

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.173 OF 2016

DISTRICT : MUMBAI

Smt. Sneha Balkrishna Ambre,)
@ Kum. Snehlata Mahadev Ratul,)
Aged 58 years, residing at Triveni CHS Ltd.,)
"Jamuna", A Wing, 4th floor, Building No.19,)
Rajaji Path, Dombivli (East), District Thane.) **..Applicant.**

Versus

The State of Maharashtra,)
Through its Secretary, Water Supply and Sanitation)
Department, Mantralaya, Mumbai 400032.) **..Respondent.**

Shri R.K. Mendadkar, the Advocate for the Applicant.

Smt. K.S. Gaikwad, the Presenting Officer for the Respondent.

CORAM : Shri Justice A.H. Joshi, Chairman

RESERVED ON : 29th August, 2016

PRONOUNCED ON : 20th September, 2016

J U D G M E N T

1. Heard Shri R.K. Mendadkar, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondent.
2. Perused the record annexed to the O.A., the affidavits of the Respondent and other documents tendered at Bar as additional compilation.

3. The Applicant claims that she had obtained a certificate showing that she belongs to "Thakar" a Nomadic Tribe.
4. The Applicant got an entry in Government service on 01.06.1976 in clerical cadre and was promoted in Nomadic Tribe (N.T.) category to the post of Assistant.
5. According to the Applicant her certificate indicating that she belongs to Thakar category remained unverified / unscrutinized because of the withdrawal of the status of N.T. to the "Thakar" caste/category.
6. The Applicant avers that :-
 - (a) She then secured fresh certificate showing that she belongs to Thakar Scheduled Tribe (S.T.).
 - (b) Said certificate was forwarded for its scrutiny before appropriate committee however Applicant did not pursue it.
 - (c) On 31.12.2015 the Applicant retired on superannuation after serving the tenure required for qualifying for pension.
 - (d) The pension of the Applicant has not been released.
 - (e) Therefore the Applicant has filed present O.A. for direction to the State to pay to her all benefits accruable on superannuation.
 - (f) During pendency of this O.A., the applicant had filed Writ Petition being Writ Petition No.5446 of 2016 and sought a direction that her certificate claiming that she belongs to "Thakar" Schedule Tribe be scrutinized.
 - (g) The Hon'ble High Court has passed order in said Writ Petition on 04.05.2016, and has directed the scrutiny committee to undertake and complete the exercise of scrutiny of applicant's tribe claim, within six months.
 - (h) The scrutiny of applicant's tribe claim is still pending.
 - (i) Money payable to the Applicant towards Provident Fund and G.I.S. is paid to her.

7. In this O.A. the Applicant has claimed that she is entitled for pensionary benefits in view of satisfactory completion of employment and respectable superannuation.

8. The applicant has put forward various grounds which are drawn from the body of O.A. and quoted adverbation as below :-

“(iii) That the Respondent herein failed to see and appreciate that retirement benefits of the applicant cannot be withheld in such arbitrary manner save and except with authority of law. However, there is no provision either in the Maharashtra Civil Services (Pension) Rules, 1982, for withholding retirement benefits without assigning any reasons.

*(v) That the respondent State failed to see that the case is fully covered by the judgment of this Hon’ble Court in the case of Laxman P. Maske vs. State of Maharashtra and ors. O.A.no.691 of 2014 decided on 22.1.2016. hereto annexed and marked as **Exhibit “K”** is the true and correct copy of the said judgment.*

*(vi) That the respondent State also failed to see and appreciate that the case of the applicant is also covered by the judgment delivered by this Hon’ble Court in O.A.no.920 of 2014. True and correct copy of the said judgment is hereto annexed and marked as **Exhibit “L”**. ”*

(Quoted from page 9, ground Nos.(iii), (v) and (vi) of the O.A..)

9. During oral submissions learned Advocate Shri Mendadkar had laid special thrust on the Full Bench judgment of Hon’ble High Court, Bombay in case of **ARUN VISHWANATH SONONE VS. STATE OF MAHARASHTRA, 2015(1) ALL MR-Feb. DATED 22.12.2014.** Based on this judgment, it is urged that Hon’ble Full Bench of Bombay High Court, has ruled that the Government servants subject matter of Government decision dated 30.06.2004 are entitled to get protection / continuation in employment. According to learned Advocate for Applicant, essential corollary of protection is that the plea now raised before this Tribunal by the State is wholly untenable and what the Applicant is entitled is not only continuation in employment by way of protection, but also all pensionary benefits.

