

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.203 OF 2023**

**DISTRICT : Pune**  
**Sub.:- Denial of retirement**  
**benefits**

Shri Rajendra Narayanrao Rudrurkar )  
Age : 59 Yrs, Occu. Retired as Physical )  
Training Instructor from the office of the )  
District Sports Officer, Ratnagiri, having )  
office at Ratnagiri, R/o Flat No.1008, )  
B-Wing, Ravinanda Trinity, near Ivy Estate)  
Wagholi, Pune 412207. )...**Applicant**

**Versus**

1. The Director of Sports and Youth )  
Services, (M.S.), Pune, having office )  
at Shiv Chattrapti Complex, )  
Mhalunge, Balewadi, Pune 45. )
2. The District Sports Officer, having )  
office at District Sports Complex, )  
Plot No.O-S-15, Near Bafna Motors, )  
MIDC, Mirjole, Tal and )  
Dist. Ratnagiri. )...**Respondents**

**Shri Arvind V. Bandiwadekar, Advocate for Applicant.**

**Smt. Archana B. K., Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 08.05.2023**

### **JUDGMENT**

1. The Applicant who stands retired from the service (voluntary retirement) on 30.01.2018 raised grievance for not releasing gratuity, regular pension and GIS with interest and sought directions to the Respondents to pay the same invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was appointed on the post of Physical Training Instructor by order dated 03.05.1991 issued by the Respondent No.1- Director of Sports and Youth Services, Pune and accordingly joined the Government service. He tendered voluntary retirement notice on 01.11.2017 requesting retirement w.e.f. 30.01.2018. However, his notice of voluntary retirement was accepted quite belatedly by communication dated 23.12.2019 stating that his notice of voluntary retirement is accepted w.e.f. 30.01.2018. After retirement, he made representation on 22.01.2020 to release retirement dues but it was not responded. He again made representation but in vain. The Applicant, therefore, filed this O.A. for directions to the Respondents to release gratuity with interest, regular pension with interest and GIS with interest.

3. The Applicant contends that the Respondents have raised the irrelevant issue of non-furnishing Caste Validity Certificate and deprived him from retiral benefits. According to him, he was not appointed on reserved post (Scheduled Tribe) and, therefore, withholding of retiral benefits is totally illegal.

4. The Respondents resisted the O.A. *inter-alia* contending that the Applicant belongs to Scheduled Tribe and he was appointed on the post reserved for Scheduled Tribe. However, he failed to submit Caste Validity Certificate and, therefore, retirement benefits are not cleared.

5. Shri Arvind V. Bandiwadekar, learned Counsel for the Applicants has pointed out that in appointment order dated 03.05.1991, there is absolutely no mention about appointment on reserved post for Scheduled Tribe and in absence of any such mention in the appointment order, the contention raised by the Respondents are totally incorrect. In alternative submission, he has further pointed out that the Respondents have not place on record any material to show that Caste Scrutiny Committee has invalidated the caste certificate of the Applicant nor there is any material to show that the Applicant was appointed on supernumerary post in terms of G.R. dated 21.12.2019 issued by the Government. On this line of submission, he submits that since the Applicant is now retired from service, in absence of any such rule to the contrary, his retirement benefits cannot be withheld. In this behalf, he placed reliance on the decision of Hon'ble High Court Bench at Nagpur in ***Writ Petition No.547 of 2021 [Namdeo D. Nikhare Vs. Secretary, P.W.D, Mantralaya & Ors.] decided on 23.03.2022***

6. Per contra, learned Presenting Officer submits that even if there is no specific mention in appointment order about appointment on reserved post, in letter dated 22.02.1991 issued by Selection Board, there is clear mention that the Applicant belongs to Scheduled Tribe. She, therefore, submits that in absence of Caste Validity Certificate, the Applicant is not entitled to retiral benefits.

7. In view of pleading and submissions, the issue posed for consideration is whether the Respondents can withhold gratuity, regular pension and GIS. In my considered opinion, the answer is in emphatic negative.

8. There is no denying that the Applicant tendered voluntary retirement notice which was accepted belatedly and Applicant stands retired from the post of Physical Training Instructor w.e.f. 30.01.2018.

