

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.7441 OF 2019

Bhimrao s/o Bhaorao Dhondge

.. Petitioner

Versus

The State of Maharashtra and ors.

.. Respondents

Mr P.V. Jadhavar, Advocate for petitioner
Ms R.P. Gaur, A.G.P. for respondents no.1 and 4
Mr S.S. Tope, Advocate for respondents no.2 and 3

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 11th February 2020

ORAL ORDER :

1. The petitioner seeks directions against the respondent – employer to release the pensionary benefits including monthly salary.
2. The petitioner was appointed as a Peon in August 1985 by respondent no.2. The petitioner retired upon attaining the age of superannuation on 30.4.2018. The retiral benefits of the petitioner are withheld on the ground that validity certificate is not submitted.
3. Mr Jadhavar, learned Advocate for petitioner submits that the petitioner was appointed from general category. The petitioner has not taken benefit of reservation at the time of appointment nor during his service tenure. According to learned counsel, for the first time, in year 2010, the employer sought the caste certificate from the petitioner. The petitioner submitted the caste certificate to the employer as per its demand. The employer submitted the proposal. The proposal was returned back on the ground that the name of the tribe is not correctly mentioned in the caste certificate. According to learned Advocate, the petitioner at the time of

entering the service had said that he belongs to Scheduled Tribe category but has not taken benefit of reservation.

4. Mr Tope, learned Advocate for respondents no.2 and 3 submits that though the appointment order of the petitioner does not mention that the petitioner is appointed from reserved category, but the first page of service book of the petitioner mentions his caste as belonging to Scheduled Tribe category, so also the seniority list. The learned Advocate submits that at the time of appointment of the petitioner, the roster was not a subject matter of consideration. The adherence to the roster was since year 2000. According to learned Advocate, the Education Officer also conducted the hearing and considering all the relevant record has arrived at the conclusion that the petitioner, on 14.8.1985 was appointed from Scheduled Tribe category. The learned Advocate submits that as the petitioner was appointed from reserved category, unless he produces the validity certificate, the petitioner is not entitled for the pension. Learned Advocate relies on the judgment of Apex Court in the case of **Chairman & Managing Director of Food Corporation of India and ors. Vs. Jagdish Balaram Bahira and ors.** reported in **(2017) 8 SCC 7 670.**

5. We have considered the submissions. There cannot be any dispute with the proposition that if the petitioner has been given the benefit of reservation, he has to produce the validity certificate. Failure to produce validity certificate would entail forfeiture of all the service benefits, as held in the case of Food Corporation of India Vs. Jagdish Balaram Mahira (supra).

6. The appointment order of the petitioner nowhere states that the petitioner is appointed from a reserved category. We had also asked learned Advocate for the respondents as to whether the benefit that is accorded to

the reserved category was given to the petitioner, such as age relaxation, relaxation in educational qualification, relaxation in bench mark for selection. The learned Advocate, upon instructions from the respondents submits that no such record is available with the respondents to suggest that the petitioner was given benefit of relaxation as is applicable to the reserved category candidate.

7. We do not find that advertisement is given in a manner that reserved seats are to be filled in. If the appointment was from general category and subsequently also, no benefit has been accorded to the petitioner of reserved category, then it would be improper on the part of the respondents to insist submission of validity certificate for granting retiral benefits.

8. The documents and the evidence on record do not lead to an irresistible conclusion that the petitioner was appointed from Scheduled Category/reserved category. Considering the totality of the facts and circumstances of the present case, it appears that the petitioner was appointed from open/general category.

9. In light of that, the respondents shall release the admissible retiral/pensionary benefits to the petitioner as per law. The same shall be done preferably within six months.

10. Writ Petition is accordingly disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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