2026:BHC-AUG:50126-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9967 OF 2019

1] **Waman Shamrao Kulkarni**
Age : 67, Occ: Pensioner
R/o: Suvarna Shilpa Apartment,
Flat No. 5, Near Shanoormiya Darga,
Devanagari, Aurangabad ... *Petitioner*

VERSUS

1] **The Registrar (Administration)**
High Court of Judicature of Bombay
Bench at Aurangabad,
Aurangabad ... *Respondent*

APPEARANCE :-

- **Neha B. Kamble,** *Advocate for the petitioner*
- **Mr. Rajendrraa Deshmukkh,** *Senior Counsel a/w. Ms. Meenal S. Deshmukh, Advocate i/by Mr. Mukul Kulkarni, Advocate for Respondent*

CORAM : KISHORE C. SANT &
JITENDRA JAIN, JJ.

RESERVED ON : 15th OCTOBER, 2026

PRONOUNCED ON : 19th OCTOBER, 2026

JUDGMENT [PER - JITENDRA JAIN, J.] :-

1. Rule. Rule made returnable forthwith. By consent, taken up for final hearing.

2. This petition is filed under Article 226 of the Constitution of India seeking a direction against the sole respondent for grant of compassionate pension to the petitioner for the period

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from 16th September 1998 to 6th August 2004, together with interest from the date of entitlement.

Brief facts :

3. The petitioner was appointed as a Peon in the year 1981 and was later promoted to the post of Havildar in the respondent's establishment.

4. On 16th September 1998, the petitioner was removed from service after being found guilty of theft. The said order was unsuccessfully challenged before this Court. The order of removal was confirmed by the High Court on 20th May 1999.

5. On 6th August 2004, the petitioner was dismissed from service after being found guilty of misrepresentation and fraud along with Mr. Shrikant Nigvekar, in departmental inquiry proceedings. The review application against the said dismissal also came to be dismissed on 11th February 2015.

6. Meanwhile, the petitioner made an application on 26th March 2003, requesting grant of compassionate pension under Rule 100 of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules). The said application came to be rejected by the respondent vide order dated 16th August 2003.

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7. It is on the above backdrop that the present petition is instituted for grant of compassionate pension for the period from 16th September 1998 to 6th August 2004, being the period from the order of his removal till the order of his dismissal.

8. Ms. Kamble, learned counsel for the petitioner, submitted that there is a difference between removal and dismissal and, on a reading of Rules 100 and 101 of the Pension Rules, the period between the order of removal and the order of dismissal would not disentitle the petitioner of compassionate pension. She further submitted that Mr. Shrikant Nigvekar was granted compassionate pension and, therefore, there is a violation of Article 14 of the Constitution of India, as the same benefit is denied to the petitioner.

9. The learned counsel relied upon the following decisions in support of her submissions:

i. ***Moti Ram Deka and Others Vs. General Manager, North East Frontier Railways, and Others***[1]
ii. ***Batahari Jena and Others Vs. State of Orissa and Another***[2]
iii. ***Anna Deoram Londhe Vs. State of Maharashtra***[3]

10. She, therefore, prayed for allowing the petition in terms of prayer clause (B).

1 MANU/SC/0261/1963
2 MANU/OR/0017/1968
3 MANU/MH0435/1998

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11. Mr. Deshmukh, learned Senior Counsel appearing for the respondent, vehemently opposed the petition. He submitted that the benefits given to Mr. Shrikant Nigvekar were subsequently revoked and, therefore, the question of claiming parity does not arise.

12. The learned Senior Counsel further, relying on Rule 101 of the Pension Rules, submitted that a Government servant who is removed or dismissed from service cannot claim pension as a matter of right, nor is such a person eligible for compassionate pension. However, in a case deserving special consideration, the Government may sanction compassionate pension. The learned Senior Counsel submitted that the charges against the petitioner are so severe and, more particularly, since the petitioner was working in a Court, which is considered a temple of justice, the interpretation canvassed by the learned counsel for the petitioner should not be accepted. He submitted that this is not a case which warrants special consideration for grant of compassionate pension.

13. The learned Senior Counsel relied upon the decision of this Court in the case of ***Baliram Ramchandra Majgaonkar vs. District and Sessions Judge, and Another***[4] and more particularly, paragraphs 6, 10 and 11, and submitted that the petition requires to be dismissed.

4 2003 (4) Bom. C.R. 584

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14. We have heard the learned counsel for the petitioner and the learned senior counsel for the respondent.

15. Rule 101 of the Pension Rules reads as follows:

> *"101. **Grant of Compassionate Pension in deserving cases by Government. -** (1) A Government servant who is removed from service **shall** forfeit his pension and gratuity:*
>
> *Provided that **if the case is deserving of special consideration**, Government may sanction a Compassionate Pension not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.*
>
> *(2) A compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than the minimum pension as fixed by Government.*
>
> *(3) A dismissed Government servant is not eligible for Compassionate Pension."*
>
> ***(emphasis supplied)***

16. On a reading of Rule 101, a Government servant who is removed from service shall forfeit his pension and gratuity. Sub-rule (3) provides that a dismissed Government servant is not eligible for compassionate pension. The claim of the petitioner is for the period from the date of his removal to the date of dismissal and, therefore, Rule 101(3) does not fall for our consideration.

