

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 2474/2021

Uday S/o Murlidhar Kohat,
Aged about 62 years,
Occupation : Retired,
R/o.46, Medical Cooperative
Housing Society, Bhagwan Nagar,
Nagpur – 440027.

..... PETITIONER

// VERSUS //

1. The State of Maharashtra,
through its Secretary, General
Administration Department,
Mantralaya, Mumbai – 32.
2. The Zilla Parishad, Nagpur,
Through its Chief Executive
Officer, District – Nagpur.
3. Block Development Officer,
Panchayat Samiti Hingna,
Zilla Parishad, Nagpur.

.... RESPONDENT(S)

Mr. M.V. Bute, Advocate for the petitioner
Ms. Tajwar Khan, Assistant Public Prosecutor for respondent no. 1
Mr. S.R. Charape, Advocate for respondent nos. 2 and 3

CORAM : A.S. CHANDURKAR AND M. W. CHANDWANI, J.J.

DATED : 19/10/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

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

2 The petitioner came to be appointed on a Class III post with
the Health Department at Zilla Parishad, Nagpur on 05.05.1984. This

appointment initially was for a period of one year. Thereafter, the petitioner was issued fresh orders of appointment on 26.06.1985 and 24.07.1986. The petitioner was then promoted on the post of Health Supervisor on 09.02.2005. The petitioner rendered services at Panchayat Samiti, Hingna and on attaining the age of superannuation on 31.12.2018 retired from service. Thereafter, the petitioner sought release of his pensionary benefits and made representations dated 19.11.2019 and 22.12.2020. Since pension was not released in favour of the petitioner, he has filed the present writ petition.

3. It is submitted by the learned Counsel for the petitioner that the petitioner had obtained the Caste Certificate of belonging to “Koshti” Special Backward Class and in view of the Government Resolution issued on 15.06.1995, he was entitled to protection of his service. During his entire service, he was not called upon to submit any validity certificate and he was permitted to retire from service. There was no justification on the part of respondent nos. 2 and 3 in withholding the petitioner’s pension. Reliance was placed on the decision in Writ Petition No. 547/2021 (*Namdeo s/o Dashrath Nikhare Vs. Secretary, Public Works Department and ors.*) decided on 23.03.2022. It is thus prayed that the pensionary benefits of the petitioner be directed to be released.

4. The learned Counsel appearing for respondent nos. 2 and 3 opposed the prayers made in the writ petition. He referred to the

affidavit-in-reply and submitted that on 28.03.2019 after the petitioner's superannuation, he was called upon to furnish validity certificate. Since the validity certificate was not furnished, the pension case of the petitioner was not finalized. It is thus submitted that subject to furnishing the validity certificate, the pensionary benefits of the petitioner would be released.

5. We have heard the learned Counsel for the parties. We have perused the documents on record. It is undisputed that after the petitioner's appointment, he rendered services for almost 32 years till he superannuated on 31.12.2018. It is admitted position on record that till superannuation the employer did not demand a validity certificate from the petitioner nor was any action initiated against him for failure to submit such validity certificate. As a result, the petitioner discharged duties for 32 years and thereafter superannuated. It is only for the first time on 28.03.2019 that the respondent nos. 2 and 3 sought production of a validity certificate. This was after the petitioner's superannuation. There is no justification indicated by respondent nos. 2 and 3 to withhold the pensionary benefits of the petitioners. It would have been a different matter if the employer had initiated some action or had taken some steps when the petitioner was in service to seek either a validity certificate or any other relevant document from the petitioner. No such steps were taken when the petitioner was in service. No provision has

been pointed out to indicate the power to withhold pensionary benefits in such situation. Hence, for this reason, the action on the part of respondent nos. 2 and 3 in withholding pensionary benefits is unjustified. This Court in *Namdeo s/o Dashrath Nikhare (supra)* has observed that when the said petitioner was not placed on supernumerary post while in service, he could not have been deprived of pensionary benefits. We find that in the present case, the respondents were not justified in withholding the pensionary benefits in absence of any valid or statutory basis for the same.

6. Hence for the aforesaid reasons, the following order is passed:-

(i) The writ petition is allowed.

(ii) It is directed that the respondent nos. 2 and 3 shall finalize the petitioner's pension case within a period of three months from today and release the pensionary benefits to the petitioner in accordance with law.

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

(M. W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

SANDIP
MAHADEV
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Personal
Assistant to the
Hon'ble Judge
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