



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

WRIT PETITION NO. 248/2020

PETITIONERS:

- Shamrao Shrawanji Nikhare (dead)
Through his legal heirs.
- (i) Mrs. Meena wd/o Shamrao Nikhare,
Aged 52 years, Occu: Service (Wife).
- (ii) Shri Piyush s/o Shamrao Nikhare,
Aged 21 years.
- (iii) Ayush s/o Shamrao Nikhare,
Aged 20 years, All r/o Plot No. 19,
Malbar Colony, Hazari Pahad Road,
Seminary Hills, Nagpur.

**[Amendment carried out as per Court
Order dt. 06/07/2022]**

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

RESPONDENTS

- 1] Scheduled Tribe Caste Certificate
Scrutiny Committee, through its
Member Secretary, Adiwasi Bhavan,
Giripeth, Nagpur.
- 2] Maharashtra Jeevan Pradhikaran,
Telangkhedi Garden Road, Nagpur,
through its Executive Engineer.

Mr. R.S. Parsodkar, counsel for the petitioners.

Mr. M.K.Pathan, AGP for respondent No.1.

Mr. D.M. Kakani, counsel for respondent No.2.

CORAM : **AVINASH G. GHAROTE &**
DATE : **URMILA JOSHI-PHALKE, JJ**
29/09/2023

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J)

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. The deceased petitioner claims to belong to Halba-Scheduled Tribe. As per the contention of the deceased petitioner, his forefather's school entries are also recorded as Halba-Scheduled Tribe in the record of 1946-47. His great grandfather's entry is also recorded as Halba-Scheduled Tribe in the record of 1912. The deceased petitioner *Shamrao Shrawanji Nikhare* was appointed as an 'Assistant Engineer' on the establishment of respondent No.2/*Maharashtra Jeevan Pradhikaran* on 29/09/1995. His caste claim was referred to the respondent No.1- Scheduled Tribe Caste Certificate Scrutiny Committee in the year 1987 for the first time. The caste claim of the petitioner was invalidated. Therefore, he preferred an appeal before the Additional Commissioner and the Additional Commissioner set aside the said order of the Caste Scrutiny Committee and remanded the matter to the Committee. Thereafter, the Caste Scrutiny Committee again invalidated the claim of the deceased. The deceased petitioner again challenged the said invalidation order by preferring the Writ Petition No. 8234/2017 which

was decided on 22/02/2018 by which, this Court has set aside the order of the Caste Scrutiny Committee and remanded the matter back to the Caste Scrutiny Committee. The Caste Scrutiny Committee has not conducted any vigilance inquiry in the case of petitioner and again invalidated the caste claim of the petitioner. The deceased petitioner has challenged the invalidation order by preferring this writ petition, on the ground that the Caste Scrutiny Committee totally ignored the oldest documents of pre-independence period and invalidated the caste claim of the petitioner which is unjust, illegal and contrary to the decisions of the Hon'ble Apex Court and this Court. During the pendency of the petition, the original petitioner died. The legal heirs of the petitioner by way of an amendment amended the writ petition and raised restricted claim regarding release of retiral benefits.

3. Learned counsel for the petitioner submitted that the legal heirs of the petitioners are not desirous of challenging the order passed by the Scrutiny Committee dated 04/01/2020 and restricted their prayer to release of the retiral benefits. It is submitted that deceased petitioner's retiral benefits have been withheld without any legal justification. The petitioner placed reliance on the decision in the case of *State of Jharkhand and others V/s Jitendra Kumar Srivastava and another [(2013) 12 SCC 210]* and submitted that in absence of any statutory prohibition, the deceased

petitioner's retiral benefits could not have been withheld. It is further submitted that this view has been reiterated in the subsequent decision in Civil Appeal Nos. 1770-1771/2023 (Arising out of Special Leave Petition (Civil) Nos. 5356-5357/2023 and Diary No. 15448/2020) (***R Sundaram V/s The Tamil Nadu State Level Scrutiny Committee and others***) ***decided on 17/03/2023***. Similarly, the attention was invited to paragraphs 72 and 73 of the decision in the case of ***Chairman and Managing Director, Food Corporation of India and others V/s Jagdish Balaram Bahira and others [(2017) 8 SCC 670]***, it is submitted that the deceased petitioner's retrial benefits ought to be released.

