

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 570/2021 (S.B.)**

Dnyaneshwarsingh Raibhansingh Parihar,  
Aged 58 years, Occ. Retired as Statistic Assistant  
R/o A-1/4 Shri Complex, near Tine Tots School,  
Narenda Nagar, Nagpur, Tq. & Dist. Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Public Health Department,  
Mantralaya, Mumbai-01.
- 2) The Director,  
Health Services, Pune,  
Dist. Pune.
- 3) The Deputy Director ,  
Health Services (HIVS),  
Pune, Pune-1.
- 4) The Deputy Director,  
Health Services,  
Nagpur, Dist. Nagpur.
- 5) The Assistant Director,  
Health Services (Leprosy),  
Bhandara.

**Respondents.**

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**S/Shri A.S. Khedkar, Kalyan Chiwarkar, Advs. for the applicant.**

**Shri A.P. Potnis, P.O. for the respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Member (J).**

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**Date of Reserving for Judgment : 18<sup>th</sup> April, 2022.**

**Date of Pronouncement of Judgment : 6<sup>th</sup> May, 2022.**

**JUDGMENT****(Delivered on this 6<sup>th</sup> day of May, 2022)**

Heard Shri A.S. Khedkar, learned counsel for the applicant and Shri A.P. Potnis, 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 “Statistics Investigator” w.e.f. 01/06/1998, vide appointment order dated 29/05/1998. The applicant was appointed on the reserved post of VJ-A (विमुक्त जाती-अ) (Rajput Bhamta). The Caste Scrutiny Committee vide order dated 7/7/2005 invalidated the Caste Rajput Bhamta (VJ-A).

3. The applicant challenged the decision of Caste Scrutiny Committee before the Hon’ble Bombay High Court, Bench at Nagpur in Writ Petition No.4066/2005. In the said Writ Petition, the service of the applicant was protected. The said Writ Petition was withdrawn with direction to the respondent / authority “*to decide the representation of the applicant on its own merit in the light of law laid down by the Hon’ble Apex Court as well as other Government Circulars and decisions of this Court as early as possible in any case not beyond the period of 8 weeks from the date of receipt of such representation. Needless to mention that, till the decision is taken by respondent no.2, the services of the petitioner need not be disturbed*”.

4. The applicant made representation. He was directed to file affidavit stating that he and his family shall not claim the benefit of caste Rajput Bhamta (VJ-A). The said letter is dated 29/07/2006. Accordingly, the applicant had given affidavit dated 19/08/2006.

5. The respondent / appointing authority has decided the representation of the applicant in view of the Judgment of Hon'ble Supreme Court in the case of **Milind Sharad Katware Vs. State of Maharashtra** and his appointment was treated in the open category. The entry in that regard is taken in the service book.

6. The applicant thereafter was promoted in the open category. The applicant retired on 29/10/2020. On 16/03/2020 after 15 years from the date of invalidation of caste claim of the applicant, one person has made complaint anonymously to the Secretary, Public Health Department, Mantralaya, Mumbai by taking objection to the promotion of applicant from reserved category to Open category. The Government has passed the G.R. on 25/2/2015 directing the respondents and other authority not to take cognizance of anonymous complaint. Even though, the respondents have taken the cognizance of anonymous complaint and directed the applicant to produce caste validity certificate. The pension case of the applicant is sanctioned by the A.G., Nagpur. But the respondent / authority not given 'No due certificate' and therefore Treasury Officer not passed the pension

order. The applicant is not getting any pension and therefore prayed to direct the respondents to release the pension and all other consequential benefits.

7. The application is strongly opposed by the respondent nos.1 to 5 by filing affidavit-in-reply. It is submitted that in view of the Judgment of Hon'ble Supreme Court, the applicant is not entitled for any benefit. The Caste Scrutiny Committee invalidated the caste claim of the applicant of reserved category of VJ-A (Rajput Bhamta). As per the direction of Hon'ble High Court, the service of the applicant was protected. It is submitted that file in respect of pensionary benefits of applicant was forwarded to GAD for their opinion. The GAD directed to the respondents not to release the pensionary benefits till submission of caste validity certificate. It is submitted that in view of order passed by the Hon'ble Supreme Court in Civil Appeal No. 8928/2015 and Govt. G.R. dated 21/12/2019, the present applicant is not eligible for pensionary benefits and other related consequential benefits. The respondents have taken appropriate decision as per the Circular of GAD. Hence, the O.A. is liable to be dismissed.

