IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4624 OF 2021

Kamlabai w/o Shaphadu Salve
Age 47 years occu. Household
r/o Wadod Chatha, Tq. Sillod
District : Aurangabad .. PETITIONER

VERSUS

1) The State of Maharashtra
For Secretary, Rural Development Department,
Govt. of Maharashtra
Mantralaya, Mumbai-32

2) The Chief Executive Officer,
Zilla Parishad, Jalna

3) The Education Officer (Primary)
Zilla Parishad, Jalna
Aurangabad

4) Joint Commissioner & Vice President,
Schedule tribes, Caste Scrutiny Committee
Aurangabad Division, Aurangabad
Through its Secretary .. RESPONDENTS

Mr. D.R. Irale Patil, Advocate for petitioner;
Mr. P.S. Patil , AGP for respondent No.1,
Mr. M.S. Mahajan, Advocate for respondent no.2

CORAM : DIPANKAR DATTA, CJ
AND
MANGESH S. PATIL, JJ

DATE : October 01, 2021

ORAL ORDER (Per – Dipankar Datta, CJ) :

1. The basic question that we are tasked to decide is, whether the Chief Executive Officer, Zilla Parishad, Jalna and the Education Officer (Primary) of such Zilla Parishad, respondents no. 2 and 3, respectively, are justified in withholding Rs.10,53,250/- payable to the petitioner on account of death

gratuity that accrued in favour of her late husband (hereafter 'the teacher' for short).

2. The facts lie in a narrow compass.

3. The teacher was appointed as a primary school teacher vide order dated 9th April 1992 of the respondent no. 2. While discharging duty as a teacher of a school in Avhana, Taluka – Bhokardan, the teacher passed away on 18th December 2019 at the age of 47 years due to a heart attack. The version of the respondents 2 and 3 is that the teacher entered service as a reserved candidate belonging to Scheduled Tribe on the basis of the tribe certificate dated 3rd July 1991 issued by the Executive Magistrate, Sillod, which was produced by the teacher, and proceedings before the Scrutiny Committee on the issue of validation of such tribe certificate are still pending; therefore, the petitioner is not entitled to the death gratuity as aforesaid till such time the said committee pronounces on the validity of the tribe certificate. It is also the case of the respondents that the teacher never tried to obtain validity of the tribe certificate and such certificate was referred to the Scrutiny Committee for its decision by the respondent no. 2 vide letter dated 22nd July 2013. In support of the case that the teacher was appointed on a reserved vacancy, our attention has been drawn to a register maintained by the Zilla Parishad containing particulars of employees who have been employed from 1982 as well as the particular roster points against which such appointments have been made. The teacher, it is shown, was appointed against a roster point earmarked for the Scheduled Tribe. Photocopy of the relevant pages of the register are taken on record, marked Exhibit 'X'. However, the proceedings could not be taken to its logical conclusion by the Scrutiny Committee in the

absence of the inquiry report of the relevant Vigilance Cell with the result that validity of tribe status of the teacher is still awaited.

4. We have heard learned advocates appearing for the petitioner, the respondent no. 1/State and the respondents no. 2 and 3 at some length. For the purpose of a decision on this writ petition, it would be absolutely necessary for us to look into the provisions 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 (hereafter 'Act No. XXIII of 2001', for short). Since section 10 thereof has been the sheet anchor of the respondents' contention that the petitioner is not entitled to lay claim on the death gratuity of Rs.10,53,250/- so long the tribe certificate of the teacher is not validated, we quote section 10 in its entirety hereinbelow for facility of convenience :-

> "***10. Benefits secured on the basis of false caste certificate to be withdrawn.*** - (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such castes, tribes or classes, or secures any appointment in the Government, local authority or in any other company or corporation, owned or controlled by the Government or in any Government-aided institution or cooperative society against a post reserved for such castes, tribes or classes by producing a false caste certificate shall, on cancellation of the caste certificate by the Scrutiny Committee, be liable to be debarred from the educational institution concerned, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or

> appointment by such person as aforesaid shall be withdrawn forthwith.
>
> (2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.
>
> (3) Notwithstanding anything contained in any Act for the time being in force, any degree, diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a caste certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such caste certificate, by the Scrutiny Committee.
>
> (4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, cooperative society or any statutory body on the seat reserved for any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false caste certificate as belonging to such caste, tribe or class on such false caste certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."

