

W.A.(MD)No.1817 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.02.2025

PRONOUNCED ON : 25.03.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)No.1817 of 2023
and
C.M.P.(MD)No.13804 of 2023**

1.The Director General of Police,
Office of the Director General of Police,
Beach Road, Chennai.

2.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

... Appellants

Vs.

D.Amutha

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.22549 of 2016, dated 07.09.2023.

For Appellants	:Mr.Veera Kathiravan Additional Advocate General assisted by M/s.D.Farjana Ghoushia Special Government Pleader
For Respondent	:Mr.I.Pinaygash



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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed by the State against the order, dated 07.09.2023, passed in W.P.(MD)No.22549 of 2016.

2. The writ petition was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order, dated 08.10.2016 and consequently, to direct the respondents to provide compassionate allowance as per Rule 40(1) of Tamil Nadu Pension Rules, 1978.

3. The brief facts of the case are that the writ petitioner's husband Late.S.Duraisamy served as Constable and was dismissed from service on 08.01.2002. Against the said order, he preferred an appeal, pending appeal, he died on 09.06.2009. On 25.03.2013, the writ petitioner submitted a representation to provide compassionate allowance as per Rule 40 of Tamil Nadu Pension Rules, 1978. The 2nd respondent, vide order, dated 22.04.2013, rejected the representation stating that the writ petitioner's husband was dismissed from service, hence, pension cannot be provided. Aggrieved over the said order, the



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writ petitioner had preferred W.P.(MD)No.10366 of 2013 and the Writ Court vide order dated 05.08.2016 had held that the termination of service *ipso facto* does not disentitle compassionate allowance and directed the 2nd respondent in the writ petition to consider the application afresh in the light of the said Rule. In order to comply with the order, the respondents had passed the order, dated 08.10.2016, which was impugned in the writ petition.

4. After hearing the rival submissions, the Writ Court has held that the 2nd respondent therein has erroneously rejected the claim of compassionate allowance without considering all the aspects and further held on plain reading of Rule 40(1) proviso that the respondents therein ought to consider for deserving cases, hence rejection is not in accordance to the Rule. The genuine hardship was expressed by the writ petitioner, therefore, the Writ Court set aside the orders passed by the respondents and directed the respondents to provide compassionate allowance. Aggrieved over the same, the present writ appeal is preferred.

5. The primary contention of the appellants is that under Rule 40(1) clearly states the family of the government servant are not entitled to compassionate allowance, if the employee was dismissed or removed from



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service. The Hon'ble Supreme Court in the case of ***Mahinder Dutt Sharma Vs. Union of India and Others*** reported in (2014) 11 SCC 684 has been held the act of moral turpitude will disentitle the family of the delinquent from claiming compassionate allowance. In order to consider the contention, the Rule 40(1) is extracted hereunder:

"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 gratuity 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 dismissed or removed from service under the second proviso (c) to clause (2) of Article 311 of the Constitution of India, for overt, anti-national activities such as sabotage, espionage and like."



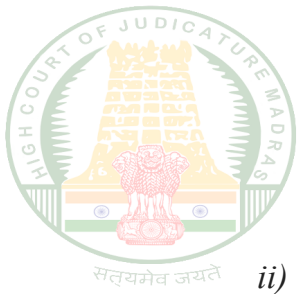
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The said Rule states that the Government servant if dismissed or removed shall forfeit his pension and gratuity. At the same time, it has granted power to the appointing authority in the first proviso to grant the compassionate allowance if the case is deserving of “special consideration”. Further the said proviso states the amount shall not exceeds $2/3^{\text{rd}}$ of pension or gratuity or both. The 2^{nd} proviso states about the employees coming under Central Government service are not covered under the said Rules and the same is not relevant to the present case. The 3^{rd} proviso states that no compassionate allowance shall be granted to the Government servants who are dismissed or removed for overt, anti-national activities such as sabotage, espionage and like under the second proviso (c) to clause (2) of Article 311 of the Constitution of India.