17. Rule 101(1) provides for forfeiture of pension in the case of a Government servant who is removed from service. There is no dispute that on 16th September 1998, the petitioner was removed

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from service. Sub-rule (1) uses the expression "shall" and, looking at the context and the object of Rule 101, the Rule has to be construed as a mandatory provision for forfeiture of pension and gratuity.

18. However, an exception is carved out by the proviso to sub-rule (1), which provides that if the case is deserving of special consideration, then compassionate pension can be granted. The exercise of discretion is not mandatory but would be on the satisfaction of the employer. The condition to grant pension under the proviso is not only of deserving but deserving of special consideration, which is to be interpreted very strictly. Therefore, the issue which requires consideration is whether, in the facts of the present case, the case deserves special consideration.

19. The respondent - employer has exercised its discretion by coming to a conclusion, having regard to the nature of the charges for which the petitioner was removed that the case does not deserve special consideration.

20. The order of the disciplinary authority rejecting the plea for compassionate pension has been enclosed with the petition at pages 85 to 90. In paragraph 2, it is specifically mentioned that the charge against the petitioner was that of removing a typewriter machine lying in the Advocates' Clerks' Room without permission,

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which amounts to a theft. The said order is a reasoned order. There is no challenge to the decision making process in the petition.

21. In our view, a person working in a Court who is charged with and found guilty of theft would certainly not fall within the expression "deserving of special consideration" used in the proviso to Rule 101. The contention of the petitioner that he has spent 18 years in service prior to his removal, cannot a ground which will fall within the expression "special consideration" required under proviso to Rule 101(1) of the Pension Rules.

22. Looking at the charges on petitioner for which he was removed, it cannot be said that the respondent has exercised its discretion unfairly or unreasonably. We have not been shown any material for coming to the conclusion that there is perversity in the decision-making process of the respondent.

23. The decisions relied upon by the learned counsel for the petitioner would not apply to the facts of the present case. However, the observations made by this Court in the decision relied upon by the learned senior counsel for the respondent in the case of ***Baliram Ramchandra Majgaonkar (supra),*** and more particularly paragraph 6 thereof, are relevant, and same are reproduced hereinbelow:

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> *"6. The question now arises, whether, in the facts and circumstances of the case, the Government was justified in not accepting the petitioners prayer for grant of compassionate pension. Every misconduct is not similar nor for every misconduct punishment awarded is 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 ceasers 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 or rater a misconduct relating to misappropriation is always referable to moral turpitude and, therefore apparently the petitioner was not deserving for grant of compassionate pension"*
>
> *(emphasis supplied)*

24. The interpretation of Rule 101 came up for consideration before Nagpur bench of this Court in the case of ***Chandrashekhar S/o Devidas Deshmukh V. Amravati Municipal Corporation and others***,[5] and the relevant observations in that regard are as under :-

> *"9. The reliance placed by Mr. Meghe on Rule 19 does not take the case of the petitioner any further. We do not read Rule 19 to suggest that if the employee is removed on the charge of proved misconduct or misappropriation, then the order of removal shall not be an impediment in claiming pension. Insofar as Rule 101 is concerned, rather than furthering the case of the petitioner, the substantive rule provides that an employee, who is removed from service, shall forfeit his pension and gratuity. Reliance is placed on the proviso. It is well settled that a proviso cannot be understood as limiting or diluting the legislative intent as is discernible from the substantive provision. The proviso contemplates an*

5 2023 SCC OnLine Bom 3055

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exceptional situation, where if a case deserves special consideration, the employer may sanction compassionate pension. Further the proviso must be understood on the touchstone of Sub-Rule (3) which provides that a dismissed employee shall not be eligible for compassionate pension.

10. The use of expression 'removal' in a given situation may only be a matter of semantics. A matter of form rather than of substance. However, we are not required to delve deeper in that broader question. In the facts obtaining from the record, we are more than satisfied that the petitioner has not demonstrated entitlement in law to pension.

11. .....

12. .....

13. .....