5. The provisions of Act No. XXIII of 2001 in general and section 10 in particular have been considered by the Supreme Court in a decision of recent origin reported in (2017) 8 SCC 670 (**Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others**).

6. Mr. Patil, learned AGP appearing for the respondent no. 1 has invited our attention to paragraphs 54, 55, 62, 65 and 87 of the said decision to support his contention that without validation of the tribe claim of the teacher, the petitioner is not entitled to any 'financial benefits' as referred to in sub-section (2) of section 10. The aforesaid submission of Mr. Patil has been adopted by Mr. Mahajan, learned advocate for the respondents 2 and 3.

7. Let us now consider whether in terms of section 10 of Act No. XXIII of 2001, as interpreted in **Jagdish Balaram Bahira** (supra), the action of the respondents in withholding payment of death gratuity to the petitioner is justified. Since the scheme of Act No. XXIII of 2001 has been discussed in detail by the Supreme Court in **Jagdish Balaram Bahira** (supra), it is considered unnecessary for the purpose of a decision on this writ petition to repeat the same. However, we may note that so far it is relevant here, the ratio of the decision is that if any appointment under the Government/Public Authority is obtained by an individual on a vacancy earmarked for a reserved candidate on the basis of a caste/tribe certificate, which in terms of the procedure envisaged in Act No. XXIII of 2001 subsequently turns out to be false, such individual would have no right to continue in service and any benefit enjoyed or derived by virtue of such appointment shall be withdrawn forthwith. That seems to be the plain and clear intention of the statute and there can be no quarrel on this score. We have, however, not noticed any observation made by the Supreme Court in **Jagdish Balaram Bahira** (supra) that the expression "any other benefits" as employed in sub-section (1) of section 10 that could be withdrawn, or, the expression "other financial benefit" that could be recovered as arrears of land revenue, would include death gratuity. In fact, the facts and circumstances giving rise to the

proceedings before the Supreme Court did not require a pronouncement in that regard. In a way, Mr. Patil, learned advocate for the petitioner, is right in contending that the decision in **Jagdish Balaram Bahira** (supra) is distinguishable on facts and the ratio laid down therein inapplicable to the facts of the present case.

8. The precondition for attracting section 10 of Act No. XXIII of 2001 is that an individual must have obtained admission for a seat in an institution or appointment on a public post, reserved for the socially and economically backward classes, by falsely projecting that he/she belongs to the reserved category. In this case, although there is no clinching evidence that the teacher was appointed on a post which according to the 100-point roster was supposed to be filled by a reserved candidate, we shall assume the same in view of production of Exhibit ‘X’ before us.

9. The next situation that would emerge and call for consideration on reading section 10 is, what happens to an individual who obtains a degree, diploma or any other educational qualification on the basis of a caste/tribe certificate which is subsequently proved to be false. The answer is in sub-section (3) of section 10. The non-obstante clause therein would render such degree, diploma or any other educational qualification inoperative. However, significantly, there is no such express provision in Act No. XXIII of 2001 or the rules framed thereunder, or at least no such provision has been brought to our notice on behalf of the respondents, empowering the State to recover any amount which is part of a retirement benefit like ‘gratuity’ from an employee. Law is well-settled that attention has to be devoted to what has been said by the Legislature and also to what it has preferred not to say.

10. The point that would now engage our consideration based on Mr. Patil's contention is, whether death gratuity can be comprehended to be covered by the expression "other financial benefit", which is recoverable from an individual who joined service on the basis of a false caste/tribe certificate, as arrears of land revenue. We need not deal with "any other benefits" in sub-section (1) of section 10 since withdrawal of 'any other benefits' would be the follow-up action of debarment from service which, in this case, has not occasioned because the teacher died-in-harness. The other incidental point that would require a decision from us would be, whether the State should be allowed to reap the benefit of the Scrutiny Committee's fault or lapse, as the case may be, in not completing the process of rendering a final decision in the proceedings that have been initiated in regard to validation of the teacher's tribe certificate.

