

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

**CIVIL APPLICATION NO. 6067 OF 2023
IN
WRIT PETITION NO. 10896 OF 2021**

Laxman S/o Uttam Sangalkar
Age – 61 years, Occ – Retired,
R/o. Tarangan Housing Society,
Wing B, Flat No.9,
Makhmalabad Masrul Link Road,
Old Jakat Naka, Onkar Nagar,
Panchavati, Nashik

... 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] The Chief Executive Officer
Zilla Parishad – Nashik,
Tq. Dist. Nashik

... Respondents

....

Mr. C. V. Dharurkar, Advocate for Appellants
Mr. P. S. Patil, AGP for Respondent No.1 and 2– State
Mr. V. C. Patil, Advocate h/f Mr. U. B. Bondar, Advocate for
Respondent Nos. 3 and 4 in CA/6067/2023

....

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

DATE : 03.11.2023

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

1. Heard at length the learned Advocates appearing for the respective parties.
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 30.09.2021 passed by this Court.
3. The Applicant/Petitioner has filed Writ Petition, challenging the order dated 31.05.2021 passed by Respondent No.2 Caste Scrutiny Committee, invalidating his caste claim as "Tokare-Koli" Scheduled Tribe. Admittedly, the Petitioner was appointed as Junior Assistant with Respondent No.3 Zilla Parishad, Nashik on 7th August, 1993, 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 31.05.2021, Respondent No.2 invalidated his caste claim holding that the Petitioner failed to prove his claim as belonging "Tokare Koli", Scheduled Tribe for want of cultural affinity as well as documentary evidence.

5. On 30.09.2021 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 09-12-2021.*
3. *Till next date, adverse action may not be taken against the Petitioner only on the ground that tribe claim of the Petitioner is invalidated. "*

6. The Petitioner was superannuated on On 31.05.2020, on attaining age of 58 years. However, pension, leave encashment, gratuity arising out of service have not been released in his favour.

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 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 undertaking as may be directed to get pensionary benefits subject to the outcome of this Writ Petition. It is further submitted that, the Petitioner is superannuated on attaining age of superannuation and rendered more than 10 years service, therefore, the Petitioner 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*, wherein, the Hon'ble Supreme Court has held that, once the claim of being 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 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 and the Petitioner has superannuated on 31.05.2020. 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 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 the Maharashtra Civil Services (Leave) Rules, 1981 and Payment of Gratuity Act, 1972, to the

Petitioner on furnishing undertaking that in case, his Petition is dismissed on merit and order of Respondent no. 2 is upheld by this Court, in that event, he would re-deposit entire amount with Respondent No. 3 within 60 days. 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. 6067 OF 2023 is hereby partly allowed.**
- b) 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 merit and order of Respondent no. 2 is upheld by this court, he would re-deposit entire amount with the Respondent No. 3 within 60 days.

[Y. G. KHOBRADE, J.

[RAVINDRA V. GHUGE, J.]

SMS