14. In Kulkarni Shashikant Bhavani v. Bombay Physical Culture Association, (2019) 5 Mah LJ 198, the Coordinate Bench, considered similar if not identical situation and noticing the provisions of Rule 26 and 27 of the Rules held that an employee, who is removed from service on the proved charge of misconduct which involved element of moral turpitude, is not entitled to pension. We may extract the relevant observations in the said decision which reads thus:

> *24. In the present case, the petitioner is removed from - service on a proved charge of grave misconduct involving moral turpitude. This being the position, if respondent No. 2 has rejected the claim of the petitioner for pension on the ground that the petitioner is removed from service on account of proved charge of grave misconduct, we do not find the action of the respondents is contrary to the rules or in any manner arbitrary. No doubt, pension is a right of the petitioner, but the same is governed by the said Rules. A plain reading of Rules 26 and 27 makes it amply clear that the Government has a power to withhold permanently a pension, if the petitioner is found guilty of grave misconduct. The petitioner was removed from the service before he attained the age of superannuation. The removal from the service before he reaches the age of superannuation will hardly be of any consequence,*

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> *for when claim for pension is made upon cessation of service, the same would be governed by the provisions of the Rules 26 and 27 of the said Rules. The conduct of the petitioner and grave nature of the proved misconduct involving moral turpitude for which the petitioner is removed from service would disentitle the petitioner to claim pensionary benefits. It is not possible to fathom a situation where an employee is held eligible for pension though he is removed from service upon a proved misconduct of a serious nature before attaining the age of superannuation or on completion of pensionable service; whereas in respect of an employee who has retired, his right to receive pension is made subject to good conduct in future. Subject to the provisions of Rules 26 and 27, departmental proceedings can be held even against a retired employee and if held guilty of grave misconduct, his pension can be forfeited."*
>
> *(emphasis supplied)*

25. In the case of ***Nalini W/o Natthuji Shende V. State of Maharashtra and others***[6], Nagpur Bench of this Court observed as under :-

> *"14. Submission (v) that similar relief is granted by the High Court in Anna Deoram Londhe (supra) may now be considered. The factual matrix in Anna Deoram Londhe was that the employee was removed from service since he was convicted under Section 302 of the Indian Penal Code, which conviction was altered by the High Court to Section 325 of the Indian Penal Code. The Hon'ble Supreme Court granted liberty to the employee to make a representation to the Government for compassionate pension under Rule 100 read with Rule 101 of the Rules. Even before a decision could be taken on the representation, the employee expired and in the peculiar and glaring facts of the case, the High Court held that family pension be paid to the widow of the employee.*

6 Writ Petition No. 3468 of 2022, decided on 23.03.2023

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15. Anna Deoram Londhe is a decision which turns on facts. The conviction for bodily offence did not have any nexus with the discharge of duties. Hon'ble Supreme Court granted leave to the employee to prefer representation for compassionate pension under Rule 101 of the Pension Rules. The employee expired before a decision could be taken on the representation, and in the glaring factual matrix, the High Court directed that pension be paid to the widow of the employee.

16. In our considered view, Anna Deoram Londhe does not take the case of the petitioner, who has been dismissed on serious charges touching the discharge of duties, any further.

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……..

……

32. Rule 101 again makes a distinction between removal and dismissal. Sub-rule (1) provides that while ordinarily, even a removed Government Servant shall forfeit pension and gratuity, in cases deserving of special consideration, compassionate pension not exceeding 2/3 of pension or gratuity or both may be sanctioned.

33. Rule 101(1) clearly refers to the removal of service under Rule 19. Sub-rule (3) of Rule 101 mandates that a dismissed Government servant shall not be eligible for compassionate pension. We have noted supra that the Discipline and Appeal Rules envisage different penalties. Removal from service without affecting the chances of future employment under the Government is one of the penalties prescribed, in contradistinction with the penalty of dismissal which renders the Government servant ineligible for future employment under the Government."

(emphasis supplied)

26. In our view the above decision supports the view which we have taken.

27. The instant petition has been filed in August 2019. The prayer for grant of compassionate pension is for the period

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16.09.1998 to 06.08.2004. In our view, there is a gross delay of 15 years in the petitioner approaching this Court for seeking relief. The contention that in 2015, petitioner's review application against dismissal of service was rejected and, therefore, there is no gross delay, cannot be accepted. Even if the date of rejection of review application is considered i.e. 11.02.2015, the present petition is filed on 06.08.2019 which is after almost 4-1/2 years taking the starting point as contended by the petitioner. Therefore, even on this court, no relief can be granted to the petitioner on the ground of delay and laches.

28. The learned senior counsel for the respondent relied upon affidavit-in-reply of the respondent and submitted that the petitioner was also involved in a recruitment scam in relation to the vacancies in the High Court. We do not propose to examine this issue, since, based on the reasons recorded in the order rejecting the application for compassionate pension, the action of the respondent cannot be faulted on that ground itself. Therefore, this Court does not feel the need to consider the plea regarding the recruitment scam.

29. In view of above, this Court does not find any reason to interfere with the order rejecting the application for compassionate pension. Accordingly, the petition is dismissed.

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30. Before parting, we appreciate learned counsel for the petitioner Ms. Neha Kamble the way she presented her case with clarity and assisted the Court with a Note for consideration.

[JITENDRA JAIN]
JUDGE

[KISHORE C. SANT
JUDGE

Jhs/

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