8. Heard the learned counsel for the applicant Shri A.S. Khedkar. He has submitted that the service of the applicant was protected by the Hon'ble High Court in Writ Petition No.4066/2005.

The respondent / appointing authority treated the service of the applicant in open category. During the service, he was promoted. The applicant is retired on 29/10/2020. Till then, nobody raised any objection, but the respondents have taken cognizance of one anonymous complaint dated 16/03/2020. The learned counsel for the applicant has pointed out the Govt. G.R. dated 25/2/2015 by which the Government has taken decision not to take any cognizance of anonymous complaint. The respondents have not followed the G.R. dated 25/2/2015. Without giving any opportunity, the respondents have directed the applicant to produce caste validity certificate. In fact, the service of the applicant was treated in open category. The applicant is retired on 29/10/2020. In fact, the pension case is sanctioned by the A.G., but 'No due certificate' is not issued by the respondents, therefore, the applicant is not getting pensionary benefits.

9. The learned counsel for the applicant has submitted that the service of the applicant is protected well before the Judgment of Hon'ble Supreme Court in Civil Appeal No.8928/2015 and therefore the direction in that Judgment is not applicable. The learned counsel has pointed out the Judgments of Hon'ble Bombay High Court in Writ Petition No.547/2021, decided on 23/3/2022, in Writ Petition No.14820/2021, decided on 16/03/2022, in Writ Petition Nos.235 &

236 of 2021, decided on 31/1/2022 and Writ Petition No.903/2020, decided on 4/5/2021.

10. The learned counsel for the applicant has submitted that the Judgment of Hon'ble Bombay High Court in the case of applicant becomes final and therefore it cannot be re-opened now.

11. Heard Shri A.P. Potnis, learned P.O. for the respondents. He has pointed out the Judgment of Hon'ble Apex Court in Civil Appeal No. 8928/2015 and the Judgment in the case of **Chandrabhan Parate Vs. State of Maharashtra & Ors.** The learned P.O. has submitted that once the caste claim is invalidated, then employee cannot claim any benefit arising from the said services. The caste claim of the applicant of Rajput Bhamta (VJ-A) is invalidated and therefore the applicant is not entitled for any benefit and consequently, he is not entitled for any pensionary benefits. Hence, the O.A. is liable to be dismissed.

12. There is no dispute that the applicant was appointed in the reserved category of VJ-A (Rajput Bhamta). The caste certificate of the applicant of Rajput Bhamta (VJ-A) is invalidated by the Caste Scrutiny Committee, Nagpur on 7/7/2005. The applicant has challenged the decision of caste scrutiny committee in Writ Petition No. 4066/2005. The Division Bench of Hon'ble Bombay High Court has passed the following order –

“ Heard Mr. N.R. Saboo, learned counsel for the petitioner, Mr. T.R. Kankale, learned AGP for respondents.

*The learned counsel for the petitioner states that though the caste claim of the petitioner is invalidated by the Committee, the services of the petitioner are to be protected in view of the law laid down by the Apex Court in Milind Katware’s case [2001 (1) Mh.L.J. 1] as well as other Government Circulars and decisions rendered by this Court and seek permission to withdraw the present writ petition with liberty to make representation to the respondent no.2 in view of the above legal position and prays that direction be given to respondent no.2 to consider the same on its own merits, according to law.*

*The learned AGP does not have any specific objection in this regard.*

*In the circumstances, writ petition dismissed as withdrawn with liberty as prayed for.*

*If the representation is made by the petitioner to respondent no.2 within two weeks from today, the respondent no.2 is directed to decide the same on its own merit in the light of law laid down by Apex Court as well as other Government Circulars and decisions of this Court as early as possible in any case not beyond the period of 8 weeks from the date of receipt of such representation.*

*Needless to mention that, till the decision is taken by the respondent no.2, the services of the petitioner need not be disturbed.”*

13. After passing the order by Hon’ble Division Bench of High Court dated 22/9/2005, the applicant has made representation. The respondent / authority directed the applicant to file affidavit stating that he or his family will not claim any benefit of Rajput Bhamta (VJ-A) caste. The applicant sworn affidavit on 19/08/2006. The respondent / appointing authority has taken the decision that service of the applicant is treated in the open category. The entry in that regard is taken in the service book. The applicant was in continuous service till

the date of superannuation. Nobody raised any objection. The A.G. has also sanctioned the pension case, but one of the employee without mentioning his detailed name and address, made complaint on 16/3/2020 addressed to the respondent no.1 stating that the applicant was not entitled to continue his service, because, his caste certificate was found to be false. After this letter, the respondents have given direction to the applicant to produce the caste validity certificate. They have not issued any 'No due certificate' to get the pension. The applicant is not getting any pension since the date of retirement. He was also not given any other pensionary benefit.

