

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

WRIT PETITION NO. 547/2021

Namdeo s/o Dashrath Nikhare,
 Aged about 58 years, Occupation-Retired
 R/o. Ayodhya Nagar, Teacher Colony,
 Ward No.15, Gadchiroli.

..... **PETITIONER**

...V E R S U S...

- 1] Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
- 2] Chief Engineer,
Public Works Department,
Regional Division, Nagpur.
- 3] Superintending Engineer,
Public Works Department,
Bandhkam Bhavan, Complex Parisar,
Gadchiroli.
- 4] Executive Engineer,
Public Works Department No.2,
Gadchiroli.
- 5] Superintending Engineer,
Public Works Department,
Old Secretariate, Civil Lines,
Nagpur-440 001.

Amended as per
Court's order
dated 17.02.2021

Sd/- 15.03.2021
S.R.Narnaware
C.F.Petitioner

..... **RESPONDENTS**

 Shri S.R.Narnavare, Advocate for petitioner.
 Ms N. P. Mehta, Assistant Government Pleader for respondents.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.
DATE : 23rd MARCH, 2022.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner was appointed on the post of Junior Clerk with Public Works Department of the State of Maharashtra on 08.11.1985. His appointment was on a post reserved for Scheduled Tribe candidate. Subsequently, the petitioner's cadre was changed and worked as Assistant Storekeeper from 13.11.1996. The petitioner was promoted as Storekeeper on 06.06.2001 as a Scheduled Tribe candidate. Since the petitioner failed to submit his caste validity certificate, he was reverted to the post of Assistant Storekeeper by the order dated 16.12.2009. However subsequently on 24.05.2011 he was promoted to the post of Storekeeper from the open category. He continued on that post and superannuated on 31.05.2020. After his retirement the respondent no.5 issued a communication dated 19.11.2020 by which the petitioner was informed that under Government Resolution dated 21.12.2019 he ought to have been placed on a supernumerary post on account of his failure to submit a caste validity certificate. However without doing so, the petitioner had retired on 31.05.2020. The petitioner was further informed that on account of failure to submit validity certificate he was not entitled to the benefits under Assured Career Progression Scheme. The petitioner was

informed that the documents pertaining to his pension case would be considered by the concerned Superintending Engineer. Being aggrieved, the petitioner has challenged the aforesaid communication in this writ petition.

3. It is submitted by Shri S.R.Narnavare, the learned counsel for the petitioner that when the petitioner superannuated from service on 31.05.2020, he was occupying the post of 'Store Keeper' from the open category. He was not placed on a supernumerary post in terms of the Government Resolution dated 21.12.2019. Despite that the petitioner was being paid provisional pension. The petitioner could not be deprived of his pensionary benefits in absence of he being placed on a supernumerary post. Reliance was placed on the decision of the Hon'ble Supreme Court in **Civil Appeal No.3984/2010** (*V.Sukumaran vs. State of Kerala and anr.*) decided on 26.08.2020 in that regard.

4. Ms N. P. Mehta, learned Assistant Government Pleader for the respondents opposed the aforesaid contentions by relying upon the additional affidavit placed on record. It was submitted that initial entry of the petitioner was on the post that was reserved for candidates from the Scheduled Tribe category. For failure to submit a validity certificate, the services of the petitioner had been reverted. What was required to be seen was the initial entry of the petitioner in service and not the post from which the petitioner

retired. Attention was invited to the paragraph 3 of the additional affidavit wherein it was stated that the petitioner had not been placed on a supernumerary post till his retirement. The petitioner was not entitled for retirement benefits as he failed to submit the validity certificate.

5. We have heard the learned counsel for the parties and we have perused the documents on record. It is not in dispute that the petitioner entered in service on being appointed as Junior Clerk on a post reserved for the Scheduled Tribe category. It is further not in dispute that the petitioner's tribe claim was invalidated on 08.03.2010. However till his superannuation the petitioner was not placed on a supernumerary post. Consequently, he retired from the post of Storekeeper on which he was promoted on 24.05.2011 in the open category.

6. In these facts when the petitioner was not placed on a supernumerary post, there does not appear to be any justification for withholding the petitioner's retirement benefits. No departmental proceedings were held against the petitioner prior to his superannuation on the basis of which he could be deprived of his pensionary benefits. By the order dated 03.07.2020 the petitioner is being paid provisional pension subject to finalization of his pension case. The impugned communication does not seek to deprive the petitioner of such retirement benefits. Thus as the petitioner has superannuated without being placed on a supernumerary post, there is no

reason to withhold his pensionary benefits. In that view of the matter, the petitioner is entitled for the relief of grant of retirement benefits.

7. Accordingly the writ petition is disposed of by directing the respondents to finalize the petitioner's pension case within a period of three months from today and release such benefits to the petitioner in accordance with law.

Rule is made absolute in aforesaid terms. No costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

Andurkar..