

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 6066 OF 2023
IN
WRIT PETITION NO. 7409 OF 2021**

Ravindra Tanaku Baviskar
Age: 59 years, Occ-Service,
R/o. A/P Om Shanti Nagar, Plot No.2,
Gat No.9/2/1/B, Near Gujral Petrol Pump,
Pimprala, Tq. Dist. Jalgaon

... Applicant

Versus

- 1] The State of Maharashtra
Through: The Secretary,
Department of Tribal Development,
Mantralaya Extension Building,
Madam Kama Road, Hutatma
Rajguru Chowk, Mumbai-400 032
- 2] The Committee for verification of
Scheduled Tribe Claims, Nandurbar,
Milk Chilling Plant Building, Near RTO,
Sakri Road, Nandurbar – 425412
Through: The Secretary
- 3] Kavayitri Bahinabai Chaudhari
North Maharashtra University,
Jalgaon, P. B. No. 80, Umavi Nagar,
Jalgaon 425 001
Through: the Registrar

... Respondents

Mr. C. V. Dharurkar, Advocate for Appellants
Mr. P. S. Patil, AGP for Respondent No.1 and 2– State
Mr. A. B. Girase, Advocate for Respondent No.3

....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 03.11.2023

ORDER (Per: Y. G. Khobragade, J.) :-

1. Heard the learned Advocate appearing for the respective parties at length.
2. The Applicant/Petitioner has filed the present Application and prayed for issuance of directions against Respondent No.3 to pay him regular monetary benefits viz., Pension, Leave Encashment, Gratuity arising out of service rendered by him as per order dated 07.07.2021 passed by this Court.
3. The Applicant/Petitioner has filed this Writ Petition, challenging the order dated 24.05.2021 passed by Respondent No.2 Caste Scrutiny Committee, invalidating his caste claim as “Tokare Koli” Scheduled Tribe. Admittedly, the Petitioner was appointed as Sahayak Kaksh Adhikari with the Respondent No.3 - Kavayitri Bahinabai Chaudhari North Maharashtra University, Jalgaon on 01-07-1991, against the reserved category of Scheduled Tribe.

4. Since the appointment of the Petitioner was under the S.T. category, his caste claim was forwarded to Respondent No.2 Caste Scrutiny Committee for verification. On 24.05.2021, Respondent No.2 invalidated his caste claim holding that the Petitioner failed to prove his caste claim Tokare Koli Scheduled Tribe for want of cultural affinity as well as documentary evidence.

5. On 07.07.2021, the coordinate Bench of this Court [Coram: S. V. Gangapurwala, J. (as His Lordship then was) and R. N. Laddha, J.) had passed the following order while issuing Notice:

"ORDER:

1. *The tribe claim of the Petitioner is invalidated.*
2. *Issue notice to respondents, returnable on 01-09-2021. The learned A.G.P waives notice for respondent Nos. 1 & 2.*
3. *Till then adverse action shall not be taken against the Petitioner only on the ground that tribe claim of the Petitioner is invalidated. "*

6. During the pendency of the Petition, on 31.05.2022, the Petitioner superannuated on completion of his age of 58 years. However, Pension, Leave Encashment, Gratuity arising out of service, have not been paid.

7. The learned Advocate appearing for the applicant canvassed that, this Court in various identical cases similar to the

present case, has directed to pay pension on submitting an undertaking by way of an affidavit that the Petitioner would not claim any increment, revised pay scale, promotion or other service benefits until the Petition is decided. Similarly, the present Applicant is ready and willing to tender an affidavit undertaking as may be directed to get pensionary benefits subject to the outcome of this Writ Petition. It is further submitted that, the Petitioner has superannuated on attaining the age of superannuation and rendered more than 22 years service. Therefore, he is entitled for pension, Gratuity, Leave Encashment as per the Maharashtra Civil Services (Pension) Rules, 1982, Payment of Gratuity Act, 1972 and Maharashtra Civil Services (Leave) Rules, 1981.

8. The learned counsel for the Petitioner relied on the case of ***Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others, (2017) 8 SCC 670***. The Hon'ble Supreme Court has held that, once the claim of being the member of SC/ST found by the Scrutiny Committee to be false, further requirement of his dishonest intention cannot be imported for consequential withdrawal of civil benefits, which had occurred to him on strength of his false claim.

9. The legality and validity of the order passed by Respondent No.2 invalidating caste claim of the Petitioner is subjudice before this Court. The Petitioner has superannuated on 31.05.2022 during the pendency of this Petition. Section 4 of the Payment of Gratuity Act, provides for payment of death-cum-retirement gratuity to the employee on his superannuation/death. Rule 68 of the Maharashtra Civil Services (Leave) Rules, 1981 provides that the Public Employee would be entitled to receive monetary benefits toward permissible leave encashment. As per the ratio laid down in case of ***Chairman and Managing Director, Food Corporation of India, (supra)***, on the claim of being member of SC/ST being found by the Scrutiny Committee to be false, further requirement of his dishonest intention cannot be imported for consequential withdrawal of civil benefits. However, entitlement of the Petitioner for pensionary benefits may be considered on merit.

10. Therefore, taking into consideration the settled proposition of law and to maintain balance of equity, it will be just and proper to direct Respondent No. 3 to pay monetary benefits toward leave encashment and gratuity as per per the Maharashtra

Civil Services (Leave) Rules, 1981 and Payment of Gratuity Act, 1972, to the Petitioner on furnishing undertaking/affidavit that, in case, his Petition is dismissed on merit and the order of the Respondent no. 2 is upheld by this Court, in that event, he would re-deposit entire amount to Respondent No. 3 within 60 days.

11. In view of above discussion, we allow the present Application partly and proceed to pass the following order:

ORDER

- a) Accordingly, **the CIVIL APPLICATION NO. 6066 OF 2023 is hereby partly allowed.**
- b) The Respondent No.3 is hereby directed to pay the leave encashment and gratuity to the Applicant/Petitioner within a period of ninety [90] days from today, if not paid earlier.
- c) Applicant/Petitioner is hereby directed to furnish undertaking/ Affidavit that, in case, his Petition is dismissed on merits and order of the Respondent no. 2 is upheld by this court, he would re-deposit the entire amount to Respondent No.3 within 60 days.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]