

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

WRIT PETITION NO. 8472 OF 2019

(Maharashtra State Electricity Transmission Company, through Chief General Manager Vs. Anil s/o
Ganpat Patil & Ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.D. Zoting, Advocate for the petitioner.
 Shri N.C. Phadnis, Advocate for respondent No.1.
 Ms. S.S. Jachak, Assistant Government Pleader for respondent Nos. 2 and 3/ State.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : APRIL 5, 2023

Heard.

2] Respondent No.1 claiming to belong to 'Kahar' Nomadic Tribe - B came to be appointed on the post of Assistant Engineer with the petitioner – Maharashtra State Electricity Transmission Company on 28/7/1989. According to the Company, this appointment was on a post reserved for the members belonging to Nomadic Tribe. It is the case of the Company that respondent No.1 was subsequently promoted as an Executive Engineer and while serving in that capacity, he sought an entry to be taken in his service-book of belonging to 'Kahar' in view of the validity certificate issued to him. A complaint was received by the Company from the Employees' Union alleging that the tribe certificate obtained by respondent No.1 was a forged certificate and hence necessary enquiry be made. An internal enquiry was conducted and a report to that effect was received on 23/3/2018 concluding that there was substance in the complaint as made. It was recommended that disciplinary action be taken against respondent No.1. A show cause notice dated 9/2/2018 was issued by the petitioner that was replied by respondent No.1 on 16/2/2018. It however appears that in the meanwhile, respondent No.1 superannuated from service on 30/6/2021. In the said backdrop, the Company seeks a declaration that the validity certificate issued by the Scrutiny Committee be declared to be illegal and the order dated 27/6/2008 directing issuance of such validity certificate be set aside.

3] We have heard the learned Counsel for the parties and we have perused the documents on record. It is not in dispute that on 27/6/2008, a validity certificate came to be issued to respondent No.1 by the Scrutiny Committee. A similar such validity certificate has also been issued to respondent No.1's brother – Sanjay on 22/9/2014. On 9/2/2018, the Company issued a notice to respondent No.1 seeking his clarification in the aforesaid matter in the light of the enquiry report submitted by the Vigilance Cell of the Company. Respondent No.1 replied to the same on 16/2/2018 and denied having committed any irregularity in the matter. However, the Company thereafter did not take any further action in the matter as a result of which respondent No.1 superannuated on 30/6/2021 after attaining the age of retirement. Thus, in effect, no disciplinary proceedings were pending against respondent No.1 when he retired from service.

4] By the order dated 27/9/2022, respondent No.1 was directed to file an affidavit indicating the manner in which the validity certificate was issued to him and as to whether its issuance was preceded by any enquiry by the Vigilance Cell. Accordingly, respondent No.1 filed his affidavit dated 7/10/2022 stating therein that while issuing the validity certificate, the Scrutiny Committee had conducted necessary enquiry as per the prescribed procedure. On being satisfied that his claim was genuine, such validity certificate came to be issued. A similar affidavit has been filed by the Scrutiny Committee indicating the manner in which the validity certificate was issued to respondent No.1. It is an admitted fact that the petitioner did not approach the Scrutiny Committee raising a grievance that issuance of such validity certificate to respondent No.1 requires re-consideration. Since the Scrutiny Committee has issued such validity certificate, it would be necessary for the Company to first approach the Scrutiny Committee and seek to bring to its notice the alleged irregularities stated to be committed by respondent No.1 in that regard. In absence of such grievance being considered by the Scrutiny Committee, we do not find it appropriate in these facts to re-open the aspect of issuance of validity certificate to respondent No.1 in exercise of writ jurisdiction. Moreover, respondent No.1 in his

preliminary submissions has stated that all his retiral benefits have been withheld by the Company on this count. On a query made to the learned Counsel for the Company as to whether such course of withholding the retiral benefits was permissible under its Service Regulations, it was submitted that there was no such provision to withhold the retiral benefits of an employee when such employee has superannuated from service without being subjected to any disciplinary enquiry.

5] In these facts therefore we are not inclined to entertain the challenge as sought to be raised by the Company to the issuance of validity certificate to respondent No.1. The interests of justice would be met by keeping it open for the Company to approach the Scrutiny Committee with its grievance that the validity certificate issued to respondent No.1 requires re-consideration. If such request is made to the Scrutiny Committee, it is free to consider the matter in accordance with law. Since no disciplinary proceedings have been held against respondent No.1 and he has superannuated on attaining the age of retirement, his retiral benefits that have been withheld by the petitioner on account of pendency of the Writ Petition shall be released in his favour within a period of six weeks from today. Subject to what has been stated above, the Writ Petition stands dismissed with no order as to costs.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

SUMIT