14. In fact, the Government of Maharashtra has issued the G.R. dated 25/2/2015. As per the Clause-1 it is directed not to take any cognizance of anonymous complaint and it should be filed. It appears that the respondents have not followed the G.R. dated 25/2/2015.

15. The learned P.O. has strongly relied on 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.** In the case **Chairman and Managing Director, FCI & Ors. Vs. Jagdish Balaram Bahira** the Hon'ble Supreme Court has held that the employees who were appointed on reserved post and their caste



validity was found to be false, they are not entitled for any service benefits. The same ratio is laid down in the case of **Chandrabhan Parate Vs. State of Maharashtra.**

16. These Judgments of Hon'ble Supreme Court were pointed out before the Hon'ble High Court in Writ Petition Nos,235 & 236 of 2021 and it is held in para nos.41 & 42 as under –

*“41. In this case, by making the impugned order depriving the Petitioner of the retiral benefits, the Respondents have virtually sought to review this Court's order dated 8/6/2016 in Writ Petition No. 1809/2015 instituted by the Petitioner. This order has attained finality because the Respondents did not challenge the same by either filing a review Petition before this Court or instituting a Special Leave Petition before the Hon'ble Supreme Court. Even the Explanation to Order XLVII, Rule1 of the CPC, provides that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. In this case, the Respondents had no authority to review the judgment made by this Court. Based upon the subsequent decision in the FCI case (supra), Respondents have sought to review the order of this Court or in any case, acted contrary to what was ordered by this Court in its order dated 8/6/2016 in Writ Petition No.1809/2015 instituted by the Petitioner. According to us, this will not be a proper exercise on the part of the Respondents.*

*42. Although there is no necessity to advert to other submissions made by Mr.Khati in more detail, we must note that the reliance placed by Mr.Nadkarni on the Circular dated 1/6/2020 by the Ministry of Shipping, is by no means sufficient to sustain the impugned action. In the first place, there is no clarity as to whether the MPT in its reference dated 30/12/2019, or its letter dated 22/3/2020, had apprised the Central Government of the order dated 8/6/2016 in Writ Petition No. 1809/2015 instituted by the Petitioner and the fact that this order had attained finality inter partes. Secondly, such a circular, at the highest, is like executive instructions, and the same cannot efface a binding order made by the competent Court of law”.*

17. In the present matter, the applicant has continued his service till the date of retirement. He was appointed in the year 1998

and retired in the year 2020. He has completed near about 22 years service. Till the retirement, nobody raised any objection.

18. The Hon'ble Bombay High Court in Writ Petition No.903/2020 has held that once the Judgment of Hon'ble High Court is confirmed, then it cannot be re-opened. The order in W.P.No. 4066/2005 filed by the applicant challenging the decision of scrutiny committee becomes final. In the identical situation, the Hon'ble Bombay High Court in Writ Petition No.14820/2021 has held in para-12 as under –

*“12. In our view, since the respondents could not have placed the petitioner in service on supernumerary post for a temporary period of 11 months or till the date of his retirement, whichever is earlier, vide order dated 25.02.2020, the respondents cannot withhold the pension and other retiral benefits of the petitioner on that ground. In our view, the order dated 25.02.2020 issued by respondent no. 2 deserves to be quashed and set aside. We, accordingly, pass the following order:-*

- a) Rule is made absolute in terms of prayer clause (C) and (D).*
- b) Respondent no.3 Collector is directed to submit the pension papers for release of pension and other related papers for release of retiral benefits of the petitioner to the Accountant General, within four weeks from today, without fail.*
- c) The Accountant General is directed to release the dues of the petitioner within two weeks thereafter.*
- d) Insofar as pension payable in future is concerned, the same also be released within the time prescribed under the Pension Rules, without fail.*
- e) Petition stands disposed of in the aforesaid terms. No order as to costs.*
- f) Parties to act upon authenticated copy of this judgment.”*

