

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1002 OF 2016

DISTRICT : SATARA

Mrs. Shakuntala S. Chavan.)
@ Godavari Sarjerao More,)
Aged : Adult, Residing at Post : Venegaon,)
Tal. & District Satara – 415 518.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Education Department,)
Mantralaya, Mumbai - 400 032.)
2. Deputy Director of Education,)
Kolhapur Region, Kolhapur.)...**Respondents**

Mr. R.K. Mendadkar, Advocate for Applicant.

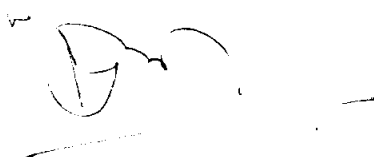
Mr. A.J. Chougule, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 19.04.2017

JUDGMENT


1. The Applicant, a retired Government employee calls into question the move of the Respondents to deny to



her, all her post retiral benefits for the reason that she failed to produce Caste Validity Certificate though she was allowed to retired without any hitch.

2. The facts in so far as they are relevant hereto are that, the Applicant retired on superannuation on 31.5.2016 and she was not facing any Departmental Enquiry (DE), etc. at that time. No post retiral benefits and not even her Provident Fund, Gratuity and Leave Encashment was given for the reason already mentioned above. In the Affidavit-in-reply itself in Para 10, the following averments are made which need to be fully reproduced.

"10. With reference to para no.VII (4), I say and submit that in the year, 1982 when the Applicant came to be appointed there were no orders of the Government about produce Caste Validity Certificate and hence no such condition was included in the Appointment Order. But subsequently the Government though it fit to ascertain as to whether the Backward Class employees who came to be appointed as per reservation meant for concerned Backward Class Category actually belongs to that caste and therefore the Government in Tribal Development Department have issued order Vide



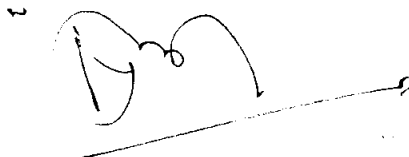
A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line and a small flourish.

G.R. dated 13th April, 2000 (No.STC-14200/C.No.43/Ka/10) - (copy enclosed and marked as Exhibit R-3) Scheduled Tribe Caste Verification Committees for Six Revenue Regions in the State. Subsequently vide G.R.No.STC-1099/C.No.14/K-10 dated 16th August 2000 (copy enclosed and marked as Exhibit R-4) it is made compulsory to produce Caste Validity Certificate from concerned Caste Scrutiny/ Verification Committee."

3. The fact at issue, therefore, is as to whether the Respondents are justified in denying the Applicant the post retiral benefits for the reason above mentioned. This aspect of the matter is now fully governed by the Judgments which are binding.

4. I have perused the record and proceedings and heard Mr. R.K. Mendadkar, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.

5. The 1st Respondent is the State of Maharashtra in Education Department while the 2nd Respondent is the Deputy Director of Education, Kolhapur Region.



6. The Applicant is a physically disabled employee. She came to be promoted from time to time, which fact is not denied. She was never put to notice that the failure on her part to present the Caste Validity Certificate would be her undoing. As late as in 2013, her matter was forwarded to the concerned Caste Scrutiny Committee and almost on the eve of her retirement, she was informed that the said move of the Applicant failed and she could not establish the fact that Thakar Community which she belonged to, was a Scheduled Tribe. It is, however, equally clear that there is not even a ritualistic suggestion against her integrity in the matter of seeking appointment way back in 1982. There is absolutely no material to suggest that any sharp practice was employed in that behalf.

7. In this background, it needs to be mentioned that the present controversy admits to its resolution on the basis of two Judgments of the Hon'ble Bombay High Court. One is a Full Bench Judgment of the Hon'ble the Chief Justice at Nagpur in the matter of **Arun V. Sonone Vs. The State of Maharashtra : 2015 (1) MLJ 457** and the other one Division Bench Judgment of the Hon'ble Bombay High Court of Nagpur Bench post **Arun** in **Alka Mahure Vs. The Joint Director and Vice-Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee : 2015 (4)**



MLJ 251. These two binding pronouncements of the Hon'ble High Court were followed by me in **OA 920/2014 (Shri Shyam R. Pawar Vs. The State of Maharashtra and 2 others, dated 22.9.2015)**. There, the Applicant was of Thakur Caste. He had already taken voluntary retirement before the Scrutiny Committee ruled against him on 30.1.2015. Like the present Applicant, that Applicant was also not given his post retiral benefits except for a few. Quite pertinently, in doing so, reliance was placed there also as the Respondents would do in this matter. On the Government Circular issued by the GAD on 18th May, 2013 which according to the Respondents empowered them to withhold the post retiral benefits. Clause 2(7) thereof was invoked with particular emphasis. I discussed these various aspects in **Shyam Pawar's** case. It may also be noted that in that particular matter, the order of the Scrutiny Committee came to be stayed by the Hon'ble High Court in a Writ Petition. The only reason as already mentioned above for blocking the post retiral benefits in that matter was Para 2(7) of the Circular of 18.5.2013. In Para 6 of the said Judgment, the said Clause was fully reproduced which I can do here as well.

