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**(2014) 01 RAJ CK 0163**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 3617 of 2011

Latoor Chand

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

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**Date of Decision :** 29-01-2014

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 325

**Citation :** (2014) LabIC 4327 : (2015) 2 RLW 1061

**Hon'ble Judges :** Mohammad Rafiq, J

**Bench :** Single Bench

**Advocate :** M.C. Taylor and R.M. Bairwa, Advocate for the Appellant; N.K. Maloo, Sr. Counsel, V.K. Tamoliya and Raj Sharma, Advocate for the Respondent

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## **Judgement**

Mohammad Rafiq, J.—This writ petition has been preferred by petitioner assailing the order dated 03.08.2010 by which application of petitioner for grant of compassionate allowance to him under Rule 172 of the Rajasthan Service Rules from the date of his removal from 11.03.1993 has been declined. Facts of the case are that petitioner was appointed as peon with respondents on 02.11.1974. Thereafter he worked on the post of Lower Division Clerk in the court of Munsiff and Judicial Magistrate, Bhawanimandi, District Jhalawar, from 28.09.1976. The Munsiff and Judicial Magistrate vide letter dated 13.04.1987 called for explanation from petitioner on the premise that he was looking after the work of criminal section when Shri Ram Gopal Gupta was on leave he received an envelope containing copy of dying declaration of one Kalu Singh and he gave receipt of the same but he misplaced the same. Petitioner submitted an explanation on 21.04.1987 stating that he handed over the complete papers to Shri Ram Gopal Gupta on his return from casual leave. His explanation was not accepted and he was served with charge-sheet under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, on 13.10.1987. On conclusion of disciplinary proceedings, petitioner was eventually awarded penalty of removal from service vide order dated 11.03.1993. Petitioner requested for grant of compassionate allowance to him under Rule 172 of the

RSR read with Rule 43 of the Rajasthan Civil Services (Pension) Rules, 1996. His case was forwarded by the establishment on Rajasthan High Court to the Government through the Law Secretary. The Government vide letter dated 20.11.2005 conveyed to Registrar General of the Rajasthan High Court that the District & Sessions Judge himself was competent to pass appropriate order with regard to compassionate allowance under Rule 43 of the Rules of 1996. The Registrar General of the Rajasthan High Court accordingly wrote to the District & Sessions Judge, Jhalawar to do the needful, vide letter dated 20.02.1996, who by his order dated 20.04.2006 rejected the request of the petitioner. Aggrieved thereby, petitioner made a representation to the High Court and thereafter served upon them legal notice for demand of justice. When nothing was done by respondents, he approached this court by filing S.B. Civil Writ Petition No. 7562/2009, which came to be disposed of by order dated 18.05.2010 of a co-ordinate Bench of this court requiring the respondents to decide the representation of the petitioner. The respondent State Government rejected the representation of the petitioner vide order dated 18.06.2010. Aggrieved thereby, petitioner has approached this court by filing present writ petition.

2. Shri M.C. Taylor, learned counsel for petitioner, has argued that petitioner was removed from service on 11.03.1993, much prior to enforcement of the Rules of 1996. His case was covered by Rule 172 of the Rajasthan Service Rules and not by Rule 43 of the Rules of 1996. The State Government as also the District & Sessions Judge both without application of mind, wrongly denied him benefit of compassionate allowance. It is argued that the finance department is the final authority in such matters and despite the information by the finance department, the District & Sessions Judge was competent to grant compassionate allowance. He committed serious illegality in refusing to grant the same to petitioner. It was argued that under Rule 172 of the RSR, it is the Government which is competent and not the District & Sessions Judge. The finance department of the Government, vide communication dated 20.11.2005 has already opined in favour of grant of compassionate allowance and forwarded the matter to the District Judge to take a decision on his own level. There was no justification for the District & Sessions Judge to refuse to grant benefit of compassionate allowance to petitioner. Action of the respondents is arbitrary, unreasonable and capricious.

