

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

WRIT PETITION 1876 OF 2020

Pradip s/o.Natthu Singh Jaywar,
aged 58 yrs, Occ. Retired (VRS)
BSNL employee as Motor Driver,
R/o. Plot No. 304, Janki Nagar,
Nagpur 440 034

.....PETITIONER

..V E R S U S..

1. The Bharat Sanchar Nigam Limited,
through Charirman cum Man Managing
Director, Sanchar Bhavan, Mathur Lane,
New Delhi 110 001

2. The chief General Manager Telecom,
BSNL, BSNL Complex, Juhu Danda,
Santacruz (West),
Mumbai 400 054

3. The General Manager Telecom,
BSNL 'O' Mile, Civil Lines,
Nagpur 440 001

4. The Assistant General Manager
Telecom, (Staff), o/o. GM Telecom,
BSNL, 'O' Mile, Civil Lines,
Nagpur 440 001

..RESPONDENTS

Mr. M.M. Sudame, counsel for petitioner.
Mr. R.S. Sardey, counsel for respondents.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 06.04.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

3. Petitioner was initially appointed on the establishment of the Department of Telecommunications, Government of India, which was at a later stage corporaterized as Bharat Sanchar Nigam Limited (BSNL), on daily wage.

4. Petitioner was conferred with temporary status Mazdoor (TSM) by order dated 31.7.1990. Petitioner has placed on record the list of employees, who were granted such status which includes the name of the petitioner at serial 452.

5. The petitioner claims that he belongs to the caste "Rajput" which is not a Scheduled Tribe. Petitioner has placed on record the order dated 29.3.1996, vide which, twenty employees are confirmed. The name of the petitioner appears at serial 16. Petitioner emphasizes that while against the names of certain employees, the caste or tribe is mentioned, there is no such endorsement or entry as regards the petitioner.

6. Petitioner submits that on 24.6.1992, he was engaged as casual Motor Driver, and again, the order which is placed on record does not refer to the engagement as against a reserved category. Petitioner then refers to the order dated 25.7.1992 which also makes no reference to the caste or tribe of the petitioner.

7. Petitioner submits that temporary Motor Drivers including the petitioner were regularized by Department of Telecommunications and petitioner was made permanent as Motor Driver by order dated 29.3.1996, to which, a reference is already made supra.

8. The petitioner refers to the Service Book and asserts that he disclosed his caste as Thakur and did not at any point in time claim that he belongs to Scheduled Tribe. The petitioner refers to the School Leaving Certificate which mentions only “Rajput” caste. Petitioner asserts that the Office Clerk, without any basis clearly erroneously, referred to the Thakur caste as Scheduled Tribe.

9. Broadly, the claim of the petitioner is that he belongs to

the Open Category, and in any event, he was not appointed or engaged against reserved category nor did the petitioner avail any benefit whatsoever on the basis of the caste or tribe status, which is harped upon by the employer.

10. The petitioner is aggrieved by the insistence of BSNL, and that too at the fag end of his career, that the petitioner should submit the Caste Validity Certificate. The petitioner did prefer representation dated 17.8.2019 pointing out that he was appointed from Open Category and that he has not claimed any benefit on the basis of caste or tribe nor did he during the entire service tenure submit any caste or tribe certificate to the employer. The petitioner submits that pursuant to the Voluntary Retirement Scheme (VRS) on 4.11.2019 options were invited from eligible employees to avail the VRS. We are not concerned with the nitty gritty of the VRS. Suffice it to note that according to the petitioner, he opted for the VRS, his request was accepted by respondent 3, vide order dated 21.1.2020, and the petitioner was relieved on 31.1.2020. However, the petitioner has not received the ex- gratia payment and the leave encashment on the premise that the petitioner did not submit the Caste Validity Certificate. It is with such grievance, that the petitioner has approached us

invoking jurisdiction under Article 226 of Constitution of India.

11. We have considered the entire record threadbare and having done so, we have not come across any material whatsoever to suggest that the appointment of the petitioner was against post reserved for any particular caste or tribe. In this view of the matter, we are not required to delve deeper in the submission that the petitioner, as a fact, belongs to the Thakur-Rajput caste and not to Thakur Scheduled Tribe, although, we find that prima facie, such submission is substantiated from record. In our considered view, since there is nothing on record to suggest that the appointment or then the subsequent confirmation is against any reserved category post, the question of withholding benefits under the VRS just does not arise.

12. We called upon the learned counsel for the BSNL to offer any justification, assuming there is such justification, for withholding the benefits under the VRS, which to us, appears to be absolutely arbitrary.

13. While the learned counsel is justifying the action impugned, in all fairness, he does not join issues with the

submission of Mr. M.M. Sudame that there is no material on record to suggest that the appointment of the petitioner is against post reserved for the Scheduled Caste or Scheduled Tribe.

14. Considering the facts on record, the decision to withhold the retiral benefits must be quashed and we order accordingly.

15. We direct the respondents to release the benefits withheld within the next eight weeks, failing which the amount shall attract interest @12% per annum.

16. Petition is allowed in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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