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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE K. BABU

WEDNESDAY, THE 18TH DAY OF MAY 2021 / 28TH VAISAKHA, 1943

WA.No.2210 OF 2019

AGAINST THE ORDER/JUDGMENT IN WP(C) 3810/2018(A) OF HIGH
COURT OF KERALA

APPELLANT/PETITIONER:

V.KESAVAN NAIR,
AGED 70 YEARS
S/O.G.VELAYUDHAN NAIR, (EX-CONSTABLE/CENTRAL
INDUSTRIAL SECURITY FORCE), RESIDING AT
THIRUVATHIRA, KAITHOORKONAM HOUSE, EDACODE,
NEMOM POST, TRIVANDRUM - 695 020.

BY ADVS.
SRI.T.C.GOVINDA SWAMY
SMT.KALA T.GOPI

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
OF INDIA, MINISTRY OF HOME AFFAIRS,
NEW DELHI - 110 001.
- 2 THE DIRECTOR GENERAL,
CENTRAL INDUSTRIAL SECURITY FORCE, (MINISTRY OF
HOME AFFAIRS), BLOCK NO.13, CGO COMPLEX, \
NEW DELHI - 110 003.
- 3 THE COMMANDANT, CENTRAL INDUSTRIAL SECURITY
FORCE,
(MINISTRY OF HOME AFFAIRS), BANK NOTES PRESS,
DEWAS - 455 003, MADHYA PRADESH.

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4 THE SENIOR ACCOUNTS OFFICER,
OFFICE OF THE REGIONAL PAY AND ACCOUNTS OFFICER
(CISE), (MINISTRY OF HOME AFFAIRS), 3RD MSO
BUILDING, DF BLOCK, D WING, 2ND FLOOR, SALT
LAKE, KOLKATA - 700 064.

R1-4 BY SMT.O.M.SHALINA, CGC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
18.05.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ALEXANDER THOMAS & K.BABU, JJ.

W.A No. 2210 of 2019
(Arising out of the judgment dated 14-02-2019
in W.P(C) No.3810 of 2018)

Dated this the 18th day of May, 2021

JUDGMENT

K.BABU, J.

The judgment dated 14-02-2019 of the learned Single Judge of this Court, in W.P(C) No.3810/2018, is under challenge in this intra court appeal filed under Sec.5 of the Kerala High Court Act.

2. The appellant is the writ petitioner. Respondents in this writ appeal are the respondents 1 to 4 in the writ petition.

3. Heard Sri.T.C.Govindaswamy, learned counsel appearing for the appellant and Smt.O.M.Shalina, learned Central Government Counsel appearing for the respondents.

4. The appellant entered into the service of CISF as a Cook on 06-01-1971. On 18-02-1986, while working as Constable, the appellant was dismissed from service as per Ext.P3 order. He challenged the order of the dismissal before this Court, in which the respondents were directed to consider his representation, which

ended in rejection.

5. On 14-08-2014, the appellant submitted a representation before the Director of General, CISF (respondent No.2) and requested sanctioning of compassionate allowance. The said representation was also rejected as per order dated 15-12-2014. The appellant, thereafter, filed W.P(C) No.7653/2015 before this Court, challenging the order rejecting his request for compassionate allowance. By judgment dated 28-06-2016 in W.P(C) No.7653/2015, this Court set aside the order of rejection passed by the official respondents and directed them to consider the representation submitted by the appellant in the light of the directions contained in the judgment of the Apex Court in Mahinder Dutta Sharma v. Union of India [(2014) 11 SCC 654].

6. The competent authority, thereafter, passed Ext.P1 order by which, he was granted compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 at the rate of Rs.9,000/- per month with effect from 16-11-2016. The appellant challenges Ext.P1 order to the extent, it granted compassionate allowance only prospectively and contended that he should have been granted compassionate allowance with effect from the date of his dismissal from service.

