

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

WRIT PETITION NO. 3380 OF 2022

Narayan s/o Laxmanrao Wankhede,
aged 59 years, Occ. Retired,
R/o Plot No. 59-A, Shriram Wadi,
Behind Shivraj School, Ayodhya Nagar,
Nagpur.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Chief Secretary,
6th Floor, Main Building, Mantralaya,
Mumbai – 400032.
2. Nagpur Municipal Corporation,
Nagpur, through its Commissioner,
Civil Lines, Nagpur – 440024.

RESPONDENTS

Shri S.D. Borkute, Advocate for the petitioner.
Shri A.A. Madiwale, Assistant Government Pleader for respondent No.1/ State.
Shri J.B. Kasat, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE : 21/11/2022

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

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

2. The petitioner entered service as Fireman with the Nagpur Municipal Corporation on 15/6/1984. The petitioner's entry in service was on the post reserved for 'Dhoba' Scheduled Tribe. In the year 2004, the petitioner's tribe claim was invalidated. In view of Government

Resolution dated 15/6/1995, he was continued in service as belonging to the Other Backward Class category. The petitioner obtained validity certificate of belonging to 'Dhobi' Other Backward Class category on 20/3/2012. During the course of service, the petitioner was placed on a supernumerary post in view of Government Resolution dated 21/12/2019. The petitioner thereafter superannuated on 27/11/2020. His retiral benefits have been withheld and hence this Writ Petition.

3. The learned Counsel for the petitioner submits that after invalidation of the petitioner's tribe claim, he was granted protection in service in view of Government Resolution dated 15/6/1995. The employer in terms of that Government Resolution placed him in the Other Backward Class category and his name was shown in the seniority list accordingly. Having protected his service and having permitted him to superannuate, there was no reason to withhold the petitioner's retiral benefits. In support, the learned Counsel for the petitioner placed reliance on the decision in *Raja Tukaram Shinde Vs. The State of Maharashtra & Anr.* [Writ Petition No. 903/2020 decided on 4/5/2021] as well as in *Moreshwar s/o Ramchandra Hadke Vs. The State of Maharashtra & Ors.* [Writ Petition No. 14820/2021 decided on 16/3/2022] at the Aurangabad Bench. The impugned communication dated 12/5/2021 requiring the employer to await the recommendations of the Study Group and thereafter the policy decision of the State Government was not

warranted in these facts. It is therefore prayed that the retiral benefits of the petitioner be directed to be released.

4. In the reply filed on behalf of the Municipal Corporation, it has been stated that the petitioner was placed on a supernumerary post pursuant to the Government Resolution dated 21/12/2019. This was in view of the order dated 9/1/2020. In the light of the Government Resolution dated 21/12/2019, unless report of the Study Group was received, the petitioner was not entitled for pensionary benefits. He further submitted that the relief as prayed for was not liable to be granted.

5. We have heard the learned Counsel for the parties and we have perused the documents on record. It is undisputed that after invalidation of the petitioner's tribe claim, his services were protected by relying upon the Government Resolution dated 15/6/1995. The petitioner's services were protected as belonging to the Other Backward Class category. His name was also included in the seniority list as belonging to that category. In this backdrop, when the Corporation itself protected the services of the petitioner and placed him in the Other Backward Class category, there does not appear to be any justification to await the recommendations of the Study Group and thereafter the policy decision of the State Government. It is undisputed that after being placed

in the Other Backward Class category, the petitioner has obtained validity certificate dated 20/3/2012 of belonging to 'Dhobi' Other Backward Class category. He was permitted to superannuate on 27/11/2020. We find that the Division Bench in *Raja Tukaram Shinde (supra)* has considered the effect of the orders of protection granted by this Court and the effect of non-release of pensionary benefits thereafter. In the present case, the employer itself has granted such protection and hence in these facts, it would not be necessary to await the recommendations of the Study Group and thereafter the policy decision of the State Government.

6. For the aforesaid reasons, there does not appear to be any justification in issuing the impugned communication dated 12/5/2021 to the petitioner in that regard. Respondent No.2 – Municipal Corporation is directed to release the pensionary benefits of the petitioner pursuant to his superannuation on 27/11/2020. Needful be done within a period of six weeks from receipt of copy of this judgment.

7. Rule is made absolute in the aforesaid terms. No costs.

(ANIL L. PANSARE, J.)

(A.S. CHANDURKAR, J.)

SUMIT