Regulation, 1965 to oppose the claim of the Petitioner. Paragraph No.7 of the affidavit-in-reply dated 21.04.2025 is extracted herein under:

“7. I say that MBPT Pension Regulation, 1965, at 10(a) stipulates as under:

*“No Pension may be granted to an employee dismissed or removed for misconduct, insolvency or inefficiency, but to employees so dismissed or removed, compassionate allowance may be granted by the trustees when **they are deserving of special consideration**”.*

Provided that the allowance granted to any employee shall not exceed two-third of the pensions which would have been admissible to him, if had retired on medical certificate.”

12. From the rival contentions of the parties, the point for determination that falls for consideration is whether the case of the Petitioner would be a case deserving of special consideration in terms of Regulation No.10(a) of MBPT Pension Regulations, 1965, for grant of compassionate allowance?

13. Reference to the authoritative pronouncement of the Hon’ble Supreme Court on the issue of compassionate allowance and factors for consideration, in the case of Mahinder Dutt Sharma Vs. Union of India³ is appropriate. The Hon’ble Supreme Court in the said case was considering the Delhi Police (punishment and appeal) Rules, 1980 and Central Civil Service (Pension) Rules, 1972. It would be

³ 2014 (11) SCC 684

apposite to refer to the provision of Rule 41 of the Central Civil Service Pension Rules, 1972 and to Paragraph Nos.13 to 15 of Mahinder Dutt Sharma (supra).

“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 dismissed 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 compassion pension.

(2) *A compassionate allowance sanctioned under the provision to sub-rule (1) shall not be less than the amount of Rupees three hundred and seventy-five per 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 is described as ‘very good’.”

“13. We are of the considered view that the adjudication by the courts below with reference to Rule 41 of the Pension Rules, 1972 is clearly misdirected. The Rule itself contemplates payment of compassionate allowance to an employee who has been dismissed or removed from service. Under the punishment rules, the above punishments are of the severest magnitude. These punishments can be inflicted only for an act of extreme wrongdoing. It is on account of such wrongdoing, that the employee concerned has already been subjected to the severest form of punishment. Sometimes even for being incorrigible. Despite that, the Rule contemplates sanction of a compassionate allowance of up to two-thirds of the pension or gratuity (or both), which would have been drawn by the punished employee if he had retired on compassionate pension. The entire consideration up to the present juncture, by the courts below, is directly or indirectly aimed at determining whether the delinquency committed by the appellant was sufficient and appropriate for the infliction of the punishment of dismissal from service. This determination is relevant for examining the veracity of the punishment order itself. That, however, is not the scope of the exercise contemplated in the present consideration. Insofar as the determination of the admissibility of the benefits contemplated under Rule 41 of the Pension Rules, 1972 is concerned, the same has to be by accepting that the delinquency committed by the punished employee was of a magnitude which is sufficient for the imposition of the

most severe punishments. As in the present case, unauthorised and wilful absence of the appellant for a period of 320 days has resulted in the passing of the order of dismissal from service. The punishment inflicted on the appellant has been found to be legitimate and genuine as also commensurate to the delinquency of the appellant. The issue now is the evaluation of claim of the punished employee under Rule 41 of the Pension Rules, 1972.

14. 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:

14.1. (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.

14.2. (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.

14.3. (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.

14.4. (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.

14.5. (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.

15. 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."

14. The principle that emerges from the decision of the Hon'ble Supreme Court in Mahinder Dutt Sharma (supra) is that if the misconduct committed by the employee which resulted in dismissal or removal of service is an act of moral turpitude; or act of dishonesty towards his employer; or an act designed by personal gains from the employer or an act that deliberately harming a third party interest or an action which is considered as depraved, perverted, wicked, treacherous or the like, then in such eventuality, the employee would ordinarily be disentitled to compassionate allowances and in such a situation, the

deserving special consideration would have to be momentous. However, where the delinquency leveled and proved against the punished employee does not fall in the realm of misdemeanor within one of the five classifications referred to by the Hon'ble Supreme Court, it would be easier than otherwise to extend such benefit to the punished employee subject to availability of factors of compassionate consideration.

15. In the instant case, Regulation No.10(a) of the MBPT Pension Regulation 1965 relied upon by the Respondents is similar to Regulation 41 of the Central Civil Services Pension Rules, 1972. Regulation 10(a) of the MBPT Pension Regulation 1965 provides for consideration of compassionate allowance in the eventuality of a punished employee deserving of special consideration.

16. Respondents, in paragraph No.10 (VII) of the affidavit-in-reply dated 21.04.2025, have referred to the reasons for rejecting Petitioner's request for Compassionate allowance. Para 10 (VII) is extracted herein below :

“VII. That as per Regulation of 10 (a) of Mumbai Port Trust Pension Regulation 1965, Board of Mumbai Port Authority may grant compassionate allowance to the employees dismissed /removed for misconduct when they are deserving of special consideration.

In the Board meeting held on 20.09.2024, it was observed that there has been no exemplary contribution or any such act on

the part of Petitioner which can be treated as deserving for considering the case. Therefore, the Board decided to not to consider the request of Petitioner for payment of compassionate pension. Decision of the Board to not to consider the petitioner for compassionate pension has been communicated vide Order No. OBL/LA/ESTT/524/2024 dated 15.10.2024.”