7. The respondents resisted the claim of the appellant and contended that the power to grant compassionate allowance is discretionary, which the competent authority exercised taking into account the entire circumstances including the antecedents of the appellant. The appellant had been a habitual offender; he was awarded with one major and 7 minor penalties. Respondents further contended that, the appellant had overstayed from 18-12-1984 to 28-06-1985 and thereafter remained absent unauthorisedly for 192 days from 11-08-1985 to 18-02-1986, which is a serious misconduct, indiscipline and dereliction of duty. According to the respondents, Ext.P1 order was issued after evaluating all the circumstances and in tune with the judgment of the Apex Court in Mahinder Dutta Sharma's case (supra).

8. The learned Single Judge dismissed the writ petition challenging Ext.P1 order of the respondents, holding that the relevant Rule does not provide that compassionate allowance be given with effect from the date of his dismissal or from a particular date as it was entirely within the discretion of the competent authority sanctioning the allowance.

9. Sri.T.C.Govindaswamy, learned counsel for the appellant

submitted that, in terms of Rule 83 of CCS (Pension) Rules, 1972, pension which includes compassionate allowance, becomes payable from the date on which a Government servant ceases to be borne on the establishment. According to the learned counsel, by virtue of the said Rule the appellant is entitled to be granted the benefit of compassionate allowance with effect from 18-02-1986, the date on which he was dismissed from service. The learned counsel for the appellant submitted that 'compassionate allowance' is to be treated as a class of pension having all attributes of pension. It is also submitted that compassionate allowance is a payment in lieu of pension. The learned counsel for the appellant also relied on Government decision Nos.G.I, FD Office Memo No.3(2)-R-II/40 dated 22-04-1940, G.I, F.D, No.F.3-X-R,II/34 dated 03-05-1934 and the decision of this Court in O.P No.2493/1999 to substantiate his contention.

10. The learned Central Government Counsel Smt.O.M.Shalina submitted that, Rule 41 of Pension Rules 1972 would show that it is only an allowance sanctioned by the competent authority in exercise of its discretionary power. The learned counsel further submitted that it is only an allowance paid to the government servant at the

discretion of the competent authority, when he/she is disentitled to pension under the Rules. The learned Central Government Counsel contended that the relevant rule does not mandate the competent authority to sanction compassionate allowance and that the same is granted after exercising the discretionary power of the competent authority based on subjective satisfaction. She further submitted that, the Rule does not say that the competent authority should sanction the allowance from the date of dismissal/removal from service.

11. The learned Central Government Counsel further submitted that compassionate allowance at any rate, cannot be treated as having all attributes of pension. The learned Central Government Counsel relied on the judgment dated 03-07-2018 in W.A No.1067/2018 and judgment dated 15-09-2010 in W.P(C) No.16918/2004 of this Court to buttress her arguments.

12. The questions that arise for consideration are;

- (a) Whether the competent authority has absolute discretion in granting or refusing compassionate allowance.
- (b) Whether, once the competent authority decides to pay compassionate allowance, under Rule 41 of Pension Rules

1972, the same is to be paid with effect from the date on which the penalty of dismissal/removal is imposed.

13. Compassionate Allowance is dealt with in the proviso to Rule 41 of the Pensions Rules 1972. Rule 41, reads thus:

“Rule 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 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 compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three thousand five hundred per mensem.”

14. As per Rule 41 of the Pension Rules 1972 a government servant who is dismissed or removed from service shall forfeit his pension and gratuity. Proviso to Section 41 says that, the authority competent to dismiss or remove the government servant 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 compensation pension. Rule 41 further says that a compassionate allowance sanctioned as above shall not be less than the amount of Rupees three thousand five hundred per mensem.

15. A reading of Rule 41 shows that, the competent authority has the absolute discretion in granting compassionate allowance.

16. The scheme relating payment of pension is contained in Chapter V of CCS (Pension) Rules, 1972. For effective adjudication of the rival contentions, we find it appropriate to extract the relevant portions of the rules dealt with in Chapter V.

“35. Superannuation pension

A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.

36. Retiring pension

A retiring pension shall be granted -

- (a) *to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rule 48 or 48-A of these rules, or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations ; and*
- (b) xxx xxx xxx

37. Pension on absorption in or under a corporation, company or body

(1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him].