"6. Now, it is very clear that even according to the Respondents, the only reason why they have



withheld the pensionary benefits of the Applicant is the provisions of Para 2(7) of a G.R. dated 18.5.2013 which according to them provides that those Government servants belonging to the Scheduled Tribe that joined the service before 15.6.1995 without getting the Caste Validity Certificate and retired after that date or those who took voluntary retirement after that date, would be obliged to produce the Caste Validity Certificate within six months of that G.R. on pains of suffering the discontinuation of pension after the expiry of that period. This is the English translation, but it will be better to reproduce the exact Marathi version which can be taken from the order dated 24th June, 2015 made by this Tribunal.

“जे कर्मचारी दिनांक १५.६.१९९५ पूर्वी अनुसूचित जमातीच्या प्रमाणपत्राच्या आधारे सेवेत दाखल झाले व जात प्रमाणपत्राची वैधता तपासून न घेता, दि.१५.६.१९९५ नंतर सेवानिवृत्त झाले आहेत अथवा ज्यांनी दि.१५.६.१९९५ नंतर स्वेच्छा सेवा निवृत्ती घेतली आहे. अशा कर्मचाऱ्यांनी आपल्या अनुसूचित जमातीच्या जात प्रमाणपत्राची वैधता तपासून घेवून, या आदेशाच्या दिनांकापासून सहा महिन्यात, जात वैधता प्रमाणपत्र सादर करणे आवश्यक आहे. उपरोक्त परि.क्र.२ (६) मध्ये नमुद केल्याप्रमाणे दि.१५ जून १९९५ नंतर सेवानिवृत्त / स्वेच्छानिवृत्त झालेल्या कर्मचाऱ्यांनी सुध्दा सदर विकल्प स्वीकारता येईल. जे



सेवानिवृत्त कर्मचारी वरील बाबींची पूर्तता या आदेशाच्या दिनांकापासून ६ महिन्यांच्या कालावधीत करणार नाहीत, त्यांचे सेवानिवृत्ती-वेतन तात्काळ थांबविण्यात येईल, अशा सूचना संबंधित कर्मचाऱ्यास तो ज्या कार्यालयातून सेवानिवृत्त झाला आहे, त्या कार्यालयाच्या नियुक्ती प्राधिकाऱ्याने तात्काळ द्याव्यात.”

8. Having said all that much, I think, without saying anything of my own in this OA, I had better reproduced Paras 7, 8 and 9 from that particular Judgment itself.

“7. I shall be presently pointing out that in good measure, the decision hereof would rest on two binding decisions of the Hon’ble High Court, one rendered by a Full Bench of the Hon’ble Chief Justice and another one by a Division Bench both at Nagpur. However, before I deal therewith, it needs to be mentioned that in so far as the entire gamut of the pension including the withholding thereof is concerned, it is regulated by the Maharashtra Civil Services (Pension) Rules, 1979 (‘Pension Rules’ hereinafter). In this behalf, Mr. Mendadkar, the learned Advocate for the Applicant told me that except for Rule 130 thereof, there is no other Rule that deals with withholding of the pensionary benefits. I have



read the said Rule. That deals with the issue of provisional pension and there is a reference to Rule 27 of the Pension Rules therein which reserves the right of the Government to withhold or withdraw the pension. Rule 27 inter-alia provides to the extent relevant herefor that in the event, departmental or judicial proceedings were pending against the retired or retiring employees, then the course of action therein provided would have to be followed. It is not necessary for me to examine in detail the scope of Rule 27 or even Rule 130 of the Pension Rules. But Mr. Mendadkar, in my view, is right in contending that except for the contingencies envisaged by those Rules, there is no other Rule that deals with the issue of withholding of pension. It is also clear that the Pension Rules are framed under the proviso to the Article 309 of the Constitution of India. While the G.R. that has apparently proved to be Applicant's undoing is on the face of it an instrument which can be called executive instructions. Mr. A.S. Wable, the learned Presenting Officer on his part invited reference to Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified

A handwritten signature in black ink, consisting of a stylized 'G' followed by a flourish and a horizontal line extending to the right.

Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 ('Caste Verification Act' hereinafter).

8. That particular Section *inter-alia* provides that in case a person not being a person belonging to any of those categories secured an appointment in the Government and whose claim was found false, then the course of action therein provided had to be adopted. At this stage, I may only mention that the case law, the discussion whereof is in store, is a complete answer to this submission of Mr. Wable, the learned P.O. In so far as the efficacy of the Pension Rules vis-à-vis the G.R. above referred to, Mr. Mendadkar, the learned Advocate relied upon a judgment of the Hon'ble Supreme Court in the matter of **State of Haryana Vs. Mahender Singh and others (2007) 13 SCC 606 (B)**. Now, although the said judgment arose in the factual context of the provisions of Jail Manual in the backdrop of the categories of life convicts for being released early, the principles laid down by the Hon'ble Supreme



Court with regard to the efficacy of the Rules and instruments and summarized in Para 39 thereof would be applicable hereto as well. The Hon'ble Supreme Court was pleased to observe in Para 39 as follows :-

“39. It is now well settled that any guidelines which do not have any statutory flavor are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative Act and the statutory rules. (See Maharao Sahib Shri Bhim Singhji v. Union of India, J.R. Raghupathy v. State of A.P. and Narendra Kumar Maheshwari v. Union of India.)”

9. In that view of the matter, therefore, it is very clear that unless the Pension Rules were amended, the kind of action as impugned herein based on the so called authority of a G.R. would not be a competent legal action. It is not necessary for me to delve into the issue of supplement and supplant, etc. because the whole thing is so clear as it is. For the same reason, it matters not that the Applicant has not claimed



that the said G.R. be annulled because here, I am not on any academic exercise and if I find that placing the said G.R. in juxta-position with the Pension Rules and being aware of the efficacy of the Pension Rules and the subordinate status of the said G.R, it is impermissible to give primacy to the G.R. over the Rules framed under the proviso to Article 309 of the Constitution of India. It is so simple as that.”

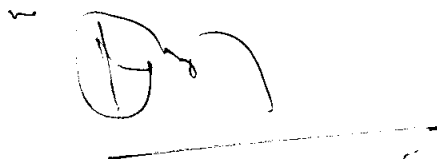
9. I, then referred to the two Judgments of the Hon’ble Bombay High Court above referred to and made these observations in Paras 11 & 12:

“**11.** This year, the Hon’ble Bombay High Court in its Nagpur Bench has rendered at least two very significant judgments for guidance in such matters. The first one was rendered by a Full Bench of the Hon’ble Chief Justice in **Arun V. Sonawane Vs. The State of Maharashtra and others, 2015 (1) Mah. Law Journal (FB) 457.** This judgment was followed by a Division Bench in **Alka Vs. Joint Director and Vice-Chairman, Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur, 2015 (4) Mah. Law**



Journal 251 (DB). Mr. Mendadkar has mainly relied on **Alka** (supra) because it has followed the Full Bench judgment in **Arun Sonawane** (supra). I must however mention that I have perused both the judgments. It will be observed that a number of castes came to be considered by Their Lordships in the two judgments and in **Alka's** judgment, Thakur Caste which we are herein concerned with was also involved because by that judgment, Their Lordships were pleased to dispose of a batch of Writ Petitions, in which the Petitioners belonged to different castes. The contingency of the failure of the Certificate in such matters, especially on the basis of an important date of 15.6.1995 came to be discussed and a few land-mark judgments of the Hon'ble Supreme Court were referred to. The observations of Their Lordships in **Alka's** case (supra) in Para 27 are of momentous significance and I must reproduce them herein below.

“27. After perusal of Full Bench judgment mentioned supra, we find that merely because caste claim is invalidated, it cannot be said that the person has obtained caste



certificate by playing fraud or by practicing falsehood. Dhangad or Dhanwar are both Scheduled Scheduled Tribes while Dhangar is a Nomadic Tribe recognized as such in State of Maharashtra. Thus the said scheduled tribes or nomadic tribe also enjoy social reservation. Though the upper caste Thakur exists, when old documents of any Thakur whether backward or forward, mention caste as Thakur, the affinity test is being used as the only solution. Relevance of the affinity test in such matters and its use to invalidate to caste claim has also been debated in several matters before this Court. Protection envisaged by the Full Bench is to the candidates like petitioners who applied for and got caste certificate as per law without resorting to any wrong or unfair means. Though their caste certificates need to be cancelled, they cannot be punished in the facts and circumstances further by denying protection in employment in terms of Full Bench judgment mentioned supra. Those whose caste claims either as Thakur or Dhangad or Dhanwar scheduled



tribe are invalidated, may be extended such concession of protection in employment, if it is seen that they have not participated in any falsehood or fraud, while obtaining that caste certificate."

