

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3237 OF 2007

**WITH
CIVIL APPLICATION NO. 3076 OF 2013
IN
CIVIL APPLICATION NO. 1961 OF 2010
IN
WRIT PETITION NO. 3237 OF 2007**

Mansing Shankar Bhoje	}	Petitioner
versus		
The chief Secretary	}	
General Administration	}	
Department and Ors.	}	Respondents

Ms. G. M. Savagave for the petitioner.

Ms. Sushma Bhende – AGP for respondent
nos. 1 to 4 and 7.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- MARCH 8, 2017

P.C. :-

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari or any other appropriate writ, order or direction calling for the records and proceedings pertaining to a letter dated 31st January, 2002 and

after scrutiny thereof as to its legality and validity, this court should quash and set aside the same.

3. The writ petitioner, by a writ of mandamus or any other appropriate writ, order or direction, seeks a direction to the respondents to determine and fix his last drawn salary at Rs.8,500/- and to pay him the difference in the retiral benefits and pension on the basis of his last drawn salary.

4. The petitioner before us was in service of the Government of Maharashtra. He was appointed against a reserved seat in the Maharashtra Education Services (Class II). He claimed that he belongs to Tokre Koli Scheduled Tribe. He forwarded the tribe certificated dated 30th July, 1977. Pursuant to his selection by the Maharashtra Public Service Commission and his recommendation, the petitioner was appointed in the said educational services of the State Government on 1st November, 1983. Since the petitioner's caste claim was forwarded for scrutiny and verification by a competent authority, but the certificate was invalidated, the petitioner came to be reverted from the services on 6th May, 1986. The petitioner, being aggrieved and dissatisfied with the invalidation of the claim, preferred an appeal to the Additional Commissioner, Pune Division, Pune. On 17th August, 1987, the Additional

Commissioner remanded the case to the scrutiny committee with consequential directions. The petitioner's reversion remained and therefore, he challenged it by filing a writ petition, being Writ Petition No. 2203 of 1986. On 26th June, 1986, the State Government placed the order of reversion passed earlier in abeyance. The writ petition was, therefore, disposed of. Then, the Additional Commissioner had set aside the decision of the scrutiny committee and remanded the matter, but, once again, on 24th September, 1991, the scrutiny committee rejected the claim of the petitioner that he belongs to Tokre Koli Scheduled Tribe. The appeal against the scrutiny committee's order was also dismissed by the Additional Commissioner, Pune Division on 23rd January, 1992.

5. A writ petition, being Writ Petition No. 4869 of 1992 was filed challenging the order passed by the scrutiny committee, on which, the Division Bench of this court ruled as under:-

“6. In view of the fact that the Petitioner has since retired from service, the question as to whether he is a Tokri Koli has in a large measure been rendered academic. Besides this, even if this was a live issue between the parties it would have been necessary to take into account subsequent development such as the constitution of a new Committee for the scrutiny and verification of Tribe claims by the State Government. A reference to the Committee may not now be necessary in view of the fact that the petitioner has retired and does not seek any benefit on the basis that he belongs to the Tokri Koli Scheduled Tribe. Since the Petitioner has rendered long years of service in the State government, we consider it proper and

appropriate to direct the Respondents to release to the Petitioner his retirement benefits. However, we make it clear that the Petitioner shall not hereafter claim any benefit of his belonging to the Tokri Koli Scheduled Tribe.

7. We direct that the State Government shall release the retirement benefits of the Petitioner within a period of 4 months from today.”

6. The petitioner, on the strength of this order, claimed the benefits, since, in the mean while, he had retired on attaining the age of superannuation. The petitioner's date of retirement is undisputed. The petitioner was, therefore, aggrieved and dissatisfied with the non compliance with the directions of the Division Bench. He was advised to file contempt petition alleging civil contempt. However, the contempt petition was disposed of as the issue was not covered, in the opinion of this court, by the direction of the Division Bench, of which, contempt was complained of. The petitioner having retired on 31st December, 1997, claims all the retiral benefits. Those were determined by an order of 8th December, 2000. The petitioner complains that the retiral benefits were released after considerable delay. Then, the petitioner noticed that the pensionary benefits were made admissible on the footing that his last draw salary was Rs.6,500/- per annum. This, according to the petitioner, is factually incorrect. The petitioner was entitled to be treated on par with other candidates. The petitioner submits that other employees,

who had completed successfully the probationary period and were allowed to continue in service till superannuation, were granted benefits such as pension etc. on the basis of their last drawn salary. It is only the petitioner, who is singled out for this treatment. The petitioner, therefore, complains that his pensionary benefits shall be on the basis of the last drawn salary as claimed by him, namely, Rs. 8,500/- and not Rs. 6,500/- as falsely stated in the impugned letter. That is how the challenge is raised in the writ petition.

7. Mr. Savagave learned counsel appearing for the petitioner would submit that the impugned letter is contrary to law and all established principles in service jurisprudence. The impugned letter proceeds on the footing that the petitioner has computed 13 increments. However, his 13 increments cannot be granted as the petitioner could not produce a tribe validity certificate from the competent authority. Having secured an appointment against a reserved seat, he cannot be granted these increments. Therefore, the letter says that the petitioner is not entitled to any relief of fixation of his pay as prayed.