EXPLANATION. - Date of absorption shall be

- (i) xxx xxx xxx
- (ii) xxx xxx xxx
- (2) xxx xxx xxx
- (3) xxx xxx xxx

37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Public Sector Undertaking

(1) Where a Government servant referred to in Rule 37 elects the alternative of receiving the retirement gratuity and a lump sum amount in lieu of pension, he shall, in addition to the retirement gratuity, be granted:-

(a) xxx xxx xxx

(b) xxx xxx xxx

37-B. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body-

(1) xxx xxx xxx

38.Invalid pension

(1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

39.Compensation pension

(1) If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal of those of his own, have the option -

(a) of taking compensation pension to which he may be entitled for the service he had rendered, or

(b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.

(2)(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx.

(3) xxx xxx xxx

(4) xxx xxx xxx

40.Compulsory retirement pension

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) xxx xxx xxx

(3) xxx xxx xxx.”

17. Rule 35, which deals with superannuation pension, mandates that the same shall be granted to a government servant on his attaining the age of compulsory retirement. Rule 36, which deals with retiring pension, says that the same also shall be granted to a government servant in advance of the age of compulsory retirement. In the case of pension on absorption in or under a corporation or company or body, provided in Rule 37, as the expression used is 'shall' the government servant is mandatorily entitled to pension. Rule 37-A says that, where a government servant referred to in Rule 37 elects the alternative of receiving the retirement gratuity and he/she shall be eligible to a lump sum amount in lieu of pension. In the case of compensation pension, provided in Rule 39, where a government servant is selected for discharge owing to the abolition of his permanent post, he shall have the option of taking compensation pension to which he may be entitled for the service he had rendered.

18. When we come to invalid pension the expression used is 'may be granted'. This points to an element of discretion with the competent authority to take into account the relevant materials that could determine the eligibility of the government employee for pension. In the case of compulsory retirement pension, provided in

Rule 40, also the expression used is 'may be granted', but it is provided that the government servant may be granted pension or gratuity admissible to him on the date of his compulsory retirement.

19. Rules 35, 36, 37, 37-A and 38 provide that the payment is mandatory. In the case of invalid pension and compulsory retirement pension, provided in Rules 38 and 40, an element of discretion is available.

20. It is also relevant to note that all the Rules in Chapter V except Rules 37-A and 41 deal with payment of pension. Rule 37-A deals with payment of lump sum amount in lieu of pension, whereas Rule 41 deals with forfeiture of pension and gratuity consequent to dismissal or removal of a government servant from service. The proviso to Rule 41 authorises the authority competent to dismiss or remove a government servant from service to grant "compassionate allowance" as a matter of concession. Hence we find force in the submission of the Central Government Counsel that compassionate allowance does not have all the characteristics and attributes of the pensions covered by Rules 35 to 40 of the Pension Rules, 1972. Therefore Rule 83 of Pension Rules 1972, relied on by the learned counsel for the appellant, which mandates that pension other than

family pension shall become payable from the date on which a government servant ceases to be borne on the establishment, cannot be pressed into service for fixing the date from which compassionate allowance is to be granted.

21. In the case of compassionate allowance, under Rule 41, the statute provides that, the competent authority has to see that the case of the government employee is deserving on special consideration which definitely gives absolute discretion to the authority in the sanction of compassionate allowance. In all other Rules the payment of pension or payment in lieu of pension is either mandatory or subject to satisfaction of certain conditions.

22. The learned Central Government Counsel relied on judgments of this Court in W.P(C) No.16918/2004 and Writ appeal No.1067/2018 in support of her contention that, the government employee who has been granted the compassionate allowance cannot claim that he or she be given the benefit with effect from the date of dismissal or removal.

23. In ***Devadas v. State of Kerala and another*** (W.A No.1067/2018) this Court had considered the question whether compassionate allowance sanctioned to an employee who suffered a

dismissal or removal from service is eligible to have the same claim with effect from the date of imposition of punishment itself, as a matter of right. In ***Devadas's case*** (supra), a Clerk in Judicial department was dismissed from service in the year 1981. He claimed compassionate allowance, in terms of Rule 5 of Part III KSR, in 2015; he was granted compassionate allowance with effect from 2016. After analysing the provisions contained in Rule 5 of Part III KSR, the Division Bench of this Court held that, granting of compassionate allowance was only a mercy shown by the employer to the employee and it is in the absolute discretion of the competent authority to sanction the same, taking into account the facts and circumstances of the case and that the government employee cannot as of right claim the amount of compassionate allowance, so also with effect from the date on which he was removed from service. The Division Bench also took note of the delay in making the claim while upholding the contentions of the official respondents therein that the discretion to grant the relief is absolutely with the Government.

