

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3871 OF 2022

PRALHAD SAKHARAM KOLI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri Yeramwar Sushant C.
AGP for Respondents 1 and 2/State : Shri S.K. Tambe
...

CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 03rd January, 2023

Per Court :-

1. Despite service of court notice on the Chief Executive Officer, Zilla Parishad, Palghar and the Education Officer (Primary), Zilla Parishad, Palghar, none have caused an appearance, either through an advocate or in person.

2. The petitioner has put forth prayer clauses B, C and D as under :-

“B) To direct the respondents No.3 and 4 to forthwith grant and release the pension and all the pensionary benefits to the petitioner without insisting for submission of Certificate of Validity as he is retired from service by superannuation on 31.05.2021, by issuing appropriate writ, orders or directions as the case may be;

- C) *To direct the Respondent No.2-Committee to decide Tribe Claim of the petitioner which is pending since 04.03.2022 (earlier since 18.02.2020) as expeditiously as possible within a stipulated period as this Hon'ble Court deems fit, by issuing appropriate writ, orders or directions as the case may be;*
- D) *To direct the Respondents No.3 and 4 to forthwith grant provisional pension and release all the pensionary benefits to the petitioner pending hearing and final disposal of the present Writ Petition.”*

3. The petitioner places reliance upon the judgment delivered by this Court at Nagpur dated 15.04.2022 in Writ Petition No.5706/2021 filed by ***Ms.Shalini d/o Purushottam Bokde vs. The State of Maharashtra and others.***

4. The petitioner claims to be belonging to “Tokre Koli”, Scheduled Tribe category. He obtained such certificate, albeit, with the wrong spelling “Tokare Koli” on 31.08.1979. He was appointed as a Primary Teacher on 11.01.1988 by the then Zilla Parishad, Thane (now Zilla Parishad, Palghar). On 29.08.2017, the petitioner’s employer directed him to tender relevant documents for forwarding the proposal to the competent Scrutiny Committee for validation of his tribe claim. The proposal was, accordingly, forwarded. As the Committee noticed that the proposal was not tendered online, the petitioner was

directed to forward a fresh proposal. Accordingly, the proposal was tendered online on 18.02.2020. The Committee then found that the tribe certificate was not issued by the competent authority since it did not bear the outward number. The petitioner was directed to get the tribe certificate verified from the competent authority.

5. The petitioner superannuated from employment on 31.05.2021. By order dated 14.03.2022, the Committee directed the petitioner to submit the tribe certificate in Format-C through the online process. The journey of the petitioner before the Committee for seeking validation, was halted at this stage. By this petition, the petitioner prays that he should be granted all retiral benefits by placing reliance upon the judgment delivered in *Shalini (supra)*.

6. Having considered the submissions of the learned advocates for the respective sides, we find that the view taken in *Shalini (supra)* would not be applicable to the case of the petitioner since the petitioner was directed to produce the validity certificate by the employer four years prior to his superannuation. It is under fortuitous circumstances that initially the proposal was not entertained as it was tendered offline.

Subsequently, the Committee noticed a spelling mistake in the certificate. Thereafter, the Committee noticed that the certificate was not in Format-C and it is during this process that the petitioner superannuated on 31.05.2021.

7. In *Shalini (supra)*, the employer did not initiate any step at all. After superannuation of the petitioner, she applied for retiral and pensionary benefits. It is then that the objection was raised by the competent authority that the petitioner (Shalini) had not tendered the validity certificate. In the instant case, the employer had demanded the validity certificate and the process had commenced four years prior to the superannuation of the petitioner.

8. Suffice it to say that after superannuation, the petitioner cannot survive without pension. At the same time, the petitioner should have been vigilant in getting his tribe claim validated knowing fully well that he was appointed on the post, which was reserved for the Scheduled Tribe category and it was the law of land that unless he produces a validity certificate, he would not be continued in employment.

9. In view of the above, this Writ Petition is disposed off with the following directions :-

(a) The employer Zilla Parishad shall forward the papers of the petitioner for provisional pension until his claim is decided by the competent Scrutiny Committee.

(b) The petitioner agrees to tender an affidavit-undertaking that if his claim is invalidated by the Committee and if he suffers an adverse order in the litigation journey, he would not be entitled for retiral benefits in the light of the law laid down by the Honourable Supreme Court in *Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others*, (2017) 8 SCC 670, *Vijay Kishanrao Kurundkar vs. State of Maharashtra and others*, 2020 AIR (SC) 3715 : 2020 SCC Online SC 834, *Chandrabhan vs. State of Maharashtra and others*, 2021 (9) SCC 804 : 2021 (5) ALL M.R. 418 and *Chief Executive Officer, Bhilai Steel Plant, Bhilai vs. Mahesh Kumar Gonnade and others*, 2022 LiveLaw (SC) 572.

(c) Let such affidavit-undertaking be tendered to the employer and a copy in this proceeding, on or before 21.01.2023.

(d) The competent authority would issue the Format-C “Tokre Koli”, Scheduled Tribe certificate to the petitioner, on or before 21.01.2023.

(e) The petitioner would tender the said tribe certificate

in the proceedings bearing No.7/499/Ser/032022/ 260726 before the Scrutiny Committee, immediately after receiving the same.

(f) The Scrutiny Committee would consider the proposal of the petitioner from the stage at which the proceedings were halted vide the impugned order dated 14.03.2022 and shall deliver an order, after following the entire procedure as is prescribed in law, on or before 30.09.2023.

(g) The petitioner shall render wholehearted cooperation in the proceedings and shall refrain from seeking adjournments on unreasonable or trivial grounds, lest the committee would be justified in progressing to the next stage in the proceeding.

(h) The petitioner would be entitled for provisional pension from the date of his superannuation, subject to the decision on his claim pending with the Scrutiny Committee.

(i) Let the arrears, calculated at the rate of the provisional pension, be paid within three months and payment of regular provisional pension be commenced simultaneously.

kps

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)