Now, it is therefore very clear that every failed Certificate cannot be considered to be the product of fraud, etc. It is neither open to me nor necessary to closely read the order of the Scrutiny Committee at Nandurbar which proved to be Applicant's undoing. But one aspect of the matter becomes very clear that for the reasons therein assigned, the Committee held that the Certificate of the Applicant would fail, but there is nothing therein to even remotely suggest that the conduct of the Applicant could be assailed as fraudulent or dishonest, etc.

12. It is, therefore, very clear that going by the mandate of Their Lordships in the two judgments herein above cited, the Applicant could not be deprived of his pensionary benefits. Incidentally, an earlier Division Bench judgment of the Hon'ble Bombay High Court in **Surender Vs. The**



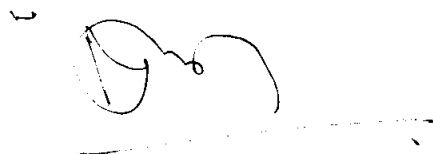
6

State of Maharashtra, 2006 (1) Mah. Law Journal 308 also laid down the same legal principle and in so far as Section 10 of the Verification Act relied upon by Mr. Wable, the learned P.O. is concerned, the observation in Para 13 of **Surender's** case (supra) wherein an earlier Division Bench judgment was referred to, makes it clear that the benefit of the protection cannot be taken away in the circumstances like the present one, even if the Validity Certificate has failed. The observations of Their Lordships with regard to the G.R. of 15th June, 1995, in my opinion would also apply to all G.Rs including the one herein relevant and they cannot be used as sticks to beat the Applicant with."

10. Mr. Mendadkar, the learned Advocate for the Applicant in that connection relied upon the Judgment of the Hon'ble Vice-Chairman of this Tribunal in **OA 691/2014 (Laxman P. Mhaske Vs. The State of Maharashtra and one another, dated 21.1.2016)**. It is not really necessary to refer to the factual details thereof, but on principles, I think, that order fortifies the decision that I am inclined to reach.



11. In my opinion, when the two Judgments of the Hon'ble Bombay High Court, one by the Full Bench and another by the Division Bench which were followed in **Shyam Pawar** (supra) were there in the field, the Respondents were ill-advised to continue to harp on the G.R. (Circular) of 2013. In so far as the efficacy of the Government instructions are concerned, useful reference could be made to a Judgment of the Hon'ble Supreme Court in **Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society Jaipur & Ors. : 2013 AIR SCW 1174 (E)**. In Para 19, Their Lordships were pleased to hold that executive instructions which had no statutory force cannot override the law. It was clearly held that, any instrument like Notice, Circular, Guidelines, etc. which ran contrary to the statutory laws could not be enforced. For that proposition, a few earlier Judgments of the Hon'ble Supreme Court were noted. I have already dealt with this aspect of the matter in **Shyam Pawar's** case also, as would become clear from the profuse quotations therefrom. I must only repeat that, in the presence of binding precedents of the Hon'ble Bombay High Court, the Respondents should have known that they could not have relied upon 2013 Circular of the GAD to negate to the Applicant the post retiral benefits. The Respondents have



in Para 15(v) tried in their own way to place their side of the matter in relation to Shyam Pawar's case and if I have correctly understood them, what they want to suggest is that it was applicable only to that particular Applicant. If the Respondents or their advisors had taken trouble to read that Judgment, they would have immediately noticed that it was not a personal opinion of this Tribunal but was in fact, completely based on two Judgments of the Hon'ble Bombay High Court. I am constrained to observe that the recitals of the Affidavit-in-reply betray a complete obdurate and insufferable attitude of the Respondents. They must realize and I am sorry to have to mention this fact to the Respondents and to their advisors that the binding precedents have got to be made applicable because of the principles that emanate therefrom and they cannot allow a Government instrument of weaker efficacy to stand against the binding Judgment of the Hon'ble Constitutional Courts.

12. The upshot, therefore, is that this particular OA also will have to be allowed in the same line as was **Shyam Pawar** (supra) and **Mhaske** (supra) and **Shyam Pawar** (supra) was based on the two binding Judgments of the Hon'ble Bombay High Court.



13. The Respondents are hereby directed to release to the Applicant, the pensionary and other benefits that they have withheld within a period of four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)

Member-J

19.04.2017

19.4.17

Mumbai

Date : 19.04.2017

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2017\4 April, 2017\O.A. 1002.16.w.4.2017.Pensionary Benefits.doc