19. The Hon'ble Bombay High Court (Nagpur Bench) in the case of **Namdeo Vs. Secretary, PWD &Ors.**, in Writ Petition No.547/2021 has held that the employee who was appointed initially in the reserved category and his caste claim was invalidated, but he was not placed on supernumerary post and he retired on the said post and therefore he is entitled for all pensionary benefits. The Judgment is identical with the case of the applicant and therefore the material portions of the Judgment in para nos.3,4,5, 6 & 7 are reproduced below –

*“3. It is submitted by Shri. S.R.Narnavare, the learned counsel for the petitioner that when the petitioner superannuated from service on 31.05.2020, he was occupying the post of ‘Store Keeper’ from the open category. He was not placed on a supernumerary post in terms of the Government Resolution dated 21.12.2019. Despite that the petitioner was being paid provisional pension. The petitioner could not be deprived of his pensionary benefits in absence of he being placed on a supernumerary post. Reliance was placed on the decision of the Hon’ble Supreme Court in Civil Appeal No.3984/2010 (V.Sukumaran vs. State of Kerala and anr.) decided on 26.08.2020 in that regard.*

*4. Ms.N.P. Mehta, learned Assistant Government Pleader for the respondents opposed the aforesaid contentions by relying upon the additional affidavit placed on record. It was submitted that initial entry of the petitioner was on the post that was reserved for candidates from the Scheduled Tribe category. For failure to submit a validity certificate, the services of the petitioner had been reverted. What was required to be seen was the initial entry of the petitioner in service and not the post from which the petitioner retired. Attention was invited to the paragraph 3 of the additional affidavit wherein it was stated that the petitioner has not been placed on a supernumerary post till his retirement. The petitioner was not entitled for retirement benefits as he failed to submit the validity certificate.*

*5. We have heard the learned counsel for the parties and we have perused the documents on record. It is not in dispute that the petitioner entered in service on being appointed as Junior Clerk on a post reserved for the Scheduled Tribe category. It is further not in dispute that the petitioner’s tribe claim was invalidated on 08.03.2010. However till his superannuation the petitioner was not placed on a*

*supernumerary post. Consequently, he retired from the post of Storekeeper on which he was promoted on 24.05.2011 in the open category.*

6. *In these facts when the petitioner was not placed on a supernumerary post, there does not appear to be any justification for withholding the petitioner's retirement benefits. No departmental proceedings were held against the petitioner prior to his superannuation on the basis of which he could be deprived of his pensionary benefits. By the order dated 03.07.2020 the petitioner is being paid provisional pension subject to finalization of his pension case. The impugned communication does not seek to deprive the petitioner of such retirement benefits. Thus as the petitioner has superannuated without being placed on a supernumerary post, there is no reason to withhold his pensionary benefits. In that view of the matter, the petitioner is entitled for the relief of grant of retirement benefits.*

7. *Accordingly, the writ petition is disposed of by directing the respondents to finalize the petitioner's pension case within a period of three months from today and release such benefits to the petitioner in accordance with law."*

20. The applicant was appointed in the reserved category, but thereafter his caste claim was invalidated and therefore he approached to the Hon'ble Bombay High Court by filing Writ Petition No.4066/2005. As per the direction of Hon'ble Bombay High Court, the applicant was directed to file representation and the respondents / employer authority was directed to consider the representation on its own merit within a period of eight weeks from the date of receipt of such representation. Till then, the services of applicant shall not be disturbed. As per the direction of Hon'ble High Court, the service of the applicant was protected. The applicant has moved the representation and decision was taken by the respondent / authority to treat the services of applicant in open category. He was also promoted in the open category. When he was retired, he was in the service in

the open category. Therefore, in view of the above cited Judgments of the Hon'ble Bombay High Court, the applicant is entitled for all the pensionary benefits. In that view of the matter, the following order –

**ORDER**

- (i) The O.A. is allowed.
- (ii) The impugned communication dated 10/06/2021 issued by the respondent no.5 is hereby quashed and set aside.
- (iii) The respondents are directed to release the pension and pay all other consequential 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** :- 06/05/2022.

**(Justice M.G. Giratkar)**  
**Member (J).**

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 Member (J).

Judgment signed on : 06/05/2022.

and pronounced on

Uploaded on : 06/05/2022<sub>ok</sub>