

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

934 **WRIT PETITION NO.4586 OF 2021**

Keshavrao Laxman Dangde
Age : 60 years, Occ : Pensioner,
R/o Karajgaon, Tal. Bhokardhan,
Dist. Jalna.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
 2. The Chief Executive Officer,
Zilla Parishad, Jalna
 3. The Education Officer (Primary),
Zilla Parishad, Jalna.
 4. Caste Verification Scrutiny Committee (ST),
Aurangabad Region,
Through its Secretary
Aurangabad.
- ..RESPONDENTS

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Mr.D.R. Irale Patil, advocate for the petitioner.
Mrs.M.A. Deshpande, A.G.P. for respondent nos.1 & 4.
Mr.V.P. Deshmukh, advocate for respondent no.2.

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**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 31.03.2022

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioner has put forth prayer clauses “B”, “C” and “C-1” as under:-

“B. The Hon’ble Court may be pleased to quash and set aside the impugned Conditional order dated 14.08.2020 passed by Resp No 3 insisting for Caste Validity Certificate & by issuing a writ of Mandamus or a writ in like nature direct the respondents to release the amount of Gratuity of Rs.9,66,900 Plus Commutation amount of Rs. 11,77,297 total Rs. 21,44, 197/- as well as continue regular monthly pension to the petitioner within 4 weeks or as found just & proper.

C. Pending hearing & final disposal of this Writ Petition the Hon’ble Court may be pleased to pass appropriate order & direct the respondents to pay the admissible amount of gratuity & commutation & continue regular monthly pension.

C-1. The Hon’ble Court may be pleased to direct the Resp No.4 to act upon the pending proposal dt. 30.7.2013 submitted for verification of Caste Claim by petitioner at the earliest.”

3. We have considered the submissions of the learned advocates for the respective sides. After considering the submissions and upon going through the petition paper book, we find that undisputed factors are as under :-

(A) The Zilla Parishad has initiated a special drive for recruiting candidates from the reserved categories in it's endeavour to wipe out the backlog in appointments as per the reservation roster.

(B) By an order dated 04.07.1986, the petitioner was appointed for a period of one year as an untrained primary teacher. It was mentioned in clause 7 that since such appointments are made by the Zilla Parishad to wipe out the backlog in appointment to the reserved categories, the petitioner should apply for the postal D.Ed., so as to become a trained teacher.

(C) The petitioner has completed such course and has become a trained teacher.

(D) The petitioner superannuated from service as an assistant teacher on 31.05.2019.

(E) On 18.05.2013, the State of Maharashtra introduced a Government Resolution requiring the candidates to submit their caste/tribe validity certificates.

(F) In view of the above Government Resolution, the Zilla Parishad forwarded the proposal of the petitioner for seeking validity of his Koli Malhar tribe falling in the Scheduled Tribe category.

(G) Till today, respondent no.4 – Caste Verification Scrutiny Committee has not concluded the proceedings and the learned Advocate for the petitioner submits that he has not even received any notice for the vigilance enquiry.

(H) The petitioner is presently receiving the provisional pension and by a communication dated 14.08.2020 issued by the Education Officer, he is directed to produce his validity certificate.

4. The learned Advocate for the petitioner submits that, assuming that he joined services in a special drive undertaken by the Zilla Parishad for wiping out the backlog of reservation on 14.07.1986, he has never received or claimed any advantage of he belonging to the Koli Malhar tribe. In his entire career of 33 years, he has not received any advantage on the basis of his scheduled tribe.

5. The learned Advocate for the Zilla Parishad submits, on specific instructions, that the petitioner never demanded and was never given any advantage of his

scheduled tribe status. He, however, clarifies that the entry of the petitioner in service was on the basis of his social status.

6. The issue before us, is as to whether regular pension of the petitioner should be kept on hold, since he does not have a tribe validity certificate. It is also a matter of circumspection, as to what would be the condition of his regular pension, if his claim of belonging to Koli Malhar tribe is rejected. For the sake of assumption, if it is believed that the claim of the petitioner is not validated, would the Zilla Parishad deprive him of the pension for his lifetime after having put in 33 years in employment in the backdrop of the Zilla Parishad having not demanded a validity certificate for 27 years of his employment. Even after the Government Resolution dated 18.05.2013 was introduced and the proposal of the petitioner was forwarded to the Competent Committee, the Zilla Parishad went into deep slumber and woke up only when the petitioner approached it for regular pension.

7. The service book entry produced before us by the petitioner is not controverted by the Zilla Parishad and, in fact, it is clear that there is no specific entry in the service book that he was selected and appointed to a post which was reserved for the Scheduled Tribe category.

8. In the light of the above and considering the peculiar facts emerging from the record and in view of decisive factor that the petitioner had never availed of any advantage of the scheduled tribe category in his entire service career, we find that this case has to be treated differently.

9. It is nobody's case that his Scheduled Tribe certificate is bogus, or that his entry in the employment was illegal. He was eligible to enter service on account of possessing requisite qualifications. He fulfills the condition of improving his qualification through the Postal D.Ed. course and worked as a trained assistant teacher throughout his career. For the first 27 years, the Zilla Parishad did not demand the validity certificate. He has superannuated six years after his proposal was forwarded to the Competent Committee and he cannot be blamed for the fact that his claim is still pending, in the backdrop of there being no allegations that he was instrumental in delaying the proceedings before the Competent Committee, or that he was not cooperating.

10. A similar issue was considered by a co-ordinate Bench of this Court in Writ Petition No.7441/2019 filed by Bhimrao Bhaorao Dhondge Vs. The State of Maharashtra and others. By an order dated 11.02.2020, this Court noted that the petitioner was appointed as a Peon in 1985 and

retired in April, 2018 on the same post. The only difference is that Bhimrao Bhaorao Dhondge was not selected on a post that was reserved for the Backward category. However, even he did not avail of any benefit of his reservation in his entire service lifetime.

11. In Writ Petition No.6679/2020 filed by Manohar Ramchandra Kusayya Korvi Vs. The State of Maharashtra and others, this Court (to which one of us Ravindra V. Ghuge, J is a party) delivered a judgment on 28.06.2021. Manohar had joined the post of a peon because it was reserved for the Scheduled Tribe Category. In identical set of facts, the employer woke up with the Government Resolution dated 18.05.2013. He had never claimed any benefit of his reservation, and therefore, this Court arrived at a specific conclusion in paragraph nos.10 to 13 as under :-

“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."

12. In view of the above, this Petition is partly allowed. The impugned order dated 14.08.2020 is quashed and set aside with the following directions :-

(a) The Zilla Parishad shall release the amount of gratuity and commutation amount by calculating the aggregate in accordance with the service record of the petitioner and release such payment with 6% interest per annum from the date the amount of gratuity and commutation became payable. Such amounts shall be paid as expeditiously as possible and preferably on or before 15th June, 2022.

(b) The Zilla Parishad shall clear the pension papers of the petitioner and shall ensure that the arrears of the pension amount as well as regular monthly pension shall be paid on or before 15th June, 2022, failing which the same shall carry an interest @ 6% per annum.

13. Rule is made partly absolute in the above terms.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)

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