4. The learned AGP for the respondent/State has relied upon the affidavits filed by the respondents and submitted that since the deceased petitioner is not challenging the order of invalidation, the petitioner's entry in service was without legal basis. In view of the decision in the case of ***Jagdish Balaram Bahira and others (supra)***, the petitioner/deceased was not entitled for the retrial benefits.

5. We have heard the learned counsel for the parties and having perused the documents on record, we find that though the petitioner's caste claim was referred to the Caste Scrutiny Committee long back in the year 1987, it was invalidated but, in view of the order of Additional Commissioner, the caste claim was remanded back to the

Committee. The Caste Scrutiny Committee again invalidated the caste claim. Against the said order of the Committee, the petitioner had filed Writ Petition No. 8234/2017 which was decided on 22/02/2018 by which, this Court set aside the order of the Caste Scrutiny Committee and remanded the matter back to the Caste Scrutiny Committee. Though, the matter was remanded back on 22/02/2018 but, the caste scrutiny committee had adjudicated it on 04/01/2020.

6. In other words, till the date of the deceased petitioner's superannuation, his claim has not been invalidated. There is no order passed by any authority depriving the petitioner of his retiral benefits, as held by the Hon'ble Apex Court in the case of ***Jitendra Kumar Srivastava and another (supra)*** withholding of pensionary benefits has to be supported by a statutory order in that regard. Similar view has been taken in ***R Sundarama (supra)***. In absence of any such order, the legal heirs of the deceased employee are not liable to be deprived of the pensionary benefits.

7. We find from paragraphs Nos. 72 and 73 of the decision in ***Jagdish Balaram Bahira and others (supra)*** that while considering the case of similarly situated persons it was noted that the claim of belonging to caste *Mahadeo Koli* was held to be not admissible. The payment of retiral benefits already effected was not interfered with. We find that in absence of any statutory adjudication while the deceased

petitioner was in service, their legal heirs cannot be deprived of his retiral benefits.

8. The State of Maharashtra has also issued the Government Notification dated 14/12/2022 and taken a policy decision, that the Government Employees, whose caste claim is invalidated cannot be deprived from getting the retiral benefits.

“अनुसूचित जमातीचे जात प्रमाणपत्र अवैध ठरल्यामुळे ज्या शासकीय अधिकारी / कर्मचारी यांना अधिसंख्य पदावर वर्ग केले आहे अशा अधिसंख्य पदावरील अधिकारी व कर्मचारी यांना सेवा विषयक तसेच सेवा निवृत्ततेचे लाभ देण्यात यावेत. यामध्ये पदोन्नती व अनुकंपा धोरण याचा लाभ मिळणार नाही.”

The deceased employee on completion of 26 years of service died due to Covid on 14/04/2021. The deceased employee who had completed 10 years of service, is entitled to family pension and therefore, after the death of Shri Shamraoji Nikhare, his legal heirs are entitled for family pension.

9. For aforesaid reasons by recording that the legal heirs of the deceased employee do not desire to prosecute his claim of belonging to Halba-Scheduled Tribe and consequently accepting the order passed by the Scrutiny Committee, it is directed that the respondent Nos. 1 and 2 shall release the deceased employee's retiral benefits in

favour of the legal heirs within a period of six weeks from receipt of the copy of this judgment to them.

10. Rule is made absolute in the above said terms. No costs.

(URMILA JOSHI-PHALKE, J)

(AVINASH G. GHAROTE, J.)