

(2003) 02 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 2936 of 1994

Baliram Ramchandra Majgaonkar

APPELLANT

Vs

The District and Sessions Judge and The State of
Maharashtra

RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 100, 101(1)
Penal Code, 1860 (IPC) — Section 325

Citation : (2003) 2 ALLMR 10 : (2003) 4 BomCR 584

Hon'ble Judges : R.M. Lodha, J;Nishita Mhatre, J

Bench : Division Bench

Advocate : K.K. Malpathak, for the Appellant; A.P. Vanarase, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—Baliram Ramchandra Majgaonkar petitioner joined his service as junior clerk in the District Court, Solapur in the year 1967. He was promoted to the post of senior clerk in the year 1985. The petitioner was charged of having misappropriated an amount of Rs. 30135.60 ps. during the period from 1.3.1986 to 31.5.1988. The charge was indeed serious and accordingly he was suspended pending departmental proceedings. Disciplinary proceedings were completed and ultimately the petitioner was found guilty of having misappropriated the amount of Rs. 30,315/-. In other words, the charge of misconduct relating to misappropriation of Government money to the tune of Rs. 30,315/- was found proved. Despite the gravity of charge, by order dated 17.11.1990, the petitioner was awarded punishment of compulsory retirement only. The petitioner appeals to have claimed for compassionate pension under the Maharashtra Civil Services (Pension) Rules, 1982 (for short, "Rules of 1982"). His claim was rejected which has gives rise to the present writ petition.

2. Mr. Malpathak, learned counsel for the petitioner, strenuously submitted that the petitioner is entitled to compassionate pension under Rule 100 of Rules of 1982 which provides for compulsory retirement pension. He submits that Rule 101(1) has no application and, therefore, claim of compassionate pension made by the petitioner has been wrongly rejected which needs to be corrected by this Court in extraordinary jurisdiction under Article 226 of the Constitution of India.

3. We considered the submission of the learned counsel for the petitioner thoughtfully and we may observe immediately that the contention is wholly misconceived, misplaced, fallacious and without any substance which we shall indicate hereinafter.

4. Rules 100 and 101 of the relevant Pension Rules 1982 read thus:

"100(1) A Government servant who is removed or required to retire from Government service for misconduct or insolvency shall be granted no pension other than a Compassionate pension.

(2) A Government servant who is removed or required to retire from Government service on the ground of inefficiency, shall, if he be eligible for a superannuation, or retiring pension, be granted such pension. If he is not eligible for a superannuation, or retiring pension be shall granted no pension other than a Compassionate Pension.

101(1) when a Government is removed or required to retire from Government service for misconduct or insolvency or is removed or required to retire from Government service on grounds of inefficiency before he is eligible for a retiring or superannuation pension Government may, if the case is considered deserving or special treatment, sanction the grant to him of a Compassionate pension.

(2) A dismissed Government servant is not eligible for Compassionate pension."

5. The scheme of the aforesaid provision clearly suggests that a Government servant who is removed or required to retire from Government service for misconduct or insolvency is not entitled to any pension save and except the compassionate pension. The compassionate pension to such Government servant who has been removed or required to retire from Government service is not payable as a matter of course which is clearly reflected from the provisions contained in Sub-clause (1) of Rule 101. An analysis of the said Rules would suggest tat in either of the case (a) when a Government servant is removed; or (b) he is required to retire from the Government service; or (c) he is required to retire from Government servant for insolvency; or he is removed or he is required to retire from Government service because of inefficiency before he is eligible for retirement or superannuation pension, his case must be found deserving special treatment for grant of compassionate pension. The expression "before he is eligible for retirement or superannuation" is only applicable to a situation where a Government servant is required to remove from Government service on the ground of inefficiency. The said expression "before he is eligible for

retirement or superannuation" is not applicable to the situation where the Government servant is removed or required to retire from Government service for misconduct or insolvency. In the present case, it is not in dispute that the petitioner who was a Government servant was removed from the Government service for misconduct. In that event, obviously the Government could consider his case for grant of compassionate pension if he was found deserving or of a special treatment. We have no hesitation in holding upon conjoint reading of Rules 100 and 101 that a Government servant who is removed from Government service for misconduct, though may be considered for grant of compassionate pension, is not entitled to compassionate pension as a matter of right. The construction, thus, put forth by the learned counsel for the petitioner that in the case where the Government servant is removed or required to retire from Government service for misconduct is entitled to compassionate pension as a matter of right is not acceptable since it overlooks the scheme reflected from Rules 100 and 101 when read together.

6. The question now arise, whether, in the facts and circumstances of the case, the Government was justified in not accepting the petitioner is prayer for grant of compassionate pension. Every misconduct is not similar. Here is a case where the petitioner was employed in the District Court as a senior clerk at the relevant time. The Court is seen by the common man as temple of justice. In the temple of justice, be it a Judge or a clerk, has to conduct himself like Ceaser's wife that is beyond suspicion. The petitioner not only acted not beyond suspicion but indulged himself in misconduct overtly and directly by misappropriating the government money to the extent of Rs. 30,315/- which, without doubt, is very serious and grave misconduct. Misconduct liberally means wrong conduct or improper conduct. It is wrongful behaviour wilful in character which is forbidden. A conduct of rather a misconduct relating to misappropriation is always referable to moral turpitude and, therefore, apparently the petitioner was not deserving for grant of compassionate pension.