10. This O.A. is opposed by filing affidavits in so far as the pension and other retirement dues are concerned.

11. In all these affidavits the ground No.(iii) which is quoted adverbatis in foregoing paragraph is contested on the ground and the fact that because the Applicant has failed to produce the certificate of validation of Applicant's claim that she belongs to Schedule Tribe, she is not entitled for any relief whatsoever.

12. In so far as ground nos.(v) and (vi) quoted in foregoing paragraph No.8 are concerned, the Respondent State has opposed those with averments which read as follows :-

"23. With reference to Para VII(14-v), I say and submit that the original application number 691 of 2014 stated in the present application by the applicant is not relevant with the present petition as the OA No.691 of 2014 is related of the termination of the services.

24. With reference to Para VII(14-vi), I say and submit that the judgment regarding the OA No.691/2014 is mainly related with termination of the services of the applicant. The same cannot be applied as the present applicant has completed government service."

(Quoted from page 66, point nos.23 and 24 of the O.A..)

13. Perusal of judgment of this Tribunal in O.A.No.691 of 2014 reveals that question involved in present O.A. was not directly and substantially involved in said O.A.. Issue of benefits accruing upon retirement arose in said case at the fag end of hearing of said O.A.No.691/2014. It also appears that said question was not contested nor was it adjudicated with eloquent findings. The point of retirement dues came to be dealt with in said O.A. indirectly. Therefore, it is not necessary to exert and deal with the judgment in O.A.No.691 of 2014 with further details, as a precedent on a previous judgment or a view.

14. Perusal of the decision/ judgment in O.A.No.920 of 2014 reveals that it is directly on the point involved in present case.

15. Though the respondents have contested present O.A., had done so without specifically commenting or answering the ground (vi), as is evident from the reply which is quoted adverbim in foregoing paragraph No.12. Therefore, after hearing on 08.06.2016, this Tribunal passed order as follows :-

"DATE : 08.06.2016.

ORDER

1. *Heard Shri R.K. Mendadkar, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.*
2. *In this case Applicant is claiming pensionary benefits on the basis of following points :-*
 - (a) *Applicant has rendered services in the Government till the date of her superannuation.*
 - (b) *Applicant's claim for scrutiny of Scheduled Tribe Certificate is pending before the competent scrutiny committee.*
 - (c) *In the judgment and order passed by this Tribunal in O.A.No.920 of 2014 this Tribunal has taken the view that the Maharashtra Civil Services (Pension) Rules, 1979 have overriding effect over Government's decision which provides for deferring the grant of pension to the retired Government servants whose Caste / Tribe certificate is unverified or is pending for scrutiny.*
3. *State Government should clarify its stand as to whether it has accedes to the judgment and order passed by this Tribunal in O.A.No.920 of 2014, or has decided to prefer to challenge it before the Hon'ble High Court.*
4. *Appropriate statement answering this query be made in foregoing paragraph by made by G.A.D., on the next date, by filing affidavit."*

(Quoted from order dated 08.06.2016.)

16. In response to this Tribunal's query, posed in the order dated 08.06.2016 (supra), the State has filed additional affidavits, which are at page no.70 onwards of the paper book.

17. Substance of the ground of objection emerging from Government's affidavit are incorporated in the recent affidavit by Deputy Secretary, G.A.D. filed on 11.08.2016. Relevant text thereof is seen at page nos.74 to 76 and the same is quoted as follows :-

- “2. *I further say and submit that the Tribal Development Department has released all the pensionary benefits to the applicant in OA No.920 of 2014 in pursuance of order dated 22.9.2015 of the Hon'ble Tribunal. However, while doing so, that Department did not bother to go through the provisions of the aforesaid Act, nor took any remarks of this Department. This is how the pensionary benefits came to be released to the applicant in OA No.920 of 2014 which is a clear breach of provisions of the aforesaid Act.*
3. *I say and submit in respect to the order dated 21.7.2016 passed by the Hon'ble Tribunal in the present OA that the applicant has been denied pensionary benefits as well as other incidental benefits arising out of her retirement after reaching the age of superannuation on 31.12.2015, on the ground of non-submission of caste validity certificate which is mandatory as per Section 6 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and Verification of) Caste Certificate Act, 2000 (hereinafter referred to as said Act).*
4. *I say and submit to reiterate that as per the provisions of the aforesaid Act, it is mandatory for the person who is appointed before 15.6.1995 on a reserved post and retired after 30.6.2013 to submit caste validity certificate failing which he/she is not entitled to any retirement benefits post his/her retirement.”*

(Quoted from affidavit of Respondent from page 75 of O.A..)

