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

WRIT PETITION NO.14820 OF 2021

Moreshwar s/o Ramchandra Hadke,
Age – 59 years, Occ. Pensioner,
R/o A-2/103, Ambika Park Society,
Khanda Colony, Plot No.1, Sector-6,
Near Shrikripa Hall, New Panvel (West),
Dist. Raigad

..PETITIONER

VERSUS

1. The State of Maharashtra,
General Administration Department,
Mantralaya, Mumbai – 32
Through its Principal Secretary
2. The Deputy Secretary,
State of Maharashtra,
Department of Revenue and Forests,
Hutatma Rajguru Chowk,
Madam Cama Marg,
Mantralaya, Mumbai-32
3. The Collector,
Office of the Collectorate,
Sindhudurg, Tq. & Dist.
Sindhudurg

..RESPONDENTS

Mr. S.C. Yeramwar, Advocate for petitioner;
Mr. S.K. Tambe, A.G.P. for respondents

**CORAM : R.D. DHANUKA
AND
S. G. MEHARE, JJ.**

DATE : 16th March, 2022

ORAL JUDGMENT (Per R.D. Dhanuka, J.)

1. Rule. Learned A.G.P. waives service for respondents.
2. Rule is made returnable forthwith.
3. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the validity of clause 1 (b) and (c) of the Government Resolution dated 21.12.2019 issued by respondent no.1. He also prays for a writ of certiorari for quashing and setting aside the order dated 25.2.2020 issued by respondent no.2 putting the services of the petitioner on supernumerary post for a temporary period of 11 months or till the date of retirement, whichever is earlier. The petitioner also seeks a writ of mandamus against respondent no.2 to forthwith grant and release the pension and pensionary benefits to the petitioner as he has retired from service on superannuation, on 31.5.2020.
4. Petitioner was appointed as Talathi against a post reserved for Scheduled Tribe category, on 4.11.1981. His tribe claim was referred

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for verification to the Scheduled Tribe Certificate Scrutiny Committee in the year 1994. The tribe claim of the petitioner was invalidated by the Committee by order dated 29.7.1994. The petitioner preferred a Writ Petition bearing No.4129 of 1994. One of the employees had filed complaint before the Maharashtra Administrative Tribunal against the petitioner. The Tribunal, by order dated 28.11.2006, directed the Collector, Raigad to accommodate the services of the petitioner considering his service tenure.

5. Petitioner thereafter obtained caste certificate as belonging to "Koli" - Special Backward Class from the Sub-Divisional Officer, Alibag and obtained certificate of validity on 9.2.2007.

6. Petitioner was thereafter promoted as Naib Tahsildar on 12.1.2011 and promoted as Tahsildar from open category by order dated 13.9.2019. On 6.7.2017, the Honourable Apex Court in Civil Appeal No.8928 of 2015, quashed and set aside various Government Resolutions and Circulars protecting services of the candidates despite invalidation of their tribe claims.

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7. The Division Bench of this Court at Nagpur in Writ Petition No.3140 of 2018 accepted the statement of the State Government regarding appointment of employees on supernumerary posts whose tribe claims were held invalid. Clause 1 (b) and 1 (c) of the Government Resolution dated 21.12.2019 directed that the employees who have surrendered their tribe claims or who have submitted the certificate of validity of Special Backward Class after invalidation of their tribe claims have been chosen to issue with fresh appointment on supernumerary post. On 25.2.2020, respondent no.2 placed the petitioner in service on supernumerary post for a temporary period of 11 months or till the date of retirement, whichever is earlier, on the basis of the Government Resolution dated 21.12.2019, issued by the Government of Maharashtra. On 31.5.2020, the petitioner retired from service on superannuation. The respondents, however, withheld pension and pensionary benefits in view of the services of the petitioner having been placed on supernumerary post at the time of retirement. The petitioner thereafter made a representation to the respondents, however, of no avail.

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8. Learned Counsel for the petitioner invited our attention to various Government Resolutions and would submit that said clauses 1 (b) and 1 (c) of the Government Resolution dated 21.12.2019 are violative of Article 19 of the Constitution of India. The petitioner was already granted protection in service in view of the Government Resolution dated 15.6.1995 and subsequent Government Resolutions being not covered under the impugned clause 1 (b) and 1 (c) of the Government Resolution dated 21.12.2019. A large number of similarly situated employees have been granted protection. It is submitted that the protection granted by earlier Government Resolutions could not have been taken away by the subsequent Government Resolution dated 21.12.2019.

9. Learned Counsel placed reliance on the judgment delivered by the Division Bench of this Court on 4.5.2021 in Writ Petition No.903 of 2020 filed by Raja Tukaram Shinde Vs. State of Maharashtra & ors., in support of his submission that the protection already granted by earlier Government Resolution which was in force till the impugned Government Resolution came to be issued, cannot be taken away.

10. This Court, in the judgment in the case of Raja (supra), after referring to several judgments of the Honourable Supreme Court held that once the protection has already been granted to the employment of the petitioner earlier, the said protection cannot be taken away by subsequent Government Resolution with retrospective effect. In our view, the said judgment of this Court in the case of Raja (supra) would apply to the facts of this case. We are respectfully bound by the said judgment and do not propose to take a different view in the matter.

11. Learned A.G.P. for respondents is not in a position to distinguish the judgment in the case of Raja (supra). Insofar as facts narrated in the instant petition are concerned, there is no dispute raised by the learned A.G.P. No affidavit-in-reply is filed on behalf of the respondents.

12. In our view, since the respondents could not have placed the petitioner in service on supernumerary post for a temporary period of 11 months or till the date of his retirement, whichever is earlier, vide

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order dated 25.2.2020, the respondents cannot withhold the pension and other retiral benefits of the petitioner on that ground. In our view, the order dated 25.2.2020 issued by respondent no.2 deserves to be quashed and set aside. We, accordingly, pass the following order:-

- a) Rule is made absolute in terms of prayer clause (C) and (D).
- b) Respondent no.3 Collector is directed to submit the pension papers for release of pension and other related papers for release of retiral benefits of the petitioner to the Accountant General, within four weeks from today, without fail.
- c) The Accountant General is directed to release the dues of the petitioner within two weeks thereafter.
- d) Insofar as pension payable in future is concerned, the same also be released within the time prescribed under the Pension Rules, without fail.

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e) Petition stands disposed of in the aforesaid terms. No order as to costs.

f) Parties to act upon authenticated copy of this judgment.

(S. G. MEHARE, J.)

(R.D. DHANUKA, J.)

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