6. The comprehensive reading of the Rule 40(1) along with provisos would clearly indicate that the charge against the Government servant ought to be grave in nature. In the present case, the charges against the delinquent are as under:

“i) Reprehensible conduct in having misbehaved in a drunken mood at Ambasamudram Bazar near Vandimarichamman koil on 03.12.2000 at about 15.00 hrs, while on beat duty, quarrelled with one Manickam of Kadayanallur, Muthukrishnapuram and his mother Chinnathai and his sister Subbulakshmi and also slapped the said Manickam.



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ii) *Reprehensible conduct in having entered on Medical Leave from 7 AM on 14.12.2000 to 9 AM on 24.12.2000 on his own accord without following the due procedures."*

The charges indicates that the delinquent had indulged in quarrel with some individuals and had entered medical leave without following due procedures. On the face of it, it is evident that the charges are not grave. When the proviso clearly states if the delinquent has indulged in anti-national activity such as sabotage, espionage and like then the charges are grave. By apply the principles of "Ejusdem Generis", the charges of slapping some individuals under drunken mood, making entry of medical leave without due procedure are not grave in nature. In such circumstances, based on the provisos to Rule 40(1) the petitioner is entitled to compassionate allowance.

7. The next contention is that the rule prescribes that the case of the delinquent family needs "special consideration" and the phrase special consideration was considered in ***Mahinder Dutt Sharma Vs. Union of India and Others*** reported in (2014) 11 SCC 684, wherein it states if the punishment is awarded on moral turpitude, then the family is not entitled to compassionate allowance. By relying on the aforesaid judgment, the Learned Additional Advocate General submitted the charges against the delinquent in the present case



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सत्यम् would fall under the realm of moral turpitude narrated in the judgment, hence the petitioner is not entitled to. It is seen the Hon'ble Supreme Court had narrated certain illustrations and held that the allegations ought to constitute an act of dishonesty towards the employer, an act designed for illegitimate personal gains from the employer, behaviour of pervert, deprave, wicked, treacherous etc. In the said case the allegations against the employee were unauthorised absence, hence the Hon'ble Court held that the same would not come under moral turpitude and an act of dishonesty towards the employer. In the present case, the allegations against the delinquent Late.S.Duraisamy are that the delinquent had slapped one Manickam and quarrelled with Manickam's mother Chinnathai and sister Subbulakshmi under drunken mood and another allegation was that the delinquent had made entries of medical leave without due procedure. The said allegations cannot be considered as "dishonesty towards the employer, an act designed for illegitimate personal gains from the employer, behaviour of pervert, deprave, wicked, treacherous etc.". Therefore, this Court is of the considered opinion that the family of the delinquent needs special consideration.

8. The writ petitioner has averred in her affidavit that the delinquent died due to stroke and he underwent treatment for more than 3 years. Further, the



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writ petitioner has stated that her son namely, Mr.Raj Thilak has suffered polio attack and is undergoing treatment, her daughter is studying B.Sc., Maths and the writ petitioner is doing daily wage coolie work. The writ petitioner is not having any support from the parents also. Under these circumstances, the petitioner is seeking compassionate allowance. After considering the said family situation, this Court is of the considered opinion that the petitioner's case needs to be considered.

9. The Writ Court has rightly held that the writ petitioner's case is deserving and this Court is also confirming the same. Therefore, the appellants are directed to grant the compassionate allowance to the respondent herein / writ petitioner within a period of six weeks from the date of receipt of a copy of this judgment.

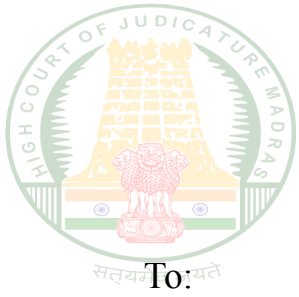
10. With the above said directions, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.]

[S.S.Y., J.]

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Index : Yes / No
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