18. In answer to the objection raised by the State, Shri R.K. Mendadkar, the learned Advocate for the Applicant placed reliance on G.R. dated 30.06.2004 and Government Circular dated 21.10.2015 by tendering copies thereof on record, which is part of additional compilation and those are seen at page No.115 and the page No.112 respectively.

19. It is necessary to refer to the text of the Government decision dated 30.06.2004. It reads as follows :-

“शासन निणय :-

अनुसूचित जमातीच्या राखीव जागेवर दिनांक १५ जून १९९५ पूर्वा, अनुसूचित जमातीच्या प्रमाणपत्राच्या आधारे नियुक्त झालेल्या, पदोन्नती मिळविलेल्या, शासकीय/निमशासकीय सेवेतील अधिकारी/ कर्मचारी यांना संरक्षण देण्याच्या अनुषंगाने, सामान्य प्रशासन विभाग, शासन निणय क्रमांक बीसीसी १०९४ /प्र.क्र. ६८/९८/१६-ब, दिनांक २७ मे २००२ अधिक्रमित करून शासन खालील प्रमाणे सुधारीत आदेश देत आहे.

- अ. ज्या बिगर आदिवासींनी अनुसूचित जमातीच्या राखीव जागांवर दिनांक १५ जून १९९५ च्या पूर्वा शासकीय किंवा निमशासकीय सेवेत नोकरी किंवा पदोन्नती मिळविलेल्या आहेत, त्यांना सेवेतून काढण्यात येऊ नये. किंवा पदावनत करू नये. त्यांना ते ज्या घटकाचे आहेत, त्या घटकात दाखविण्यात यावे यापुढे त्यांना त्या-त्या घटकाचे आरक्षणाचे फायदे देय राहतील. अशा प्रकारे रिक्त झालेली पदे आदिवासी जमातीमधून भरण्यात यावीत
- ब. वरील संरक्षण हे दिनांक १५ जून १९९५ च्यापूर्वा लागलेल्या अधिकारी/ कमचारी यांनाच देय राहिल.
- क. वरीलप्रमाणे संरक्षित केलेल्या बिगर आदिवासी अधिकारी / कमचारी यांची सेवाज्येष्ठता दिनांक १५ जून १९९५ अशी विचारात घेण्यात यावी
२. हे आदेश शासकीय / निमशासकीय सेवेतील अधिकारी / कमचारी तसेच मंडळे / महामंडळे, नगरपालिका / महानगरपालिका, शासकीय उपक्रम, अनुदानित संस्था, विद्यापिठे, सहकारी संस्था शैक्षणिक अनुदानित संस्था इत्यादींनाही लागू राहिल.
३. वरील आदेश मंत्रालयीन विभागांनी त्यांच्या नियंत्रणाखालील विभाग प्रमुख/कायालय प्रमुख यांच्या तात्काळ निदर्शनास आणण्यात यावेत.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

स्वाक्षरी,
(यु.पी.एस. मदान)
सचिव, महाराष्ट्र शासन”

(Quoted text is compiled from page 115 which is part of compilation and is part of paper book.)

20. It is evident and conclusive from the G.R. dated 30.06.2004 that now Government has declared that the Government of Maharashtra is avowed to continue services of the Government servants who do not possess valid certificate relating to their claim that they belong to S.T. as detailed and qualified in said Government Resolution, i.e. those who had entered Government service prior to 15.06.1995.

21. The Circular dated 21.10.2015 (copy whereof is at page 112 of paper book) vouches that the Government is half way ahead for giving protection to those Government servants who have entered Government service after 15.06.1995 and whose certificate of S.T. has been invalidated, as well, be considered for granting protection of employment, and final decision in this regards is in the process of being taken, and thereafter services of such Government servant's should not be discontinued.

22. The State Government has pointed out and even it is admitted by the applicant, that an order is passed by Hon'ble High Court of Bombay, Bench at Nagpur thereby partly staying the Government Circular dated 21.10.2015. Learned Advocate has tendered the copy of the said interim order in Writ Petition No.6247 of 2015. Text of the order reads as follows :-

"DATED : APRIL 25, 2016.

Heard.

Rule.

Hearing expedited.

Learned Government Pleader waives notice for respondent nos.1 and 2. Advocate Shri Parsodkar waives notice for respondent no.4.