In appointment order dated 03.05.1991, there is absolutely no whisper or mention that the appointment is made on reserved post for Scheduled Tribe. However, at the same time, the perusal of letter dated 22.02.1991 issued by Selection Board to Respondent No.1 reveals that seven posts were reserved for Scheduled Tribe. But at the same time, in letter it is stated that only four candidates from Scheduled Tribe category were available and no recommendation is made for remaining three reserved posts. It further shows that the Selection Committee has recommended the names of seven candidates including Applicant and their caste is shown as Scheduled Tribe. But it is not made clear that out of these seven posts which four posts were filled in from Scheduled Tribe reserved category. It is precisely for this reason, there is absence of appointment from Scheduled Tribe reserved category in appointment order dated 03.05.1991. It is only after lapse of 20 years, the Respondent No.2 - District Sports Officer, Ratnagiri by letter dated 28.11.2013 raised the issue of non-submission of Caste Validity Certificate. The Applicant in response to it, tendered Affidavit stating that he is appointed from open category. However, thereafter no further steps were taken by the department and on the contrary, the Applicant's notice for voluntary retirement was accepted. Perhaps the Respondents themselves are not sure that the Applicant is appointed from reserved post.

9. Even assuming for a moment that Applicant was appointed from reserved category, in that event also, the fact remains that this is not a case where his Caste Validity Certificate has been invalidated by Caste Scrutiny Committee. It appears that even no such steps were taken to submit the claim for validation to Caste Scrutiny Committee. That apart, even assuming for a moment that Applicant's caste certificate was invalidated in that event also, the fact remains that he was not appointed on supernumerary post as per the decision taken by the Government by G.R. dated 21.12.2019 by which the directions were issued to appoint those Government servants whose caste claim is invalidated so as to protect their services.

10. Notably, later the Government again issued G.R. dated 14.12.2022 (page 42 of PB) thereby releasing retiral benefits to all those Government servants whose names were taken on supernumerary post in terms of earlier G.R. dated 21.12.2019. This being so, now the Applicant's claim for retiral benefits is totally infeasible.

11. The aforesaid view is fortified in view of the decision of the Hon'ble High Court in **Namdeo Nihare's** case, the Petitioner Mr. Namdeo Nihare was appointed on the post reserved for ST category, but later he was promoted on the post of Store-keeper from Open Category. He continued the said post and retired on 31.05.2020. After his retirement, Government informed him that under the G.R. dated 21.12.2019, he ought to have been placed on supernumerary post on account of his failure to submit Caste Validity Certificate, but in the meantime, he retired on 31.05.2020. The Government informed him that on account of failure to submit Caste Validity Certificate, he is not entitled to retiral benefits. However, Hon'ble High Court held that since there was no appointment placing him on supernumerary post till his superannuation, there could be no justification for withholding retiral benefits. In Para Nos.5 and 6, it is held as under :-

**“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.”

12. In present case also as stated above, the Applicant was not placed on supernumerary post and stands retired as regular employee. Suffice to say, the Respondents cannot withhold remaining retirement benefits. Needless to mention, pension is right being governed by ‘Pension Rules of 1982’ and it does not depend upon the discretion of Government. It is in the nature of property guaranteed under Article 300-A of Constitution of India which cannot be taken away without due process of law. Since the Respondents have already accepted the notice of voluntary retirement, the Applicant is entitled to gratuity as per his entitlement in rules, regular pension and GIS. The Applicant is deprived of all these benefits for long time. Only provisional pension was paid for initial six months only and later it was stopped. Pension is not compensation for service rendered by the employee, but also social measure. Suffice to say, Applicant’s claim for retiral benefits is indefeasible.

13. The totality of the aforesaid discussion leads me to conclude that the Respondents cannot withhold gratuity, regular pension and GIS payable to the Applicant and the Original Application deserves to be allowed. Hence, the following order :-

#### **ORDER**

(A) The Original Application is allowed.

(B) The Respondents are directed to release gratuity, regular pension and GIS within six weeks from today failing to which the said amount shall carry interest at the rate applicable to GPF from the date of default till the date of actual payment.

(C) Insofar as the claim of interest for earlier delayed period is concerned, the Applicant is at liberty to redress his grievance independently.

(D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Place : Mumbai

Date : 08.05.2023

Dictation taken by : Vaishali S. Mane

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