24. In ***V.G.Ramachandran Nair v. Chairman, Kerala State Electricity Board*** (W.P(C) No.16918/2004) this Court considered a similar question. The petitioner therein was an

employee of the KSEB, who was dismissed from service on allegations of misconduct on 20-08-1990 and he was granted compassionate allowance with effect from 11-06-2003 as a special case by invoking Rule 5 of Part III KSR. This Court, after analysing the facts in that case, held that granting of compassionate allowance is only a mercy shown by the employer to the employee and that the benefit under Rule 5 is in the absolute discretion of competent authority and further that the government employee cannot, as of right, claim that the compassionate allowance should be so much or that it should be paid with effect from the date of dismissal.

25. The learned counsel for the appellant contended that, the ratio in ***Devadas's and V.G.Ramachandran Nair's cases*** (supra) cannot be made applicable to the present fact situation as those cases were decided in the context of the Rule 5 of Part III KSR.

26. The learned Standing Counsel per contra contended that Rule 5 of Part III KSR is in *pari materia* with Rule 41 of CCS (Pension) Rules, 1972.

27. We find it profitable to extract Rule 5 of Part III KSR to address the rival contentions. Rule 5 of Part III KSR reads thus:

“Rule 5. Misconduct or inefficiency: - (a) No pension may be granted to an employee dismissed or removed for misconduct, insolvency or inefficiency, but to employees so dismissed or removed, compassionate allowances may be granted when they are deserving of special consideration; provided that the allowances granted to any employee shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on the date of dismissal or removal.

(b) The following procedure shall be followed in the matter of sanctioning compassionate allowance: -

(i) On receipt of the orders of the competent authority removing/dismissing an employee from service for misconduct, insolvency or inefficiency the Head of the office, if he proposes to recommend the grant of a compassionate allowance, should fill in the first page of the application for pension in Form 2 and send it to the Audit Officer concerned for report on the title to the compassionate allowance. The Head of the Office should not wait for an application from the employee.

(ii) If the competent authority in issuing orders of removal / dismissal states that a certain proportion of pension is to be granted as compassionate allowance, no further sanction to compassionate allowance is necessary and all that is required is that the Audit Officer should certify to the admissibility of compassionate allowance on a pension application completed and signed by the Head of the office as provided above.

28. On a comparative analysis of Rule 41 of CCS (Pension) Rules and Rule 5 of Part III KSR it can be seen that, Rule 5 of Part III KSR contains all what is included in Rule 41 of CCS (Pension) Rules. It can be seen that Rule 5 of Part III KSR is more elaborate than Rule 41 of Pension Rules, 1972. So it can safely be concluded that the principles declared by this Court in the context of Rule 5 of Part III KSR are squarely applicable to the present facts situation.

29. The learned counsel for the appellant also relied on judgment dated 22-11-2002 in O.P No.2493/1999 of this Court, filed by the Southern Railway, Madras challenging order in O.A

No.721/1997 passed by the CAT, Ernakulam. In that case, CAT had allowed the claim of a railway employee, who was removed from service on account of unauthorised absence after rendering 21 years of service, directing grant of compassionate allowance with effect from 01-01-1994, though he claimed it only later. Considering the number of years rendered by the petitioner, the view taken by the CAT was found to be a possible one and interference was declined under Article 227 of the Constitution by this Court.

30. The facts considered in O.P No.2493/1999 are different from the one considered in this case. In O.P No.2493/1999 this Court was dealing with the provisions of Railway Services (Commutation of Pension) Rules, 1993. The decision of this Court in O.P No.2493/1999 has no precedential value in the context of the present case.

31. The learned counsel for the appellant also relied on Government decision (1) No.(i) G.I, FD Office Memo No.3(2)-R-II/40 dated 22-04-1940 and (2) Government decisions No.3(ii) G.I., F.D, No.F.3-X-R, II/34 dated 03-05-1934 in support of his contention.

