

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

WRIT PETITION NO. 5706/2021

Ms. Shalini d/o Purushottam Bokde
after marriage-Mrs. Shalini w/o Haribhau Chandankhede,
Age - 62 years, Occupation-Retired
R/o. Plot No.61-B, Swaraj Nagar,
Manewada Ring Road, Nagpur-440 024.

..... **PETITIONER**

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

- 1] The State of Maharashtra,
through its Chief Secretary,
6th floor, Main Building, Mantralaya,
Mumbai-400 032.
- 2] Zilha Parishad, Nagpur.
Through its Chief Executive Officer,
Zilha Parishad Building, Civil Lines,
Nagpur-440 001.
- 3] Education Officer (Primary),
Zilha Parishad, Nagpur, office at
Zilha Parishad Building, Civil Lines,
Nagpur-440 001.

..... **RESPONDENTS**

Shri Shankar Borkute, Advocate for petitioner.
Ms H.N.Jaipurkar, Assistant Government Pleader for respondent no.1.
Shri B. M. Lonare, Advocate for respondent nos. 2 and 3.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.
DATE : 5th APRIL, 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 'Assistant Teacher' with Zilla Parishad Primary School Nimboli, Panchayat Samiti, Chandur Railway, District Amravati on 05.08.1981. The petitioner claims that she belongs to 'Halba' Scheduled Tribe. Her appointment was on probation till 30.04.1982. However the said period of probation was extended till 30.04.1983. Thereafter her appointment was confirmed on the said post. She had applied to State Government for transfer from Zilha Parishad Amravati to Zilha Parishad, Nagpur. The State Government by its order dated 07.06.1985 transferred her services to Zilha Parishad, Nagpur and accordingly she joined her services at Zilha Parishad, Nagpur. She came to be promoted on the post of Head Mistress at Upper Grade Primary School in Open category by order dated 21.05.2007. As per Government Circular dated 18.05.2013 the petitioner was directed to submit caste validity certificate. Accordingly on 23.07.2013 the petitioner's tribe claim was forwarded to the Scrutiny Committee through the Block Development Officer, Panchayat Samiti, Mauda, District Nagpur. In the meantime, the petitioner had applied for voluntary retirement on 01.07.2017 due to ill-health. The respondent no.2 had granted approval to the voluntary retirement of the petitioner vide order dated 04.09.2017 four months prior to attaining the age of superannuation. The petitioner retired from service on 30.09.2017 in view of communication dated 25.09.2017 issued by the Block Development Officer. The petitioner had applied for pension as per

Maharashtra Civil Service (Pension) Rules, 1982 (for short, the Pension Rules) to the respondent no.3. Accordingly the respondent no.3 finalized the petitioner's provisional pension and she started receiving monthly provisional pension from 01.10.2017. The Scrutiny Committee rejected the tribe claim of the petitioner as 'Halba' Scheduled Tribe by its order dated 30.12.2020. Thereafter the respondent no.2 issued a communication dated 20.10.2021 in view of Government Resolution dated 21.12.2019 and stopped her monthly pension and other benefits till final outcome of decision of the Study Group constituted pursuant to Government Resolution dated 15.06.2020. Being aggrieved, the petitioner has challenged the aforesaid communication in this writ petition.

3. It is submitted by Shri Shankar Borkute, the learned counsel for the petitioner that the petitioner retired from service on 30.09.2017 and till that date she was not placed on a supernumerary post in terms of the Government Resolution dated 21.12.2019. Besides the said Government Resolution is not applicable to the employees who retired from the services. As such the respondent no. 2 had no power to withhold the monthly pension of the petitioner which was already approved as per the relevant Pension Rules. The petitioner could not be deprived of her pensionary benefits in absence of her being placed on a supernumerary post. Lastly, it is submitted by the learned counsel for the petitioner that similar relief as sought by the present petitioner

has been granted by this Court in Writ Petition No.547/2021 (*Namdeo D.Nikhare vs. Secretary, Public Works Department and ors.*).

4. Ms H.N.Jaipurkar, learned Assistant Government Pleader for the respondent no.1 and Shri B.M.Lonare, learned counsel for the respondent nos. 2 and 3 opposed the aforesaid contentions by relying upon Government Resolution dated 21.12.2019 and submitted that the petitioner was not entitled for retirement benefits in view of Government Resolution dated 21.12.2019 as her tribe claim had been invalidated by the Scrutiny Committee.

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 Assistant Teacher on a post reserved for the Scheduled Tribe category. It is further not in dispute that the petitioner's tribe claim was invalidated on 30.12.2020. However till her retirement/superannuation the petitioner was not placed on a supernumerary post. Consequently, she retired from the post of Head Mistress on which she was promoted on 21.05.2007 in the open category.

6. In these facts when the petitioner was not placed on a supernumerary post when she was in service, 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 her

retirement on the basis of which she could be deprived of her pensionary benefits. By the order dated 03.01.2018 the petitioner is being paid provisional pension subject to finalization of her pension case. The impugned communication seeks to deprive the petitioner of such retirement benefits without any justification. Thus as the petitioner has retired without being placed on a supernumerary post, there is no reason to withhold her pensionary benefits. In that view of the matter, the petitioner is entitled for the relief of grant of retirement benefits.

7. Accordingly the order dated 20.10.2021 passed by the respondent no.2 is set aside. The writ petition is allowed. The respondents are directed to release the petitioner's pension in accordance with law within a period of three months from today.

Rule is made absolute in aforesaid terms. No costs.

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

(A.S.CHANDURKAR, J.)

Andurkar..