8. Mr. Savagave submits that this understanding of the respondents is contrary to not only the law but the Division Bench order of this court. The Division Bench order clearly notes

that the petitioner had retired from the services of the Government. The petitioner obtained the employment in 1983 in Class II service of the Education Department on the basis that he belongs to Tokre Koli Scheduled Tribe. Though the claim was invalidated and the order of reversion was passed, that came to be stayed and by the Government itself. Later on, Mr. Savagave submits that the Division Bench has held that it is not possible now to go into an academic issue, as the petitioner has retired from the service. Since his claim is invalidated, he need not be treated as Scheduled Tribe candidate. However, the court observes that he has rendered long years of service and therefore, the Division Bench directed the State to release the petitioner his retiral benefits. The petitioner, thereafter, will not claim any benefit on the basis as belonging to Scheduled Tribe is the observation in the order and which has been misinterpreted and misread, according to Mr. Savagave. He would submit that there is nothing in any rules and regulations, particularly the Maharashtra Civil Services (Pay) Rules, 1981, which would enable the respondents to deny him the revised pay-scale, revised computation of pensionary benefits and difference/arrears accordingly. Mr. Savagave, therefore, submits that the writ petition be allowed.

9. On the other hand, Ms. Bhende learned AGP appearing for the respondents would submit that this writ petition is by a candidate who had secured employment against a reserved seat, but has failed to substantiate his claim as belonging to Scheduled Tribe. Such a candidate or employee cannot be put on par with other employees. The petitioner was protected purely because of a discretionary order of the Government earlier and thereafter a concession of this court. It cannot be said that he has completed the probationary period satisfactorily. That is why relying upon Rule 39 of the Maharashtra Civil Services (Pay) Rules, 1981, he has rightly been denied the relief of fixation of his pay at Rs.8,500/-. She would, therefore, submit that the writ petition be dismissed.

10. With the assistance of Mr. Savagave and Ms. Bhende we have perused the entire petition and all annexures thereto. The contention raised by Ms. Bhende is that in the Maharashtra Civil Services (Pay) Rules, a probationer means a Government servant employed on probation in or against a substantive or temporary vacancy in the cadre of a department. The first increment should be released on completion of one year of his probationary period and the subsequent increment should be released on his completion of the probationary period satisfactorily. Here, the

probation period of the applicant was not terminated till the date of his retirement. Hence, he is not eligible for the pay fixation as prayed. We inquired from Ms. Bhende as to which rule in the said Civil Services (Pay) Rules enables the Government to adopt such a stand. She would rely upon Rule 39 of the Maharashtra Civil Services (Pay) Rules, 1981. To the extent relevant, it reads as under:-

“39. Service which counts for increment

The following provisions prescribe the conditions on which service counts for increments in a time-scale:-

(1) Subject to the provisions of rules 11, 14, 20 and 44, all duty in a post on a time-scale counts for increments in that time-scale.

For the purpose of arriving at the date of next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment:

Provided that the increment shall be admissible from the 1st of the month in which it accrues.

Note. - The above proviso shall not apply to the persons on probation.

Exception 1. - (a) The increment(s) of a Government servant appointed directly to a post on probation during the period of probation should be regulated as follows:-

(i) The first increment should be released on completion of one year of his probationary period and the subsequent increment should be released on his completing the probationary period satisfactorily.

.....”

11. A bare perusal of this rule, as reproduced above and to the extent relevant, would indicate that there is no material to apply

the proviso thereunder or the *Exception* 1(a)(i). It is clear that the increments have to be granted in a time-scale, but on the condition stipulated in this rule. The respondents have not been able to place before us any record which would indicate that the petitioner had not successfully completed the probationary period or that his probationary period stood extended. There is no record of the petitioner's services being terminated by applying the doctrine of unsuccessful completion of the probationary period. In the sense, there is no over all assessment of his services so as to term them as unsatisfactory. There is no record either of probationary period being extended. It is in such circumstances, the assumption of the Government that because he failed to substantiate and prove his claim as belonging to Scheduled Tribe that the probationary period is not successfully completed by him is not borne out from the rule relied upon. The presumption that this rule enables the State to conclude that a candidate like the petitioner has not successfully completed his probationary period because he failed to produce the tribe validity certificate is not spelt out in the rule relied upon. It has also not been clarified otherwise. If this was the case and as contended now, then, there was no reason for the State Government to issue the earlier communication dated 8th December, 2000. There was no reason for releasing the

pensionary benefits on the footing that he completed the age of superannuation and rendered services till then. If all retiral benefits including pension are released, then, merely because the petitioner claims that there is a erroneous fixation of his pay resulting in the loss of substantial sum or money, the State Government could not have responded in the manner noted by us. The response by the State Government, as culled out from the impugned letter, cannot be sustained in law. The respondents have failed to point out any provision in law, including the pay rules, which would enable it to deny the pay fixation as prayed by the petitioner and on the specious plea that because he secured an appointment against a reserved seat, his claim was invalidated and by a protective order he was allowed to complete his service, he is not entitled to such pay fixation. This conclusion is completely vitiated. We have set out the reasons in the foregoing paragraphs for not upholding the stand of the State Government as contained in the impugned letter.

12. The writ petition, therefore, succeeds. Rule is made absolute in terms of prayer clauses (a) and (b). The respondents, on the strength of the communication from the petitioner, copy of which is at page 121 of the paper book and he producing the relevant documents, including true copies of his Service Book or

related materials, shall verify the position from the original record in possession of the Department and if they are not available, they shall proceed to accept the petitioner's claim on the strength of his assertions and contained in the petition as also in the letter at page 121 of the paper book. There being no contrary material nor denial of these factual statements, the respondents shall proceed to re-fix his pay at Rs.8,500/- as prayed, re-compute and re-calculate the retiral and pensionary benefits and release the difference, including arrears, as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order. Rule is made absolute accordingly. There would be no order as to costs.

13. In the light of the disposal of the writ petition, the civil applications do not survive and stand disposed of as such.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)