HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

<u>WRIT PETITION Nos.24972 of 2016 & 20583 of 2018</u>

<u>COMMON ORDER:</u>

Since the issue raised in these two writ petitions is one and the same and as the parties are also same, the writ petitions are being disposed of by this common order.

W.P.No.24972 of 2016 is filed seeking the following relief :-

> "….. to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to declare the Letter No.P&C/R5/18, dated 22.07.2016 issued by the 1st respondent as violative of Article 16 of the Constitution of India and also in violation of principles of natural justice and to direct the respondents to continue the petitioner in service with all consequential benefits …..".

W.P.No.20583 of 2018 is filed seeking the following relief :-

> "….. to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to direct the respondents to act in accordance with law and to forthwith release the retirement benefits due to the petitioner on her superannuation on 28.02.2018 like Pension, Provident Fund, etc. with reference to W.P.No.24972 of 2016 together with interest from 01.03.2018 till the date of payment".

Heard Sri Vedula Srinivas, the learned counsel for the petitioner and Mrs.V.Uma Devi, the learned Standing Counsel for respondents.

It has been contended by the petitioner that she belongs to Wanjari community and she is fully eligible and qualified to be appointed to the post of Clerk-cum-Cashier. The respondents have issued Notification for the post of Clerk-cum-Cashier during the year 1978. The petitioner submits that Wanjari Community, to which the petitioner belongs, was declared as Scheduled Tribe Community vide G.O.Ms.No.245, dated 30.06.1977. As the community of the petitioner was declared as Scheduled Tribe, the petitioner has accordingly obtained Caste Certificate and in response to the said Notification, applied for the post of Clerk-cum-Cashier. The petitioner had participated in the selection process and written examination was conducted on 19.11.1978. The petitioner was further subjected to interview on 30.12.1978. After undergoing medical examination, the petitioner was selected and appointed as Clerk-cum-Cashier in the respondent Bank on 15.03.1979.

The petitioner further submits that Wanjari community was deleted from the list of Scheduled Tribe Community vide G.O.Ms.No.44, dated 23.02.1979. The petitioner has not suppressed anything and when the Wanjari Community was declared as a Scheduled Tribe Community, the petitioner has obtained Certificate Caste claiming to be Scheduled Tribe. After the deletion of Wanjari community from the list of Scheduled Tribe Community, she has not claimed any reservation of Scheduled Tribe. During the period from 30.06.1977 till deletion of Wanjari Community from the Scheduled Tribe i.e., 23.02.1979, the petitioner's case was considered as a member belonging to Scheduled Tribe Community and the appointment order was given to the petitioner. After the petitioner got employment as Clerk-cum-Cashier with the respondent Bank, the State

Government has deleted Wanjari community from the Scheduled Tribe Community list. Hence, no fraud or falsity has been committed by the petitioner in claiming the status of Scheduled Tribe. Therefore, the petitioner contends that she was rightly appointed when Wanjari Community was treated as Scheduled Tribe and later on, the petitioner has not claimed any benefits of Scheduled Tribe. She further submits that she herself informed the respondent Bank that she is not eligible for Scheduled Tribe reservation in view of deletion of Wanjari Community from the list of Scheduled Tribe. While the petitioner was discharging her duties during May, 1996, the disciplinary authority has issued charge-sheet on 04.05.1996. The petitioner has submitted an explanation on 05.02.1997 to the effect that she has never misrepresented or claimed the status of Scheduled Tribe with an intention of playing any fraud on the Bank. The case of the petitioner was considered by the disciplinary authority and the disciplinary authority had imposed minor penalty of censure on the petitioner on 21.09.1998 and the petitioner was allowed to continue with the Bank. After nearly 18 years from the imposition of censure, the respondents have issued proceedings on 22.07.2016 terminating the services of the petitioner. Challenging the said termination order, the petitioner has filed W.P.No.24972 of 2016. This Court vide order dated 27.08.2016 was pleased to suspend the termination order dated 22.07.2016. By virtue of the said interlocutory order, the petitioner was allowed to continue in service and on attaining the age of superannuation on 28.02.2018 she retired from service.

Learned counsel for the petitioner submits that when once the disciplinary authority has initiated disciplinary proceedings on the allegation that the petitioner has produced false caste certificate at the time of appointment and concluded the said proceedings by imposing minor penalty of censure, the respondents were not justified in terminating the services of the petitioner once again on the very same set of allegations vide order dated 22.07.2016. This Court has rightly suspended the said termination order vide order dated 27.08.2016. By virtue of the said interlocutory order, the petitioner was allowed to continue in service and she retired from service on attaining the age of superannuation on 28.02.2018.

The only issue that falls for consideration is about payment of terminal benefits to the petitioner, as the petitioner was allowed to retire on attaining the age of superannuation.

Learned counsel appearing for the petitioner submits that appropriate orders be passed in the writ petition directing the respondents to consider the case of the petitioner for release of terminal benefits, as the petitioner has retired from service on attaining the age of superannuation on 28.12.2019.

Learned Standing Counsel appearing for the respondents has contended that since the petitioner was allowed to continue in service and she has retired from service on 28.02.2018 on attaining the age of superannuation, the case of the petitioner will be considered and terminal benefits would be settled in accordance with law.

This Court, having considered the rival submissions of the learned counsel for the respective parties, is of the considered view that this writ petition can be disposed of directing the respondents to settle the terminal benefits of the petitioner by duly taking into account that the petitioner was allowed to retire on attaining the age of superannuation and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order. It is needless to observe that the impugned termination order is liable to be set aside and the same is accordingly set aside, as the same was not given effect to and the petitioner was allowed to continue in service till she attained the age of superannuation.

With the above observations, the writ petitions are disposed of. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

19.06.2019
Prv