

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12938 OF 2021

Sadhana W/o. Late Arjun Bagul,
Age. 40 years, Occ. Housewife,
R/o. Hirapur Road, Adarsh Nagar,
Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.

....Petitioner

Versus

1. The State of Maharashtra
Rural Development & Water
Conservation Department,
Mantralaya, Mumbai – 32.
Through its Secretary.
2. The Chief Executive Officer,
Zilla Parishad, Aurangabad,
Tq. & Dist. Aurangabad.
3. The Education Officer (Primary),
Zilla Parishad, Aurangabad,
Tq. & Dist. Aurangabad.

....Respondents

Advocate for Petitioner : Mr. S.C. Yeramwar
AGP for Respondent No. 1 : Mr. P.S. Patil
Advocate for Respondent Nos. 2 & 3 : Mr. C.D. Biradar

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**

DATE : 30 JUNE, 2022.

ORAL JUDGMENT [PER : C.V. BHADANG, J.] :-

Rule. Rule made returnable forthwith. Learned counsel for the respondent waives service. Heard finally by consent of the parties.

2. The petitioner who is the widow of late Arjun Bagul, is seeking a direction to the respondents to grant the benefit of family pension to her along with arrears and other benefits including gratuity / provident fund, etc, and for a further direction to consider the application for appointment on compassionate ground made by her son Rohit Arjun Bagul.

3. We have heard the learned counsel for the parties and perused record.

4. Arjun Bagul was appointed as an Assistant Teacher in a Primary School with Zilla Parishad, Aurangabad, on 26 July, 1997. His appointment was against a reserved post for a scheduled tribe candidate. Arjun Bagul claimed to belong to 'Mahadev Koli' caste. After his appointment, the caste certificate was referred to the Scrutiny Committee. The Committee by an order dated 28 March, 2015, has found that the caste of Arjun Bagul as mentioned in the caste certificate bearing No. SR/859/92 dated 19 June, 1992, was 'Mahadev Koli – scheduled tribe' issued by the Executive Magistrate, Nandgaon, District Nashik. The Scrutiny Committee found that the name of the 'caste' as appearing in the scheduled tribe list is 'Koli Mahadev'.

5. In that view of the matter, by an order dated 28 March, 2015,

the committee has cancelled and confiscated the certificate by keeping the merits of the claim open.

6. Arjun Bagul expired while in service on 26 February, 2019 and now the respondents are insisting for caste verification certificate in order to release the retiral benefits / family pension to the petitioner. According to the petitioner the respondents are refusing to release the retiral benefits / family pension on the ground of the non-production of the caste validity certificate.

7. Learned counsel for the petitioner has placed reliance on the decision of this Court in Writ Petition No. 4624/2021 dated 1 October, 2021, **Kamalabai W/o. Shaphadu Salve Versus The State of Maharashtra and others**, and the order dated 12 August, 2010, passed by this Court in Writ Petition No. 3718/1994, **Prakash S/o. Fulchand Barwal Versus The State of Maharashtra and others**, in order to submit that in similar circumstances when the caste claim was pending and the concerned incumbent had expired, this Court had extended the benefits of the family pension and the retiral benefits.

8. Learned AGP appearing for respondents in all fairness submitted that as per the settled position on the subject, the caste claim cannot be verified by the Committee after the death of the concerned person.

9. We have carefully considered the circumstances and the submissions made.

10. It is not in dispute that Arjun Bagul had joined the service as an Assistant Teacher on 26 July, 1997 and he died in harness on 26 February, 2019 and thus, had put in more than 21 years in service and thus, the petitioner being his widow would be otherwise entitled to the benefit of the family pension. The record discloses that the caste certificate of Arjun Bagul was referred to the Scrutiny Committee and the Scrutiny Committee on the basis of the fact that the caste mentioned in the certificate was 'Mahadev Koli – scheduled tribe' instead of 'Koli Mahadev' as appearing in the list of scheduled tribe has refused to consider the claim for verification keeping the merits of the claim open. It can thus be seen that this is not a case where the caste claim of the petitioner has been invalidated. It is only on account of a technical error while issuing the caste certificate by the concerned Executive Magistrate, that the Committee has refused to examine the caste claim on its own merits.

11. In our view, neither the petitioner nor her husband Late Arjun Bagul can be found to be at fault for issuance of such a caste certificate by the Executive Magistrate. The fact remains that there are no allegations of any fraud and / or misrepresentation made by Arjun, claiming to belong to a scheduled tribe.

12. In Kamalabai Salve (*supra*), the question before this Court was about payment of the death gratuity to the successors of the deceased employee who had died in harness without the Scrutiny Committee

taking a decision on the validation of his caste claim. In that case, the validation of the caste claim was pending before the Scrutiny Committee for over six years. This Court after taking into consideration, 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 ('The Act of 2000' for short) and in particular Section 10 of the said Act has held that the benefit of the death gratuity could not have been refused to the widow of the deceased employee. It is well settled that the family pension and gratuity and other retiral benefits are not by way of any gratuitous payment or a bounty, but they are earned by the concerned employee on account of his long, sincere and unblemished service.

13. It is necessary to note that as per the Maharashtra Civil Services Pension Rules, 1982, which are applicable in the present case, Pension includes Gratuity. Thus, the decision of this Court on the point of the entitlement of gratuity would also apply in the case where the petitioner is claiming family pension.

14. In Prakash Barwal (supra), the petitioner was appointed as a Peon against a post reserved for scheduled tribe candidate. His caste claim was referred for verification to the Committee and the caste claim was invalidated which order was subject matter of challenge before this Court. The original petitioner expired during the

pendency of the petition. In such circumstances, this Court had found that the petitioner having rendered service of more than 15 years, his widow would be entitled to family pension and accordingly benefit of family pension was extended. This Court also found that once the original petitioner has died, the question about verification of his claim belonging to the scheduled tribe does not arise.

15. In such circumstances, we are inclined to allow the petition. The Writ Petition is accordingly, allowed. We direct respondent Nos. 2 and 3 to grant the benefit of family pension and all other admissible pensionary benefits to the petitioner without insisting for submission of the caste validity certificate of Late Arjun Bagul, within a period of three months. We also direct respondent Nos. 2 and 3 to consider the application of Rohit Arjun Bagul dated 11 October, 2021, for appointment on compassionate ground on its own merits and in accordance with law within a period of three months from today.

16. Rule is made absolute in the aforesaid terms, with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.