Full Bench of this Court in 2015 (1) Mh.L.J.457 (Arun Vishwanath Sonane .vs.. State of Mah.) has squarely spelt out the circumstances in which the protection can be extended to employees.

Hence, subject to it, we stay G.R. dated 21st of October, 2015."

(Quoted from copy of Hon'ble High Court dated 25.04.2016, copy whereof in at page 114 of paper book.)

In view of the position referred to in this paragraph, much advertance need not be given to Government Circular dated 21.10.2015.

23. The stand taken by G.A.D., as is evident is summarized as follows :-

- (a) Applicant is not entitled to any pensionary benefit treating her employment in the Government to be legally rendered, because she has failed to secure the validation of her Tribe claim.

- (b) Furnishing validity is a mandatory requirement by virtue of Section 6 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and Verification of) Caste Certificate Act, 2000.

24. In the premise discussed in foregoing paragraphs, it emerges that the State Government has failed to answered as to how the applicant's right to get protection Government service and consequent even the right to receive pension is impaired in the background of the G.R. dated 30.06.2004 and of the Full Bench judgment of Hon'ble High Court of Bombay in case of **ARUN VISHWANATH SONONE VS. STATE OF MAHARASHTRA, 2015(1) ALL MR-Feb. DATED 22.12.2014,** on applicant's claim in present O.A..

25. It is evident that the opposition of G.A.D. to grant benefit to the Applicant is opposed to the policy of Government which is proclaimed through Government decision dated 30.06.2004 quoted in foregoing paragraph No.20 and is even contrary to full Bench judgment of Hon'ble High Court of Bombay referred to and quoted in foregoing paragraph No.20 viz. **ARUN VISHWANATH SONONE VS. STATE OF MAHARASHTRA, 2015(1) ALL MR-Feb. DATED 22.12.2014.**

26. The stance and act of G.A.D. in opposing and denying the pensionary benefits of the Applicant is, apparently a product of fertile and imaginative brain of the G.A.D. and a litigious attitude. The said is diagonally opposite to the official stand and policy of the Government.

27. The wisdom which General Administration Department of the Government in taking a plea which is contrary to policy of the Government has to take a back seat to that of executive powers of the Government, being without authority or capacity to over ride the policy decision of the State Government.

28. It is important to note that the existence of Government decision dated 30.06.2004, and fact that it continues to be in force are not disputed by the General Administration Department's reply who has represented the State Government in this O.A..

29. The General Administration Department of the State has also refrained from commenting as to how it i.e. General Administration Department reconciles its plea of opposing applicant's claim by basing its reliance on the mandatory provisions contained in the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and Verification of) Caste Certificate Act, 2000, on the fact of and operation of the Government Resolution dated 30.06.2004.

30. It is evident that the G.A.D. of the State is conniving at and is disregarding the fact that the State Government (of which G.A.D. is part and parcel), has issued Government decision dated 30.06.2004, has done so openly and on the face of existence of Act of 2000. It has to be noted that the State Government has done this i.e. act of issuing the Government Resolution, dated 30.06.2014 basing its decision on a foundation that the Government has prerogative and power to condone and compound the deficiency on the part of Government servant in securing / getting validation of the certificate as of S.C., S.T. etc., and based on such power and prerogative, the Government has issued Government Resolution dated 30.06.2004.

31. The result is that the bureaucratic opposition to the applicant's claim in the present O.A. does not have the strength of superseding the Government's policy decision of condoning the deficiency and protecting the services of the

Government servant who have failed in proving their claim that they belong to a particular Scheduled Tribe.

32. Essential corollary and fallout of foregoing discussion is that as per the Government decision dated 30.06.2004, the Government servant who has failed in securing validity certificate and has retired honorably would get one and all benefits of having put in continuous services.

33. In the result the O.A. succeeds. The respondents are directed to release all unpaid pensionary benefits payable in accordance with law and standing Government Resolutions, Circulars etc., to the applicant within 120 days from the date of receipt of this order.

34. In the peculiar circumstances, where an untenable and uncontentious plea is raised by General Administration Department, and applicant was required to pursue its cause, which was contested imprudently and like an issue of prestige or ego, and the way private parties do litigate, applicant must get costs. Costs are quantified to Rs.20,000/- which be paid to Applicant along with payment of retiral dues.

(A.H. Joshi, J.)
Chairman
20.9.2016

Dictation taken by: S.G. Jawalkar.

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