

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14189 OF 2024

Shri Vijay Anant Chavan
Aged: 63 years, Occ. Nil,
At post, Varad (Hadpiwadi),
Tal.Malvan, Dist. Sindhudurg ... Petitioner

versus

1. State of Maharashtra,
Through its Secretary, School
Education and Sports Department,
Mantralaya, Mumbai -400 032
2. Zilla Parishad, Sindhudurg,
Through its Chief Executive Officer,
Having its office at Sindhudurg,
Zilla Parishad Administrative Bldg.,
Zilla Parishad, Sindhudurga,
Oros, Tal. Kudal, Dist. Sindhudurga,
Pin No. 416 812.
Dist. Kolhapur.
3. Dy. Chief Executive Officer,
Zilla Parishad, Sindhudurga,
General Administration Dept.,
Having its office at Sindhudurga,
Zilla Parishad Administrative Bldg.,
Zilla Parishad, Sindhudurga,
Pin No. 416 812. ... Respondents

....

Mr.C.K.Bhangoji for the Petitioner.
Mr.S.B.Kalel, AGP for Respondent No.1-State.
Mr.Shridhar Patil for Respondent Nos. 2 and 3.

....

**CORAM : RAVINDRA V. GHUGE &
M.M. SATHAYE, JJ.**

DATE : 16TH OCTOBER, 2024

ORAL JUDGMENT (Per : Ravindra V. Ghuge, J.) :-

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

2. This Petition is filed by Vijay, the husband of Veena Vijay Chavan. The bread earner was his wife who has passed away. There is no dispute that the deceased employee was selected and appointed on the post of staff nurse which was reserved for the Nomadic Tribe category. She claimed to be belonging to the Nomadic Tribe category and her application for seeking validity certificate from the Competent Authority, was pending. The proposal was found to be missing from the Office of the Competent Scrutiny Committee at Ratnagiri. A fresh proposal was tendered by the deceased. Since the employee passed away on 27th February, 2020, the Competent Committee concluded that there is no purpose in deciding her claim and the proceeding was disposed off. It is undisputed that the deceased employee had put in qualifying service for pension and was otherwise entitled for retiral benefits.

3. The employer has taken a stand that the pensionary and retiral benefits would not be payable to the Legal Representative of the Petitioner, since the deceased employee did not tender her validity certificate. Since her claim of belonging to particular category was not validated, she would not be entitled for such benefits.

4. This Court [Coram: Dipankar Datta, CJ (as His Lordship then was) and Mangesh S. Patil, J.] delivered a judgment on 1st October, 2021 in Writ Petition No.4624 of 2021 (***Kamlabai w/o. Shaphadu Salve Vs. The State of Maharashtra & Ors.***). The facts of the case were recorded in paragraph 3 in Kamlabai (supra) as under:-

“3. The teacher was appointed as a primary school teacher vide order dated 9th April 1992 of the respondent no. 2. While discharging duty as a teacher of a school in Avhana, Taluka – Bhokardan, the teacher passed away on 18th December 2019 at the age of 47 years due to a heart attack. The version of the respondents 2 and 3 is that the teacher entered service as a reserved candidate belonging to Scheduled Tribe on the basis of the tribe certificate dated 3rd July 1991 issued by the Executive Magistrate, Sillod, which was produced by the teacher, and proceedings before the Scrutiny Committee on the issue of validation of such tribe certificate are still pending; therefore, the petitioner is not entitled to the death gratuity as aforesaid till such time the said committee pronounces on the validity of the tribe certificate. It is also the case of the respondents that the teacher never tried to obtain validity of the tribe certificate and such

certificate was referred to the Scrutiny Committee for its decision by the respondent no. 2 vide letter dated 22nd July 2013. In support of the case that the teacher was appointed on a reserved vacancy, our attention has been drawn to a register maintained by the Zilla Parishad containing particulars of employees who have been employed from 1982 as well as the particular roster points against which such appointments have been made. The teacher, it is shown, was appointed against a roster point earmarked for the Scheduled Tribe. Photocopy of the relevant pages of the register are taken on record, marked Exhibit 'X'. However, the proceedings could not be taken to its logical conclusion by the Scrutiny Committee in the absence of the inquiry report of the relevant Vigilance Cell with the result that validity of tribe status of the teacher is still awaited."

5. After considering the provisions applicable in paragraph 4, the Court dealt with the effect of the judgment delivered by the Hon'ble Supreme Court in ***[Chairman and Managing Director, Food Corporation of India and Ors. Vs. Jagdish Balaram Bahira and Ors. (2017 (8) SCC 670)]***, in paragraph Nos.5, 6 and 7, which read as under :-

- "5. The provisions of Act No. XXIII of 2001 in general and section 10 in particular have been considered by the Supreme Court in a decision of recent origin reported in (2017) 8 SCC 670 (Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others).*
6. *Mr. Patil, learned AGP appearing for the respondent no. 1 has invited our attention to paragraphs 54, 55, 62, 65 and 87 of the said decision to support his contention that without validation of the tribe claim of the teacher, the petitioner is not entitled to any 'financial benefits' as referred to in sub-section (2) of section 10. The aforesaid*

submission of Mr. Patil has been adopted by Mr. Mahajan, learned advocate for the respondents 2 and 3.

