IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 325/2021

Vinod Laxmanrao Jumale,
aged 58 years, Occ. Retired as Junior Auditor
from Local Fund Audit, O/o Assistant Director,
r/o Amba Nagari, Kiran Nagar, Amravati. **PETITIONER**

.....VERSUS.....

1. The State of Maharashtra,
Through its Secretary, Department of Finance,
Mantralaya Mumbai-400 032.

2. The State of Maharashtra,
Through its Secretary, General Administration
Department, Mantralaya Mumbai-400 032.

3. Director, Local Funds, Konkan Bhavan
6th Floor, Navi Mumbai 400 614.

4. The Joint Director, Local Funds,
Vidyapeeth Road, Amravati 444 602. **RESPONDENTS**

Shri R.S. Parsodkar and P.R. Parsodkar, counsel for petitioner.
Shri N.R. Patil, Assistant Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.
DATE : 20TH DECEMBER, 2021.
ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith. Heard learned counsel for the parties.

2. The petitioner claims to belong to Mhali O.B.C. He was appointed on 04.12.1982 on the post of Live Stock Supervisor. When the petitioner was initially appointed he furnished a school leaving certificate which mentioned his tribe as Nhavi Banjara (NT). On noticing this mistake, the petitioner took steps and the Commissioner, Dairy Development made necessary correction on 27.06.2002 and published a seniority list showing the petitioner at Serial Number 24 as belonging to Hindu Nhavi – O.B.C. In the year 2003, the petitioner was transferred from the post of Live Stock Supervisor to the post of Junior Auditor. This post was under the purview of Director of Local Fund. On 17.09.2003, an Office Order was issued indicating the posting of various employees. Against the name of the petitioner it was shown that he belonged to V.J.N.T. category. The petitioner again took necessary steps to have this entry corrected and accordingly such correction was made at Serial Number 44 by showing the name of the petitioner as belonging to Mhali Nhavi-Open. Thereafter the petitioner’s employer referred his caste certificate for verification to the Caste Scrutiny Committee by the communication dated 24.07.2013. The Caste Scrutiny Committee on 30.06.2014 issued a validity certificate to the petitioner of belonging to Mhali – Entry No.101 O.B.C. The petitioner superannuated on 30.06.2019 and it was certified that the petitioner was entitled for pensionary benefits in view of the fact that no departmental proceedings

were pending nor were any dues recoverable from him. Such certificate was issued on 29.06.2019 by the Competent Authority. Despite this since the petitioner's retiral benefits were not released for almost two years the petitioner has filed the present writ petition seeking aforesaid reliefs.

3. Shri R.S. Parsodkar, learned counsel for the petitioner after referring to the aforesaid facts submits that since necessary corrections were made by the initial employer as well as the employer where the services of the petitioner were subsequently transferred coupled with the fact that a certificate of validity was issued to him by the Caste Scrutiny Committee, there was no legal justification for withholding the petitioner's retiral benefits. Placing reliance on the decision in *State of Jharkhand & Others Versus Jitendra Kumar Srivastava & Another* [**(2013) 12 SCC 210**] it was submitted that the right to receive pension being a fundamental right such benefits could not have been withheld in absence of any justifiable reason. He therefore submitted that appropriate relief be granted to the petitioner.

4. Reply has been filed by the concerned respondents in which it has been stated that while entering service, an entry was made in the petitioner's service book on the basis of his school leaving certificate that he belonged to Nhavi Banjara (NT). It is further stated that in absence of

validity certificate of belonging to Nhavi Banjara the action of withholding retiral benefits was justified. It is further stated that the petitioner proceeded to obtain a validity certificate of belonging to O.B.C. category and in the absence of validity certificate of belonging to V.J.N.T. category, his pensionary benefits were rightly withheld by the employer. Shri N.R. Patil, learned Assistant Government Pleader for the Employer on the basis of aforesaid facts sought to support the action of withholding the retiral benefits of the petitioner.

5. On hearing the learned counsel for the parties and on perusal of the documents filed alongwith the writ petition, we find that though the service book of the petitioner while entering service indicated the entry as Nhavi Banjara, such entry was got corrected by the petitioner. The employer on 27.06.2002 while publishing the seniority list made such correction against the petitioner's name. Similar is the fact upon transfer of the petitioner as Junior Auditor on 17.09.2003. Necessary correction was again got made and at Entry No.44 the petitioner was shown as belonging to Mhali Nhavi-Open. It is also relevant to note that the employer forwarded the caste certificate of the petitioner for due verification and the Caste Scrutiny Committee has thereafter issued a validity certificate of the petitioner belonging to Mhali O.B.C. Once such validity certificate was issued there is no substance in the stand taken by

the respondents that unless the petitioner furnishes a validity certificate of belonging to Nhavi Banjara he would not be entitled to pensionary benefits. Even accepting that in the school leaving certificate the entry shown was Nhavi Banjara it is presumed that before issuance of validity certificate, the Caste Scrutiny Committee is deemed to have verified all relevant documents and on its satisfaction have proceeded to issue the validity certificate. Such reference is also found in the validity certificate. It cannot be lost sight of that what the petitioner now is seeking is release of his retiral benefits. Since the petitioner is holding the caste validity certificate of belonging to Mhali O.B.C., there is hardly any justification for withholding his retiral benefits. The employer itself having sought verification of the caste certificate of the petitioner and the same having been duly verified by the Caste Scrutiny Committee, there is no reason whatsoever to now withhold the petitioner's retiral benefits.

6. In that view of the matter, we are satisfied that the petitioner has made out a case for grant of appropriate relief. Accordingly, following order is passed:

(a) The respondents are directed to release all retiral benefits of the petitioner and also start payment of regular pension consequent upon the petitioner's superannuation on 30.06.2019.

(b) The aforesaid be done within a period of three months from today failing which the petitioner would be entitled to claim interest on delayed release of retiral benefits.

7. Rule accordingly. The writ petition stands disposed of. No costs.

(**G.A. SANAP, J.**) (**A.S. CHANDURKAR, J.**)

APTE

Signed By: Digitally signed
byROHIT DATTATRAYA
APTE
Signing Date:22.12.2021 14:22