

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 970 of 2020 (S.B.)

Shri Krishnarao Narayan Takatewale,
 Aged about 60 years, Occ. Retired,
 R/o Lal, Gujri, Behind Vitthal-Rukhmai Mandir, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra through its Secretary, Department of Women & Children Development, Mantralaya, Mumbai-32.
- 2) The Commissioner, Women & Children Development, Maharashtra State, Pune Office at 28, Ranichabagh, near Circuit House, Pune.
- 3) The Divisional Deputy Commissioner, Women & Children Development Officer, Nagpur Division, Nagpur.
- 4) The District Women and Children Development Office, Administrative Building No.2, Nagpur.
- 5) The Superintendent, Receiving Center for Beggars, Nagpur, Patankar Chowk, Nagpur.

Correction made by adding this Rep No. 6) Deputy Commissioner (Administration) Women & Child Development Commissionerate, M.S. Park
 as per the order of Hon'ble Tribunal
 13/10/22

Respondents.

S/Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.
 Shri A.M. Khadatkar, learned P.O. for respondents.

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

Dated :- 30/09/2022.

Prm 3
Retired
 17/10/22

JUDGMENT

Heard Shri G.G. Bade, learned counsel for applicant and Shri A.M. Khadatkar, learned P.O. for respondents.

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

The applicant was appointed as a Senior Care Taker as per order dated 15/09/1979, accordingly applicant joined on 17/09/1979. The applicant worked with the respondents department till his superannuation. The applicant came to be retired on 31/05/2020. The respondent no.2 vide order dated 26/10/2020 has withhold the pensionary benefits of the applicant. Therefore, he approached to this Tribunal for direction to the respondents to release his pensionary benefits.

3. In the reply, the respondents have submitted that the applicant had not filed / submitted the Caste Validity Certificate and therefore he is not entitled for pensionary benefits in view of the Judgment of Hon'ble Supreme Court in the case of **Chairman and Managing Director, FCI & Ors. Vs. Jagdish Balaram Bahira & Ors.** and also in the case of **Chandrabhan Parate Vs. State of Maharashtra & Ors.**

4. Heard Shri G.G. Bade, learned counsel for applicant. He has pointed out the Judgment of this Tribunal in O.A.No.570/2021.

The learned counsel for applicant has submitted that the applicant was never directed to produce the Caste Validity Certificate. The applicant was not appointed in the reserved category and therefore he was allowed to continue his service till the date of superannuation. The learned counsel for applicant submitted that in view of the Judgment of Hon'ble Bombay High Court cited in the O.A.No.570/2021, the applicant is entitled for pensionary benefits.

5. Heard learned P.O. for respondents Shri A.M. Khadatkar. As per his submission, the applicant had not submitted the Caste Validity Certificate and therefore he is not entitled for pensionary benefits.

6. There is no dispute that till the date of retirement, no any notice / no any departmental inquiry was initiated against the applicant. The respondents were at liberty to terminate the service of the applicant for not submitting the Caste Validity Certificate. The learned counsel for applicant has submitted that the caste of the applicant as 'Halba' is mentioned, but there is nothing in the appointment order to show that he was appointed in the reserved category. In the appointment order, all the appointed candidates were shown their respective caste that does not mean that they were appointed in the reserved category.

7. Even though it is assumed that the applicant was appointed in the reserved category, then also it was the duty of the respondents to direct the applicant to produce the Caste Validity Certificate. Nothing is placed on record to show any action on the part of respondents for direction to the applicant to produce the Caste Validity Certificate.

8. The applicant is retired on 31/05/2020. Till then, no any show cause notice was given to the applicant, nothing on record to show that any supernumerary post was created for the applicant for a period of 11 months or till his retirement. 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.”

9. 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 in para nos.3,4,5, 6 & 7 as under –

“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."

10. In both the cited decisions, the Hon'ble Bombay High Court has held that when the respondents / authority not created any supernumerary post for a period of 11 months or till the date of retirement of the employee, who could not produce the Caste Validity Certificate, their pensionary benefits cannot be withheld.

11. From the date of posting of applicant till his retirement, no any action was taken by the respondents to terminate his services on the ground that he had not submitted the Caste Validity Certificate. The applicant was continued to work without any break till the date of his retirement on 31/05/2020. After the retirement, the impugned order dated 26/10/2020 was issued by respondent no.2 directing to withhold the amount of pension of applicant in view of the Judgment of Hon'ble Supreme Court in the case of Chairman and Managing Director, FCI & Ors. Vs. Jagdish Balaram Bahira & Ors. The Judgment of Hon'ble Supreme Court in the case of Chairman and Managing Director, FCI & Ors. Vs. Jagdish Balaram Bahira & Ors., was considered by the Hon'ble Bombay High Court in the above cited decisions. This Tribunal has also considered the Judgment in

the case of **Chairman and Managing Director, FCI & Ors. Vs. Jagdish Balaram Bahira & Ors.,** and also the Judgment in the case of **Chandrabhan Parate Vs. State of Maharashtra & Ors.**

12. In view of the above cited Judgments of Hon'ble Bombay High Court, the applicant is entitled for pensionary benefits because he was continued in service till the date of retirement without any break. No supernumerary post was created by the respondents. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned orders dated 26/10/2020 and 10/11/2020 are hereby quashed and set aside.
- (iii) The respondents are directed to release 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 :- 30/09/2022.

*dnk.

(Justice M.G. Giratkar)
Vice Chairman.

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 : 30/09/2022.