7. *Let us now consider whether in terms of section 10 of Act No. XXIII of 2001, as interpreted in Jagdish Balaram Bahira (supra), the action of the respondents in withholding payment of death gratuity to the petitioner is justified. Since the scheme of Act No. XXIII of 2001 has been discussed in detail by the Supreme Court in Jagdish Balaram Bahira (supra), it is considered unnecessary for the purpose of a decision on this writ petition to repeat the same. However, we may note that so far it is relevant here, the ratio of the decision is that if any appointment under the Government/Public Authority is obtained by an individual on a vacancy earmarked for a reserved candidate on the basis of a caste/tribe certificate, which in terms of the procedure envisaged in Act No. XXIII of 2001 subsequently turns out to be false, such individual would have no right to continue in service and any benefit enjoyed or derived by virtue of such appointment shall be withdrawn forthwith. That seems to be the plain and clear intention of the statute and there can be no quarrel on this score. We have, however, not noticed any observation made by the Supreme Court in Jagdish Balaram Bahira (supra) that the expression “any other benefits” as employed in sub-section (1) of section 10 that could be withdrawn, or, the expression “other financial benefit” that could be recovered as arrears of land revenue, would include death gratuity. In fact, the facts and circumstances giving rise to the proceedings before the Supreme Court did not require a pronouncement in that regard. In a way, Mr. Patil, learned advocate for the petitioner, is right in contending that the decision in Jagdish Balaram Bahira (supra) is distinguishable on facts and the ratio laid down therein inapplicable to the facts of the present case.”*

6. This Court finally allowed the claim of Kamlabai by recording its conclusions in paragraph Nos.12 to 15, which read thus :-

“12. The problem can be viewed from one other perspective.

As on date the teacher passed away, the proceedings before the Scrutiny Committee initiated on the basis of the reference made by the respondent no. 2 were in excess of six years old. It could be so, as submitted, that the Vigilance Cell has not been able to complete its inquiry and place a report in that regard before the Scrutiny Committee. However, the fault or lapse, as the case may be, cannot be attributed either to the petitioner or to the teacher. The obvious consequence of lack of the requisite vigilance report is that the tribe certificate, which the petitioner might have produced at the time of joining service, has not yet been invalidated. Given this situation, there is no positive material on the basis of which the respondent no. 2 could have even inferred that the tribe certificate dated 3rd July 1991 is false. No doubt, Act No. XXIII of 2001 has been enacted with the noble purpose of preventing the menace of dishonest people seeking admission in educational institutions or public employment on the basis of false caste/tribe certificates against vacancies reserved for the socially and backward classes. However, the law cannot be distorted to such an extent that even in cases where the Scrutiny Committee, constituted under the relevant enactment, takes abnormally long time to decide the issue of validity of a caste/tribe certificate, the delay in conclusion of the proceedings would operate to the utter detriment and prejudice of a distressed woman like the petitioner.

13. *Pertinently, section 11 of Act No. XXIII of 2001 provides for offences and penalties. Assuming that the teacher was alive and if indeed the Scrutiny Committee had invalidated his tribe certificate, he would have exposed himself to criminal prosecution. Now that the teacher is no longer in this world, there can be no prosecution. However, if at all, it is only the civil consequence of withdrawal of benefits that would survive. Law is again well-settled that any action of a public authority entailing civil consequences must be preceded by observance of the audi alteram partem rule. With the death of the teacher, no action leading to civil consequences can be taken. This is one other reason why we hold the action of*

the respondents to be unsustainable in law.

14. *Besides, we must not be oblivious of the realities of life and the penurious condition that is ordinarily brought about by sudden demise of the sole bread earner for the family, in our country. It is with the terminal benefits that the family of the bread earner has to survive and if such benefits, which are aimed at providing succor to the family members of a deceased individual in times of distress, are sought to be withheld in the manner the respondents have taken recourse, the Court cannot and ought not to be a silent spectator. In the present case, by denying the amount of ‘death gratuity’ to the petitioner, the State would be failing in its obligations as a welfare state as provided in Part IV of the Constitution.*

15. *For the reasons aforesaid, we find sufficient force in the petitioner’s contention that the action of the respondents is unjustified. Accordingly, we direct the respondents to immediately, but not later than sixty days from date, release in favour of the petitioner the said amount of Rs.10,53,250/-. Should there be any remissness to release the said amount within the time stipulated, the same shall carry interest @ 9% per annum till such time it is ultimately released in favour of the petitioner.”*

7. In similar set of facts, this Court (Coram : Ravindra V. Ghuge and S.G. Mehare, JJ.) delivered a judgment on 20th July, 2021 in Writ Petition No.6485 of 2020 at Aurangabad (***Sunita w/o Late Pradip Thakar Vs. State of Maharashtra and Ors.***) and by placing reliance on a judgment of this Court dated 12th August 2010, delivered in Writ Petition No.3718 of 1994 (***Prakash Fulchand Barwal since deceased through his Legal Heirs Smt. Shobhabai Barwal and others Vs. The State of***

Maharashtra and Ors.), allowed the claim of Sunita and directed the payment of family pension and all retiral benefits as would have been admissible to the deceased employee had he superannuated from service. For similar reasons, this Court has delivered several judgments which are annexed to the Petition paper-book.

8. In the light of the above, **the Writ Petition is allowed in terms of prayer clause (a)**. Necessary papers for releasing the family pension payable to the eligible Legal Representative shall be moved by the employer within 30 days and it shall be the duty of the employer as well as the Authorities concerned, to ensure that the arrears of pension are paid to the eligible Legal Representative within a period of 90 days from today. Gratuity amounts shall also be paid within a period of 60 days with admissible statutory interest @ 12% per annum in the light of the Government Notification issued by the Government of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare, dated 5th October, 1999.

9. Rule is made absolute in the above terms.

10. It is made clear that if any of the eligible Legal Representatives of the deceased employee, desire to seek compassionate

employment, the law laid down by the Full Bench of this Court in *Om Bhagwanrao Anjanwad vs. State of Maharashtra and Anr., (Full Bench), 2022 (4) Mh.L.J. 723*, would be squarely applicable.

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)