

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 634 of 2021 (S.B.)

Ishwar S/o Madhukar Moundekar,
Aged about 59 years, Occupation : Retired,
R/o Saibaba Nagar, Prem Nagar,
Shanti Nagar Colony Road,Nagpur-440 002.

Applicant.

Versus

- 1) State of Maharashtra,
through the Secretary,
Higher and Technical & Vocation Education,
Mantralaya, Mumbai-400 032.
- 2) The Joint Director,
Vocation and Training,
Regional Office, Civil Lines,Nagpur-440 001.
- 3) The Principal,
Industrial Training Institute Amgaon,
Kidngipar, Tahsil Amgaon,
District Gondia.
- 4) The Senior Treasury Officer,
Office of Senior Treasury Officer,
Civil Lines, Nagpur-440 001.
- 5) The Sub Treasury Officer,
Amgaon, Tahsil Amgaon,
District Gondia.

Respondents.

S/Shri Rajendra Patil, M.R. Patil, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Dated :- 06/12/2022.

JUDGMENT

Heard Shri M.R. Patil, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Craft Instructor as per the order dated 19/11/1985. The applicant came to be retired on superannuation on 29/02/2020. The pension case was submitted by the Department and it was sanctioned on 03/07/2020.

3. To the surprise of the applicant that respondent no.3 issued order dated 21/01/2021 after his retirement for stoppage of his pension and pensionary benefits till the decision of the Government Constituted Committee. By the said order, the applicant was placed on supernumerary post. Therefore, prayed for direction to the respondents to release his pensionary benefits.

4. The O.A. is strongly opposed by the respondents. It is submitted by the respondents that caste claim of the applicant of Halba was invalidated and therefore supernumerary post was created as per the Judgment of Hon'ble Supreme Court in the case of **Chairman and Managing Director, FCI & Ors. Vs. Jagdish Balaram Bahira & Ors.**, therefore, the O.A. is liable to be dismissed.

5. Heard learned counsel for the applicant Shri M.R. Patil. He has pointed out the Judgment of this Tribunal in O.A. No.570/2021 and the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.903 of 2020 with connected Writ Petitions, decided on 04/05/2021.

6. The learned counsel for applicant has submitted that the applicant was appointed in the Open category. Nothing is mentioned in the appointment order dated 19/11/1985 to show that he was appointed in the reserved category. The applicant was retired on 29/02/2020. After his retirement, the impugned order was issued by the respondents dated 21/01/2021 by which the supernumerary post was created and the pensionary benefit of applicant was stopped. It is pertinent to note that the supernumerary post is to be created before the retirement and not after the retirement.

7. Heard the learned P.O. Shri S.A. Sainis for the respondents. As per his submission, in view of the Judgment of Hon'ble Apex Court in the case of **Chairman and Managing Director, FCI & Ors. Vs. Jagdish Balaram Bahira & Ors.** and the Judgment in the case of **Chandrabhan Parate Vs. State of Maharashtra & Ors.**, the applicant is not entitled to get the pensionary benefits.

8. The Judgments of Hon'ble Supreme Court are considered by the Hon'ble Bombay High Court, Nagpur Bench in W.P. 547/2021. The Hon'ble Bombay High Court has held that employees who are appointed in reserved category and his caste claim was invalidated, but was not placed on supernumerary post till his retirement, his pensionary benefits cannot be stopped.

9. In the present case, the applicant was not appointed in the reserved category, no supernumerary post was created till his retirement. After his retirement, supernumerary post was created and his pension is stopped. Issuing such order by the respondent no.3 dated 21/01/2021 is illegal, hence, liable to be quashed and set aside. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order / communication dated 21/01/2021 is hereby quashed and set aside.
- (iii) The respondents are directed to pay all the pensionary benefits to the applicant within a period of three months from the date of receipt of this order.
- (iv) No order as to costs.

Dated :- 06/12/2022.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 06/12/2022.

Uploaded on : 07/12/2022.

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