



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

WRIT PETITION NO.4567/2021

Pandurang Mahadeo Nimje,
aged 60 Yrs., Occ. Retired,
R/o Plot No.20, Panchatara Housing
Society, Manish Nagar, Nagpur.

... Petitioner

- Versus -

1. The General Manager,
State Bank of India, Local Head
Office, 'Synergy', Plot No.C-6,
"G" Block, Bandra-Kurla
Complex, Bandra (E),
Mumbai 400 051.

2. Dy. General Manager,
State Bank of India, Zonal Office,
Kingsway, Nagpur.

3. The Chief Manager (HR),
State Bank of India, Zone-II,
Nagpur.

... Respondents

Mr. S.S. Ghate, Counsel with Mr. S.D. Khati, Counsel for the
Petitioner.

Mr. A.T. Purohit, Counsel for the Respondents.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 22.8.2023

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 claiming to Halba Scheduled Tribe came to be appointed on the post of Clerk-cum-Typist with the respondent No.1-State Bank of India. He was confirmed in service on 20.2.1986 and was thereafter promoted on 1.8.2001. Thereafter on 27.3.2008 he secured further promotion and became entitled to Middle Management Grade-II scale. The petitioner superannuated from service on 29.2.2020. On the same day he was issued communication by the Bank in which it was stated that he would be paid terminal benefits of the Clerical Cadre. This is for the reason that the petitioner failed to produce a validity certificate during the course of the service. Being

aggrieved, the communication dated 29.2.2020 is under challenge.

3. After hearing the learned counsel for the parties following order was passed on 2.8.2023:-

“Heard.

2. In paragraph 22A of the Writ Petition, it has been specifically pleaded that in respect of about four employees named therein, no deduction from any retiral benefits has been made despite the fact that the said employees are similarly situated as the petitioner. In reply to the said paragraph, the respondent-Bank has stated that since no documents have been submitted by the petitioner, it is not in a position to verify the allegation.

3. We find that as the employer has access to all the relevant records, a definite statement as to whether any benefit from the persons named in paragraph 22A has been withdrawn or not can be made by respondent no.1. An affidavit in that regard be placed on record explaining the said aspect.

4. Stand over to 22.8.2023.”

4. Today affidavit has been filed on behalf of the Bank stating therein that impugned communication dated 29.2.2020

came to be issued to the petitioner in view of the Office Memorandum dated 8.4.2019 that was prevailing during that point of time. As per that Office Memorandum the impugned communication holding the petitioner entitled to terminal benefits on the post of Clerical Cadre came to be issued. However, in view of the judgment of the Hon'ble Supreme Court in the Chief Regional Officer, Oriental Insurance Company V/s. Pradip decided on 27.1.2020 a fresh Circular was issued on 24.7.2020 and the earlier Circular dated 8.4.2019 came to be withdrawn. It is further stated in the said affidavit that since the petitioner superannuated on 29.2.2020 and the Office Memorandum was issued subsequently on 24.7.2020 the impugned communication came to be issued.

5. We find that the Office Memorandum dated 8.4.2019 on the basis of which the impugned communication was issued came to be withdrawn pursuant to the judgment of the Hon'ble Supreme Court in the Chief Regional Officer, the Oriental

Insurance Company (supra) decided on 27.1.2020. The petitioner superannuated thereafter on 29.2.2020. Hence for this reason, on the date of his superannuation, there was no basis for holding him entitled to terminal benefits of the initial post on which he was appointed. Yet another reason is that with regard to his four other similarly situated employees such benefits have not been withdrawn. We also find that a somewhat similar issue has been considered on 10.1.2023 in Writ Petition No.2540/2021 (Dilip Chintaman Nandankar V/s. The Union of India and others) and the action of withdrawing pensionary benefits has been held to be illegal.

6. Hence for aforesaid reasons, the communication dated 29.2.2020 is quashed and set aside. It is held that the pension of the petitioner is liable to be re-fixed on the basis of the post held by him when he superannuated on 29.2.2020. The needful be done within a period of three months of receiving copy of the judgment, failing which the retiral benefits shall be paid to

the petitioner with interest at the rate of 6% per annum till realization of the amount. Rule is made absolute in aforesaid terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)