7. The learned counsel for the petitioner relied upon the judgment of the Apex Court in State of Punjab and Ors. v. Ram Singh Ex. Constable, 1992 L I C 2391.

8. Having read the judgment, we find nothing which helps the petitioner in the present case. That was a case where the delinquent while working as a gunman of the Deputy Commissioner of Police was dismissed from service on the charge that he was found heavily drunk at the relevant time and was roaming at the bus stand wearing the service revolver. Traffic Constable brought him with difficulty in a jeep to the police station and the revolver was deposited in the malkhana and the delinquent was sent to civil Hospital for medical examination where the Doctor declared him as heavily drunk. Delinquent had a quarrel with the doctor on duty and abused him. An enquiry into his conduct was conducted and he was dismissed from service. The dismissal of service was upheld right upto the High Court and when the matter went before the Apex Court in paragraph 8 of the report, the Apex Court held thus:

"8. The next question is whether the single act of heavy drinking of alcohol by the respondent while on duty is a gravest misconduct. We have absolutely no doubt that the respondent, being a gunman having service revolver in his possession, it is obvious that he was on duty, while on duty he drunk alcohol heavily and became uncontrollable. Taking to drink by itself may not be a misconduct. Out of office hours one may take to drink and remain in the house. But being on duty, the disciplined service like police service, the personnel shall maintain discipline and shall not resort to drink or be in drunken state while on duty. The fact is that the respondent after having had heavy drink, was seen roaming or wandering in the market with service revolver, when he was sent to the doctor for medical examination he abused the medical officer on duty which shows his depravity or delinquency due to his drinking habit. Thus it would constitute gravest misconduct warranting dismissal from service. The authorities, therefore, were justified in imposing the penalty of dismissal. The Courts below failed to properly appreciate the legal incidence and the effect of the rules."

9. The reliance placed on the learned counsel for the petitioner to paragraph 7 hardly supports the petitioner's case. The observations made by the Supreme Court in paragraph 7 relate to the contention advanced on behalf of the delinquent that looking to the charge proved against the delinquent, instead of dismissing from service, lesser punishment of compulsory retirement would have met the ends of justice. The Supreme Court found that the delinquent indulged into grievous misconduct and he was incorrigible and, therefore, dismissal was the proper punishment. The judgment of the Supreme Court in *State of Punjab v. Ram Singh*'s case, therefore, has no application.

10. The learned counsel for the petitioner also relied upon the Division Bench judgment of this Court in *Anna Deoram Londhe deceased through his L.Rs. Smt. Indirabai Londhe Vs. State of Maharashtra*, . In this connection, the learned counsel invited our attention to paragraph 7 of the report which read thus:

"7. In the present case, the petitioner (since deceased) was removed from the service for misconduct on account of his conviction u/s 325 of the Indian Penal Code for which he was sentenced to suffer R.I. for four years. This conduct, however, is not connected with the discharge of his duties as such. Moreover, there is not dispute that the petitioner had put in more than 30 years of service and he was otherwise eligible for superannuation or retiring pension. He was, however, removed from service on account of the aforesaid conviction. Therefore, merely because of the petitioner (since deceased) was removed from service for the aforesaid misconduct, that along will not furnish a ground to deny him the benefit of compassionate pension. On going through the return filed on behalf of the respondents, we find that the only reason assigned for rejection of representation for compassionate pension was that the petitioner was convicted for offence u/s 325 of the Indian Penal Code, which was considered to be serious offence. In our considered opinion, in terms of provision of Rule 101, the respondents ought to have considered the representation of the petitioner from a

point of view if the case is deserving of a special consideration for grant of compassionate pension independently. Since that has not been done and nothing is on record adverse to the interest of the petitioner (since deceased) for grant of compassionate pension, we find that the impugned order suffers from legal infirmity, namely non application of mind. That necessary follows that the impugned order deserves to be set aside. In the facts and circumstances of the case discussed above, we find that the petitioner was entitled to compassionate pension."

11. Anna Deoram also has no application. That was a case where the delinquent was removed from service for misconduct which was not connected with the discharge of his duties. In the circumstances, therefore, coupled with the fact that the delinquent had put in more than 30 years of service, the Division Bench observed that the fact that the petitioner was removed from service for the misconduct on account of conviction u/s 325 of the Indian Penal Code for which he was sentenced to suffer R.I. for four years, along would not furnish a ground to deny him the benefit of compassionate pension. The observations made by the Division Bench in paragraph 7, thus, turned on its own facts and it does not lay down any principle of law that compassionate pension under Rule 100 follows as a matter of course if a government servant is removed from service or made to retire. In the present case the petitioner indulged not grave misconduct of misappropriation and, therefore, if the State Government held that he did not deserve compassionate pension and he was not entitled to special treatment, the said decision cannot be faulted warranting interference by this Court in extraordinary jurisdiction under Article 226 of the Constitution.

12. Writ petition, accordingly, has no merit and is dismissed with no order as to costs.