

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

903 WRIT PETITION NO.5160 OF 2014

BHIMSING TODARSING THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Golegaonkar Anil S.
AGP for Respondent/s-State : Mr. P. S. Patil.
Advocate for Respondent Nos.3 & 4 : Mr. Bakshi Deepak P.
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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 11.08.2021

PER COURT :-

1. The petitioner has put forth prayer clauses 'B' and 'C' as under :

"B) To direct the Respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar to decide Tribe Claim of the Petitioner which is pending since 2.8.2007 within a stipulated period as this Hon'ble Court deems fit by issuing appropriate writ, orders, or directions as the case may be;"

"C) To direct Respondents No.3 & 4 to grant higher grade pay scale, i.e., of Executive Engineer under Assured Promotion Scheme from the date of completion of 12 years service, i.e., 13.3.2009, in the cadre of Sub-Divisional Engineer by issuing appropriate writ, orders, or directions as the case may be;"

2. We have briefly heard the learned advocates for the respective parties before us.

3. The learned advocate for the petitioner informs us that the Tribe Claim of the petitioner belonging to 'Thakur' Scheduled Tribe has been validated by the competent committee vide its decision dated 31.12.2019. The petitioner since has superannuated from 31.12.2015, his retiral benefits have been withheld, as on the date of his superannuation, he could not produce his tribe validity certificate. He further submits that his Assured Promotion Scheme benefit which would have been available to him on 13.03.2009, has not been extended to him, as his tribe claim was not validated. Contention is that the validation of his tribe claim is immaterial and unconnected with the benefits available to him under the Assured Promotion Scheme as the Department Promotion Committee (D.P. C.) had recommended him for acquiring such benefit. His representation dated 04.07.2009 is pending with the authority.

4. Mr. Bakshi, the learned advocate representing the Employer – respondent Nos.3 and 4 submits that the employer

had taken a decision not to grant further service benefits to those candidates, whose selection has been on a post reserved for a backward category and validity certificate were not produced. To avoid instances of such candidates acquiring service benefits or promotional benefits without tendering a validity certificate and after superannuating, attempting to digest such benefits on the plea that now he has superannuated from service, that the employer was compelled to adopt such approach.

5. In our view, since the claim of the petitioner is validated on 31.12.2019, prayer clause 'B' is satisfied and this petition need not be kept pending for the said reason.

6. Insofar as prayer clause 'C' is concerned, we find it appropriate to permit the petitioner, in the backdrop of the employer having yet not rejected his request, to file a fresh representation along with a copy of the validity certificate. Such representation can be filed within a short period and the employer can take a decision on the same, expeditiously.

7. In view of the above, this petition is disposed off with the following directions :

- (a) The petitioner would be at liberty to enter a representation to respondent No.3 for putting forth his request for the benefits of the Assured Promotion Scheme.
- (b) Copy of the validity certificate would be annexed to the said representation.
- (c) If the representation is filed, on or before 31.08.2021, respondent No.3 would consider the said representation on its own merits and in accordance with its policies and pass a reasoned order, on or before 31.09.2021.
- (d) If the petitioner is aggrieved by the said decision, he would be at liberty to avail of a remedy, as may be permissible in law.
- (e) Now, as the petitioner's tribe claim has been validated, the employer shall process the concerned papers for clearing his retirement and pensionary benefits and ensure that the

same, along with arrears, are paid to him, on or before 30.11.2021, pending the result of his representation.

- (f) Needless to state, if the employer decides the representation of the petitioner favourably, the pensionary and monetary benefits will be re-calculated in accordance with such benefits.
- (g) As the petitioner, after the filing of this petition on 19.06.2014, had filed a similar petition at the Principal Seat on 10.08.2015, the said Writ Petition No.8108 of 2015 stands dismissed as withdrawn with the consent of the petitioner.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-