3. Shri M.C. Taylor, learned counsel for petitioner, referred to Division Bench judgment of this court in Mithlesh Sharan Sharma Vs. State of Rajasthan and Others, and argued that though first defence of the petitioner was that he had handed over complete documents to Shri Ram Gopal Gupta, the regular dealing clerk, who had returned from casual leave, but even otherwise the fact that original of the dying declaration was lost, had no adverse effect on the trial and ultimately second copy thereof was produced and relied on by the trial court and the trial court convicted the accused therein. The High Court even then acquitted the accused holding that evidence proved that deceased Kalu Singh was not in a fit state of mind and not able to make any kind of coherent or credible statement relating to the circumstances which resulted in death. The dying declaration itself

was held to be unreliable and thus the accused was acquitted by the High Court. Learned counsel has submitted that Division Bench of this court in *Mithlesh Sharan Sharma, supra*, allowed the writ petition filed by employee, who was terminated from service on the charge of absence from duties and was not held entitled to any pension. Considering however that he served as Sepoy since 17.11.1949 till 17.04.1979 i.e. for as long as thirty years, compassionate allowance was ordered to be paid to him. Reliance is also placed on the judgment of the Bombay High Court in *Anna Deoram Londhe deceased through his L.Rs. Smt. Indirabai Londhe Vs. State of Maharashtra*, .

4. Shri N.K. Maloo, learned Senior Counsel for respondents, has argued that the District & Sessions Judge has taken the decision on a reference being made to him by the State Government as in its view he was competent to take decision with regard to grant of compassionate allowance or otherwise. It cannot be said therefore that he acted outside or beyond his jurisdiction. It is argued that the District & Sessions Judge has formed a committee comprising of three senior judicial officers from the judgship and has taken the decision on their recommendation. The allegation that decision was based on non-application of mind was wholly unfounded. The District & Sessions Judge and the Committee of three senior judicial officers considered all the documents and the Division Bench judgment of this court. The petitioner filed an appeal against the order of removal and two-Judge committee of this Court on administrative side, has dismissed his appeal. The fact that the dying declaration was ultimately not accepted as reliable by the High Court, was not foundation of allegation against petitioner but the charge against him is that original dying declaration was misplaced by him. This amounted to dereliction of duties. It was submitted that Rule 172 of the RSR does not refer to the State Government as the only competent authority and there is no illegality if the State Government has referred the matter to the District & Sessions Judge.

5. I have given my anxious consideration to rival submissions and perused the material on record.

6. The first issue that requires consideration is whether the District & Sessions Judge was competent to take the decision for grant or refusal of compassionate allowance. In this connection sub-rule (1) of Rule 43 of the Rules of 1996 provides that a Government servant who is dismissed or removed from the service, shall forfeit his pension and gratuity. The proviso to sub-rule (1) of Rule 43 provides 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 compassionate pension. But admittedly the said Rule 43 of the Rules of 1996 has come into force in 1996, therefore this court must proceed on the basis of Rule 172 of the RSR, which was original Rule invoked at the time of removal of petitioner on 16.03.1993, and should apply here. Rule 172 of the RSR provides that no gratuity or pension may

be granted under Section II of Chapter XXII and Chapter XXIII to a Government servant dismissed or removed for misconduct, insolvency or inefficiency; but to Government servants, so dismissed or removed compassionate allowances, may be granted when they are deserving of special consideration; provided that the allowances granted to any Government servant shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate. Comparative analysis of two provisions thus would show that there is no substantial difference between the two.

7. At the juncture, reference may be made to the Division Bench decision of this court in *Mithlesh Sharan Sharma, supra*. That was the case in which petitioner served the State Government as a Sepoy in police department from 17.11.1949 till 17.04.1979, thus for approximately 30 years, which was much more period of service that qualified for grant of pension. The court took note of the additional fact that the petitioner at the time of deciding the matter attained the age of 75 years and being head of the family might be burdened with numerous liabilities. In those facts, the Division Bench directed for grant of compassionate allowance to the petitioner therein.

