

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

27 WRIT PETITION NO.6679 OF 2020

MANOHAR RAMCHANDRA KUSAYYA KORVI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. D.R. Irale Patil, Advocate for the petitioner.
Mr. S.B. Yawalkar, A.G.P. for respondent Nos. 1 and 3.

...

CORAM : **RAVINDRA V. GHUGE &
AVINASH G. GHAROTE, JJ.**

DATE : 28-06-2021.

ORDER :

1. By this petition, the petitioner has put-forth prayer clause 'B' as under :

"B. The Hon'ble Court may be pleased to pass necessary order and direct the respondent no. 2 to grant pension and pensionary benefits which he has denied only on condition that the petitioner not submitted the caste validity certificate as mentioned in the impugned order dated 26.9.2019 (Exh.E)".

2. We have extensively heard the learned Advocate for the petitioner and the learned A.G.P. on behalf of respondent Nos.1 and 3. None appears for respondent No. 2. However, respondent No. 2 has entered an affidavit through Namdeo Ramdas Kendre, Deputy Executive Officer, Zilla Parishad, Jalna dated 18th January 2021.

3. The petitioner joined service with respondent No.2 on 07.06.1983 as a Peon. He belongs to Telgu (Mannervarlu) scheduled tribe category. He was born on 14.01.1959 and he superannuated from service on 31.01.2019, as a Peon. In short, he joined as a Peon and he retired as a Peon. His regular pension has been withheld on the ground that he has not submitted his Tribe validity certificate.

4. The learned Counsel for the petitioner submits that the petitioner neither joined the employment on a post reserved for the scheduled tribe to which he belongs, nor has he availed of any service benefit that could have been available to him for being Telgu (Mannervarlu).

5. Though the affidavit-in-reply on behalf of respondent No.2 has been entered on 18th January 2021, neither has respondent No. 2 placed the appointment order / service book on record, nor has respondent No. 2 stated in the affidavit-in-reply that the petitioner was appointed to a post of Peon that was specifically reserved for the scheduled tribe. A bald statement is made in paragraph-6 of the affidavit that the petitioner was appointed from the category of scheduled tribe.

6. By an order dated 22nd March 2021, this Court had directed the employer of the petitioner to place on record his appointment order and service book. We are unable to apprehend as to what restrained respondent No. 2 from specifically stating that the post of Peon, occupied by the petitioner, was reserved for the

scheduled tribe category when it's vacancy was advertised and that the petitioner was selected and appointed as a Peon only because he belonged to the Telgu (Mannervarlu) scheduled tribe. In the absence of such pleadings and in the light of the solemn statement made by the petitioner that he was not selected on a post reserved for the scheduled tribe category, we have no reason to doubt the statement of the petitioner in the face of there being no denial by respondent No. 2.

7. The petitioner has placed on record at Annexure-C, page 18 of the petition paper book, a copy of his service roll indicating his entry in employment on 07.06.1983. His caste was mentioned as Telgu (Mannervarlu). His educational qualification is shown to be 6th Standard. His entry is shown to be as a probationer. On page 19, which is a part of service roll, we do not find any entry which would indicate that the post of Peon occupied by the petitioner was reserved for the scheduled tribe category.

8. The Chief Officer, Zilla Parishad, Jalgaon, respondent No.2 herein forwarded the tribe claim of the petitioner to the Deputy Director (Research) – cum – Member of the Competent Committee at Aurangabad for validation of his claim, on 25.09.2013. There is no dispute that the claim is yet not decided and the same is pending with the Competent Committee.

9. The issue before us is as to whether the pensionary benefits of the petitioner could be withheld on the ground that he ought to submit his scheduled tribe validity certificate as a pre-

condition for grant of such benefits. In our view, this condition would be applicable to the petitioner, only if the entry of the petitioner in service is on the basis of reservation and he having been selected and appointed on a post which was specifically reserved for a particular backward category. If his selection is not on a post which was specifically reserved for a backward category and if in the entire service period the petitioner has not availed of any service benefit that could have been available to him by virtue of he belonging to a scheduled tribe category, filing of validity certificate would be inconsequential and insignificant. No ground is taken by the employer or the State Government that the petitioner had submitted false Tribe records. Once there was no reservation to the post on which he was selected, his selection would tantamount to be a selection from the Open / General category.

10. Respondent No. 2 has placed before us a Government Resolution dated 18.05.2013 wherein the State of Maharashtra mandated the submission of validity certificates by candidates who had gained entry in employment on the strength of belonging to the reserved categories. The aim and object behind introducing the Government Resolution was to eliminate / trace out cases of false certificates having been filed so as to gain entry on the basis of belonging to the backward classes. It is nobody's case before us that the petitioner has forged a certificate and his entry in employment was based on a bogus tribe certificate.

11. A similar issue fell for consideration of a co-ordinate Bench of this Court in Writ Petition No. 7441 of 2019 filed by Bhimrao Bhaorao Dhondge Vs The State of Maharashtra and others. By an order dated 11th February 2020, this Court noted that the petitioner was appointed as a Peon in 1985 and retired in April 2018 on the same post. His selection was not on a post that was reserved for a backward category and he had not availed of any benefits which would have been available to him for belonging to a backward category, during the entire service lifetime. This Court, therefore, concluded that such an appointment would amount to be one from the open category / general category and as such, whether he tendered his validity certificate or not, was inconsequential.

12. In another judgment delivered by a co-ordinate Bench of this Court on 14.06.2016 in Writ Petition 5029 of 2016 filed by Shrawan Bandu Sonune Vs Chief Executive Officer, Jalna and others, a similar case came up and this Court concluded that the pensionary benefits of such a candidate could not be withheld.

13. In view of the above, this petition is allowed in terms of prayer clause 'B' reproduced above. We direct the concerned respondents to release the pensionary benefits of the petitioner as expeditiously as possible and preferably on or before 30th September, 2021. The arrears of pensionary benefits should be paid within the same period. If these directions are not implemented, the

outstanding amount shall carry an interest at the rate of 6 % per annum until the amounts are paid.

(AVINASH G. GHAROTE)

(RAVINDRA V. GHUGE, J.)

VD_Dhirde