17. Said reason sought to be put forth by the Respondents to deny the claim of the Petitioner for compassionate allowance is liable to be rejected, on the face of the observation made by this Court in its order dated 29.08.2023. This Court after having expressed a view that indulgence was due to the Petitioner for grant of compassionate allowance, called upon the Respondents to consider the case of the Petitioner sympathetically. Respondents have unfortunately not adverted to the law on subject as enunciated by the Hon’ble Supreme Court in the case of Mahinder Dutt Sharma (supra). In the facts of the present case, the Respondents have adopted a flippant approach while dealing with the case of the Petitioner.

18. Petitioner was removed from service on the ground of unauthorized absenteeism. Indisputably, the Petitioner was neither charged nor held guilty of any of the delinquency, as categorized by the Hon’ble Supreme Court in the case of Mahinder Dutt Sharma (supra). Thus, the disentitling factors for grant of compassionate allowances

would not apply to the case of the Petitioner.

19. Having held the disentitling factors as categorized by the Hon'ble Supreme Court in the case of Mahinder Dutt Sharma (supra) not applicable to the case of the Petitioner, the next issue would be whether any special consideration exist in favour of the Petitioner.

20. Petitioner in his application dated 27.09.2023 has made reference to all his tribulations, which resulted in the absenteeism, which was held as unauthorized absenteeism for the removal of the Petitioner from service. Petitioner has made reference to the hardship caused to him. Paragraph Nos. 3, 4 and 10 of the application dated 27.09.2023 are extracted herein:

“3. After the said accident, the Applicant went in trauma and had psychological problems. He was pretending that due to some invisible person, Application was influenced by the malignant spirits. Being coming from an illiterate family, Applicant parents took him to holy places for spiritual treatment feeling that the spiritual babas and Oculist (Tantrik) will drive away the evil spirit who had influenced and possession over the Applicant. Under this traumatic conditions the petitioner was not able to understand day to day affairs of life.

4. Under these circumstances, Applicant was issued a notice by the Honorable Deputy Dock Manager on 6.02.2003 calling to join services in three days. Since, the Applicant was not in a proper mental state or condition, he did not even know or understood the receipt of such Notice or even whether such notice was received or delivered be that as it maybe. After recovering from the psychological illness, Applicant on 18.02.2005, requested the authority to consider his case sympathetically and withdraw the proposed action.

10. Applicant states that, after losing the job, Applicant is working

*as labourer and assisting the masoner in small house repairing works for his survival. As Applicant is not educated and hails from a poor family, needs the grant of compassionate pension and retirement benefits for the survival of his family. Recently, Applicant has suffered heart attack and had to go take treatment at Sion Hospital, Mumbai. Since then, there are major restriction on Applicant's working capacity. On the top of it, Applicant requires money for his regular medication. Annexed herewith and marked as **Annexure '3'** collectively are the copies of medical papers in respect of the heart treatment of Applicant."*

21. Compassionate allowance centers on the concept of providing support and relief to individuals facing hardships. "Compassionate" would mean showing compassion. Petitioner in paragraph No.10 has made reference to financial and other hardships faced by the Petitioner. Respondents have not disputed the financial and other hardships claimed by the Petitioner. Petitioner is working as a labourer and assisting masoner, Petitioner having suffered a heart attack and he requiring regular medication are facts which are not disputed by the Respondents.

22. We are of the considered opinion that the circumstances in which the Petitioner is placed, clearly makes out a case for special consideration for grant of compassionate allowance. Petitioner's case falls within the parameters of "deserving of special consideration" in terms of Regulation No.10(a) of the MBPT Pension Regulation 1965. Consequently, Petitioner would be entitled to grant of compassionate

allowance in terms of the Regulation of the MBPT Pension Regulation 1965, as applicable.

23. Respondents, in their reply have concentrated essentially on the charge of unauthorized absenteeism, consequential removal of the Petitioner from service and the proceedings filed by the Petitioner against the order of removal being negated by the authorities as well as this Court. Petitioner having already suffered an order of removal from service on account of unauthorized absenteeism, the said issue was no longer relevant for consideration while assessing Petitioner's case for grant of compassionate allowance.

24. In the case of Saroj Magan Damare (*supra*), Saroj was seeking compassionate pension being the widow of Magan Damare, who was dismissed from service from Aurangabad Irrigation Board on account of unauthorized absentee. This Court by placing reliance on the decision of Mahinder Datta Sharma (*supra*), allowed the petition by directing the Respondent to grant compassionate pension to the Petitioner.

25. In the case of Anna Deoram Londhe (*supra*), the Respondents had denied compassionate pension to the Petitioner therein on the ground of Anna being removed from service for misconduct. This

Court taking note of the removal of Anna was on the ground of conviction under the Indian Penal Code, which conduct of the Petitioner was not connected with the discharge of his duties found the case of the Petitioner to be deserving of special consideration, consequently, granted compassionate pension.

26. For the reasons recorded herein above, **the Petition is allowed** in the following terms:-

- a) Decision of the Board of the Respondents dated 20.09.2024 and the communication bearing reference No.OBL/LA/ESTT/524/2024 dated 15.10.2024 are quashed and set aside.
- b) Petitioner shall be entitled for compassionate pension and retirement benefits / compassionate allowance. Respondents are directed to grant compassionate pension and other allowances in terms of MBPT Pension Regulation, 1965 or any other provisions applicable to the case of the employees of the Respondents.
- c) Petitioner shall be entitled to pension with effect from three years prior to the date of filing of Writ Petition No.4268 of 2018 in this Court. Respondents are directed to formalize the pension proposal of the Petitioner and ensure that his pension payment

commences within a period of 90 days from today. Arrears of pension amount along with statutory interest shall be payable to him within a period of 90 days.

d) There shall be no orders as to cost.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)