8. The Bombay High Court in *Anna Deoram Londhe deceased through his L.Rs. Smt. Indirabai Londhe Vs. State of Maharashtra*, was dealing with the case wherein petitioner removed from service for misconduct on account of conviction under Section 325 IPC. He challenged the order of his removal by filing Special Civil Suit. The suit was dismissed by the trial court and thereafter his appeal too was dismissed in the appellate court and the Special Leave Petition filed before the Supreme Court was dismissed too. The Supreme Court however granted him liberty to make a representation to the Government asserting that in spite of his removal he was entitled to compassionate pension under Rule 100 read with Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982, which Rule is *pari materia* to Rule 172 of the RSR. The High Court in that case held that removal of the petitioner from service on account of his conviction alone will not furnish a ground to deny him benefit of compassionate pension. The High Court on perusal of the application of the petitioner for grant of compassionate pension found that this was the only reason assigned. Considering that there was no dispute that petitioner put in more than 30 years of service and he was otherwise eligible for superannuate pension, the respondents ought to have considered his representation from a point of view if the case is deserving for special consideration for grant of compassionate pension independently. Since that was not done and nothing is on record adverse to the petitioner for grant of compassionate pension, the order of the Government refusing to pay compassionate pension was held to suffer from legal infirmity, namely, non application of mind.

9. In the present case, even though the order of rejection passed by the District & Sessions Judge, Jhalawar, does not contain any reason whatsoever. Indisputably it is the District & Sessions Judge, who is appointing authority of the

petitioner. The Government also instead of considering prayer of the petitioner for grant of compassionate allowance, has in its communication observed that the District & Sessions Judge, Jhalawar, was under Rule 43 of the Rules of 1996 was competent to take such a decision. That decision was conveyed by the Registrar General to the District & Sessions Judge, Jhalawar on the analogy of Rule 172 of the RSR. In either Rules, no authority has specifically been mentioned but normally it should not be an authority inferior than the appointing authority, who would not be competent to take decision under Rule 172 of the RSR for grant of compassionate pension.

10. The District & Sessions Judge in the present case however has sought to rely on the report of the committee comprising of three senior judicial officers. Even if this court proceeds on the footing that the reasons given by the committee have been adopted in toto by the District & Sessions Judge, but the respondents in reply filed on behalf of the District & Sessions Judge, have neither placed copy of the report on record nor have otherwise detailed out the findings/reasons given in such report except stating as follows:--

"The case of the petitioner is not a case of special consideration because his removal was held upto the Apex Court. The case of the petitioner is a case of misconduct carries with the legitimate inference that the Government servant's service has been dishonest; there can seldom be any good case for a compassionate allowance. The act and conduct of the petitioner in not submitting the original statement of dying declaration is a case of gross misconduct. The learned District & Sessions Judge has convicted the accused under Section 302 on the basis of carbon copy of the statement of dying declaration. So many opportunities were given to the petitioner to submit the document but he could not file so the case of the petitioner is a case of gross misconduct hence he is not entitled to get any compassionate allowance. The services of the petitioner were terminated on 11.03.1993 and he had filed a writ petition No. 7562/2009, which was disposed of on 18.05.2010 with a direction to file a representation before the State Government. After receiving the letter of the Dy. Secretary dated 18.06.2010 the representation was decided on merits vide Annexure-21 dated 03.08.2010 by the District & Sessions Judge, Jhalawar, whereby rejected the representation. The representation of the petitioner was rightly rejected by the District & Sessions Judge, Jhalawar with a reasoned and speaking order and there is no illegality in the order."

11. The afore-quoted reasons, do not deal with the fact that the petitioner served the respondents for as long as twenty years and had thus completed qualifying period of pension. The charge against the petitioner was that of negligence and not of dishonesty or deliberate omission. That the record did not reflect on any kind of previous misconduct of the petitioner so as to dis-entitle him from compassionate pension or special consideration for grant of compassionate pension. That even though the charge was for negligence, yet the carbon copy of dying declaration was produced on record of the trial. It was considered by the

trial court as well the High Court, though it is another matter that the High Court eventually, in view of the attending circumstances, did not find it reliable. None of those considerations are reflected from the reply of the respondents extracted above or otherwise from the impugned order passed by the District & Sessions Judge. The order has to be therefore held to suffer from legal infirmity of non-application of mind.

12. In view of the above discussion, the writ petition succeeds and is allowed. The impugned order dated 03.08.2010 is set aside, directing the respondents to grant compassionate allowance not exceeding two-thirds of the pension, as per Rule 172 of the RSR, which would have been admissible to the petitioner if he had retired on medical certificate other than being removed from service from 11.03.1993. The petitioner shall be entitled to arrears of such compassionate allowance and also arrears from the date of removal. Compliance of the judgment be made within a period of three months from the date a copy of this order is produced before the respondents. Writ petition accordingly stands disposed of.