11. No doubt, 'gratuity' is a retirement benefit but such benefit is not granted as if it were a bounty or charity by the employer. Gratuity, for all intents and purposes, is offered by the employer (a State within the meaning of Article 12 of the Constitution, as in the present case) in terms of statutory rules that are framed in exercise of power conferred by the proviso to Article 309 of the Constitution in recognition of meritorious past services rendered by its employee. In the present case, we are informed that 'gratuity' is payable to the petitioner, if at all, in terms of the Maharashtra Civil Services (Pension) Rules, 1982. It has not been shown from such Rules that 'death gratuity' can be withheld on the ground of pendency of proceedings before the Scrutiny Committee. We are not persuaded to agree with Mr. Patil that 'death gratuity' on which the petitioner has laid claim would be covered by the expression "other financial benefit" in sub-section (2) of section 10 of Act No. XXIII of 2001. The expression "other financial benefit" has been used alongside the

words “scholarship, grant, allowance”. By application of the principle of *ejusdem generis*, the general words “other financial benefit” must be construed in the light of the distinct category or genus, i.e. “scholarship, grant, allowance”. So construed, ‘gratuity’, by no stretch of imagination, can be equated with a financial benefit that is extended to an individual as a scholarship, grant or allowance. Viewed from this perspective, there can be no doubt that sub-section (2) of section 10 cannot be pressed into service for denying the petitioner the amount of death gratuity that accrued in favour of the teacher.

12. The problem can be viewed from one other perspective. As on date the teacher passed away, the proceedings before the Scrutiny Committee initiated on the basis of the reference made by the respondent no. 2 were in excess of six years old. It could be so, as submitted, that the Vigilance Cell has not been able to complete its inquiry and place a report in that regard before the Scrutiny Committee. However, the fault or lapse, as the case may be, cannot be attributed either to the petitioner or to the teacher. The obvious consequence of lack of the requisite vigilance report is that the tribe certificate, which the petitioner might have produced at the time of joining service, **has not yet been invalidated**. Given this situation, there is no positive material on the basis of which the respondent no. 2 could have even inferred that the tribe certificate dated 3rd July 1991 is false. No doubt, Act No. XXIII of 2001 has been enacted with the noble purpose of preventing the menace of dishonest people seeking admission in educational institutions or public employment on the basis of false caste/tribe certificates against vacancies reserved for the socially and backward classes. However, the law cannot be distorted to such an extent that even in cases where the Scrutiny Committee, constituted under the relevant enactment, takes abnormally long time to decide the issue of

validity of a caste/tribe certificate, the delay in conclusion of the proceedings would operate to the utter detriment and prejudice of a distressed woman like the petitioner.

13. Pertinently, section 11 of Act No. XXIII of 2001 provides for offences and penalties. Assuming that the teacher was alive and if indeed the Scrutiny Committee had invalidated his tribe certificate, he would have exposed himself to criminal prosecution. Now that the teacher is no longer in this world, there can be no prosecution. However, if at all, it is only the civil consequence of withdrawal of benefits that would survive. Law is again well-settled that any action of a public authority entailing civil consequences must be preceded by observance of the *audi alteram partem* rule. With the death of the teacher, no action leading to civil consequences can be taken. This is one other reason why we hold the action of the respondents to be unsustainable in law.

14. Besides, we must not be oblivious of the realities of life and the penurious condition that is ordinarily brought about by sudden demise of the sole bread earner for the family, in our country. It is with the terminal benefits that the family of the bread earner has to survive and if such benefits, which are aimed at providing succor to the family members of a deceased individual in times of distress, are sought to be withheld in the manner the respondents have taken recourse, the Court cannot and ought not to be a silent spectator. In the present case, by denying the amount of 'death gratuity' to the petitioner, the State would be failing in its obligations as a welfare state as provided in Part IV of the Constitution.

15. For the reasons aforesaid, we find sufficient force in the petitioner's contention that the action of the respondents is unjustified. Accordingly, we

direct the respondents to immediately, but not later than sixty days from date, release in favour of the petitioner the said amount of Rs.10,53,250/-. Should there be any remissness to release the said amount within the time stipulated, the same shall carry interest @ 9% per annum till such time it is ultimately released in favour of the petitioner.

16. The writ petition stands allowed. No costs.

[MANGESH S. PATIL, J.] **[CHIEF JUSTICE]**

amj