

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

WRIT PETITION NO.2397/2021

Ashok Natthuppa Shelgenwar,
 aged 60 Yrs., Occ. Retired as
 Associate Professor, Dayanand
 College of Commerce, R/o
 Shelgaon-Deshmukh, Tq. Mehkar,
 Dist. Buldhana.

... Petitioner

- Versus -

1. Accountant General (A & E),
 II (Maharashtra), Civil Lines,
 Nagpur 440 001.
2. Joint Director of Education,
 Nanded.
3. District Caste Scrutiny Committee,
 Buldhana, through its Member
 Secretary, Social Justice Building,
 Trishan Chowk, Chikhli Road,
 Buldhana.
4. Dayanand College of Commerce,
 Latur, through its Principal,
 Tq. Dist. Latur.

... Respondents

Mr. R.S. Parsodkar, Counsel for the Petitioner.
 Ms. N.P. Mehta, Assistant Government Pleader for Respondent
 Nos.1 to 3.
 Mr. J.B. Kasat, Counsel for Respondent No.4.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 27.7.2023

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner claims to belong to Lingedar Scheduled Caste. He was appointed as a Lecturer at the respondent No.4 College on 9.7.1988. According to the petitioner, despite aforesaid, his caste certificate was not referred to the Scrutiny Committee for a considerable period of time. It was only in the year 2013 that the said claim was referred. Pursuant to the order passed in Writ Petition No.7020/2013 (Ashok Natthuppa Shelgenwar V/s. The State of Maharashtra and others) dated 26.2.2016 the Scrutiny Committee was directed to decide the petitioner's claim. Despite aforesaid, the claim was pending. The petitioner superannuated on 31.10.2020. Thereafter on 2.11.2020 the Scrutiny Committee passed an order of invalidation. Since the petitioner's retiral benefits have been withheld he has preferred the present writ petition raising

challenge to the order passed by the Scrutiny Committee as well the action withholding the petitioner's retiral benefits.

3. The learned counsel for the petitioner, on instructions, submits that the petitioner is not desirous of challenging the order passed by the Scrutiny Committee dated 2.11.2020. He has restricted his prayer to the release of the retiral benefits. In that regard, it is submitted that the petitioner's retiral benefits have been withheld without any legal justification. Though the respondent No.4 College had forwarded the petitioner's papers to the office of the Accountant General and on 19.1.2021 the pension has been sanctioned, the amount was not being released. Placing reliance on the decision in the case of State of Jharkhand and others V/s. Jitendra Kumar Srivastava and another reported in **(2013) 12 SCC 210** it is submitted that in absence of any statutory prohibition, the petitioner's retiral benefits could not have been withheld. He further submits that this view has been reiterated in the subsequent decision in Civil Appeal Nos.1770-1771 of 2023 (Arising out of Special Leave

Petition [Civil] Nos.5356-5357/2003 and Diary No.15448/2020) (R Sundaram V/s. The Tamil Nadu State Level Scrutiny Committee & Ors.) decided on 17.3.2023. Similarly inviting attention 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 reported in (2017) 8 SCC 670 it is submitted that the petitioner's retiral benefits ought to be released.

4. The learned Assistant Government Pleader for respondent Nos.1 and 2 has relied upon the affidavits filed by the said respondents. It is submitted that since the order of invalidation is not being challenged it was clear that the petitioner's entry in service was without legal basis. In view of the decision in *Jagdish Balaram Bahira and others* (supra) the petitioner was not entitled for the retiral benefits.

The learned counsel for the respondent No.4 submitted that the College had forwarded the pension papers of

the petitioner and the matter is presently with respondent Nos.1 and 2.

5. Having 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 Scrutiny Committee while he was in service, the same was adjudicated only on 2.11.2020 which is after his retirement on 31.10.2020. In other words, till the date of 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 Supreme 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 Sundaram* (supra). In absence of any such order the petitioner is not liable to be deprived of his pensionary benefits.

6. We find from reading of paras 72 and 73 of the decision in *Jagdish Balaram Bahira and others* (supra) that while

considering the case of a similarly situated person it was noted that the claim of belonging to 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 petitioner was in service, he cannot be deprived of his retiral benefits.

7. For aforesaid reasons by recording that the petitioner does not desire to prosecute his claim of belonging to Lingedar Scheduled Caste and consequently maintaining the order passed by the Scrutiny Committee, it is directed that the respondent Nos.1 and 2 shall release the petitioner's retiral benefits within a period of six weeks of receiving copy of the judgment.

8. Rule is made absolute in the above terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)