32. The Government of India Decision G.I, F.D Office Memo

No.3(2)-R-II/40 dated 22-04-1940, deals with guiding principles for the grant of compassionate allowance. It says that, it is practically impossible in view of the wide variations that naturally exist in the circumstances attending in each case, to lay down categorically precise principles that can be uniformly be applied to individual cases. The decision says that each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interest of Government, unduly hard on the individual. In considering this question it has been a practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he had rendered, the decision says. The decision further says that, poverty is not an essential condition precedent to grant of a compassionate allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance. The Government decision

No.F.3-X-R, II/34 dated 03-05-1934 deals with the procedure for the grant of Compassionate Allowance. It mainly deals with the procedures to be followed to avoid delay in the payment of compassionate allowance. The Government decisions relied on by the learned counsel for the appellant especially the decision dated 22-04-1940, supports the contention that the grant of compassionate allowance is the discretion of the competent authority.

33. The analysis of the statutory provisions, precedents and the Government decisions relied on by the appellant, does not lead us to enter into a conclusion that compassionate allowance is to be granted to a government employee from the date of imposition of the punishment itself as a matter of right.

34. From the discussion made above we come to the following conclusions:

- (i) Compassionate allowance provided under Rule 41 of CCS (Pension) Rules, 1972 does not have all the characteristics and attributes of the pensions covered by Rules 35 to 40 of the Pension Rules.
- (ii) Compassionate allowance under Rule 41 cannot be treated as a payment in lieu of the aforesaid pensions supra.

(iii) The authority competent to dismiss or remove a government servant from service has the discretion in the grant of compassionate allowance, in the sense that, the authority may grant the allowance if the case is deserving of special consideration.

(iv) While granting compassionate allowance the authority has absolute discretion to decide as to the time period from which the allowance is to be paid and a government employee who suffered dismissal or removal from service and was granted compassionate allowance cannot claim that he is eligible to have same with effect from the date of dismissal or removal as a matter of right.

35. Coming to the facts of this case, the appellant was dismissed from service on 18-02-1986. He approached the respondents seeking compassionate allowance on 14-08-2014. The appellant had challenged the orders passed by the respondents by filing writ petitions before this Court and the last one of which was dismissed in the year 1987. Thereafter he has not persuaded the matter. After a long lapse of 27 years on 14-08-2014 he approached the authorities seeking compassionate allowance. The respondents

have a case that it is quite probable that the appellant was working somewhere during this interval.

36. The appellant has not made any specific pleading as to whether he was working or not during the period after his dismissal till the submission of application seeking compassionate allowance.

37. The representation, stated to have been submitted by the appellant, has not been produced for perusal. It appears from Ext.P1 that he had requested to the effect that, as he was aged 65 years and was almost invalid and living in poverty his case deserves sympathetic consideration. The competent authority while passing Ext.P1 had taken into account all the circumstances and granted compassionate allowance to the appellant prospectively with effect from 16-11-2016.

38. The learned Single Judge recorded a finding that a government employee who suffered dismissal or removal from service and was granted compassionate allowance cannot claim that he is eligible to have same with effect from the date of dismissal or removal as a matter of right. We are of the view that the learned Single Judge rightly recorded a finding to that effect.

39. We are in full agreement with the conclusions arrived at in

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the impugned judgment dated 14-02-2019 of the learned Single Judge in these writ proceedings.

40. We are of the firm view that the learned Single Judge rightly declined reliefs prayed for in the W.P(C). We find no reasons to interfere with the findings of the learned Single Judge.

The Writ Appeal will stand dismissed.

Sd/-
ALEXANDER THOMAS, JUDGE

Sd/-
K.BABU, JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A

TRUE COPY OF DOCUMENTS/CORRESPONDENCE
REGARDING GRANT OF COMPASSIONATE
ALLOWANCE TO THE APPELLANT.

ANNEXURE B

TRUE COPY OF MEDICAL CERTIFICATE DATED
02/08/2019 ISSUED BY COMPETENT MEDICAL
AUTHORITY OF THE GOVERNMENT AYURVEDA
COLLEGE HOSPITAL, TRIVANDRUM, IN FAVOUR
OF THE APPELLANT.