



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

WRIT PETITION NOS. 1405 OF 2018

Waman s/o Kshirsagar Nandanwar,
Aged 59 years, Occ. Service,
R/o. Plot No.70, Mahajan Colony,
CIDCO N-2, Thakre Nagar,
Aurangabad.

..... **PETITIONER**

...V E R S U S...

1. The Central Provident Fund Commissioner,
Bhikaji Cama Palace, New Delhi-110 066
2. Additional Central Provident Fund Commissioner,
341, Bhavishya Nidhi Bhavan, Bandra (East),
Mumbai-400 051.
3. Regional Provident Fund Commissioner,
132-A, Ridge Road, Raghuji Nagar,
Nagpur-440 009.
4. The Scheduled Tribes Caste Scrutiny Committee,
through its Member Secretary, Gadchiroli.
5. State of Maharashtra,
Through its Secretary, Tribal Development,
Mantralaya, Mumbai-400 032.

..... **RESPONDENTS**

Mr. R.S.Parsodkar, Advocate for petitioner.
Mr. H. N. Verma, Advocate for respondent nos. 1 to 3.
Mr. A. M. Kadukar, Assistant Government Pleader for respondent nos. 4 & 5.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE :- 24th JUNE, 2024

ORAL JUDGMENT (Per NITIN W. SAMBRE, J.)

Vide memo dated 28.05.1984, based on the claim of the petitioner as that of belonging to 'Halba' Scheduled Tribe, the petitioner came to be appointed on the post of Junior Clerk with the respondent no.3.

2. After the claim of the petitioner was referred on 06.12.2016 i.e. after almost 32 years, to the respondent no.4-Committee for verification, the Committee vide order dated 18.01.2018 rejected the claim of the petitioner. The petitioner along with claiming other reliefs is also questioning the said order of the Committee rejecting his claim for validity.

3. During the course of hearing of the petition, the petitioner has already given up the challenge to the order of invalidation of his tribe claim.

4. The only issue that is pressed by the counsel for the petitioner, on instructions, is the denial of pensionary benefits to the petitioner by the Employer i.e. respondent nos. 1 to 3.

5. Mr. Parsodkar, learned counsel appearing for the petitioner would urge that the entitlement of the petitioner to the benefits can be supported by the judgment of this Court in Writ Petition No. 2397 of 2021 (*Ashok Natthuppa Shelgenwar vs. Accountant General (A&E), and three others*)

decided on 27.07.2023 based on the law laid down by the Apex Court in the matter of *State of Jharkhand and others vs. Jitendra Kumar Srivastava and another [(2013) 12 SCC 210]* and *Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others [(2017) 8 SCC 670]*.

6. Mr. Parsodkar while drawing support from the observations in paragraphs 5 and 6 of the judgment in *Ashok* (supra) would urge that the petitioner is entitled for similar relief. Apart from above contention, he has also invited our attention to the judgment of the Division Bench of this Court delivered in Writ Petition No. 8557/2018(*Jaisingh Ganeshsingh Baghel vs. Union of India, and others*) wherein identical reliefs have been granted.

7. According to Mr. Parsodkar, the law is settled by the Supreme Court in the matter of *State of Jharkhand and others* (supra) particularly in paragraphs 15 and 16. According to him, right to receive pension is treated as a right to property under Article 300-A of the Constitution. In such an eventuality, the petitioner cannot be denied right to pension. According to him, the petitioner stood superannuated on 30.09.2018 from the post of Assistant Commissioner. He would as such claim that direction needs to be issued to the respondents to release the pension in favour of the petitioner.

8. Mr. Parsodkar, in addition to above, would invite attention to the voluntary decision taken by the respondents-Employer in Writ Petition No. 1404 of 2018 (*Dilip Keshao Nandurkar vs. The Central Provident Fund Commissioner, New Delhi and others*). According to him, the petitioner in the said case is identically placed in whose favour the pensionary benefits were released by the respondents-Employer. As such, the respondents-Employer are discriminating amongst similarly situated employees.

9. As against above, Mr. Verma, counsel appearing for the respondent nos. 1 to 3-Employer while opposing the prayer, would invite our attention to the judgment of the Apex Court in the matter of *Chairman and Managing Director, Food Corporation of India and others* (supra). According to him, the mandate provided in the said judgment particularly in paragraph 69.3 if carefully perused, both the aforesaid views expressed by the Nagpur Bench in the matter of *Ashok and Jaisingh* (supra) can be declared as *per incuriam* as the mandate is not taken into account. He would further claim that the caste claim of the petitioner was very much decided before the date of superannuation i.e. on 30.09.2018 and that being so, the petitioner's case cannot be treated at par with the cases of other employees which petitioner has tried to rely upon. As such, the counsel for the respondents-Employer would urge that the petition is liable to be rejected.

10. We have appreciated the rival claims.

11. At the outset, the fact remains that the petitioner in Writ Petition No.1404 of 2018 is similarly situated as can be borne out of record as the said fact is not disputed by the respondents. The fact remains that post superannuation of the petitioner in the aforesaid case the respondents-Employer voluntarily released all retiral benefits including that of pension. When confronted, the respondents are unable to satisfy this Court as to what were the considerations which weigh with the petitioner in Writ Petition No. 1404 of 2018 (Dilip Keshao Nandurkar) who is admittedly similarly situated employee like the present petitioner. The aforesaid conduct on the part of the respondents can be said to be causing discriminatory treatment to the similarly situated persons which not only violates the mandate under Article 14 of the Constitution but also the constitutional right guaranteed under Article 300-A of the Constitution.

12. Apart from above, even if the respondents are claiming that this Court cannot issue direction thereby directing the release of the pensionary benefits in view of the mandate provided under paragraph 69.3 of the judgment in the matter of *Chairman and Managing Director, Food Corporation of India and others* (supra), this Court is equally required to be sensitive to two views which are expressed in the matter of *Ashok* and

Jaisingh (supra). In those decisions the respondents-Employer is the Union of India and since last one year the view expressed by this Court in those cases has not questioned by the Union of India. Rather, there is a reason to believe that said view is accepted by the respondents or acted upon by releasing the terminal benefits in favour of the petitioners in the said cases who are similarly placed like the present petitioner.

13. Merely because, the caste claim of the petitioner is decided just about six months prior to the date of his superannuation, by itself will not give liberty to the respondents to claim that the petitioner is not entitled for the pensionary benefits. Rather, the said contention if tested in the light of the very doctrine of Article 14 of the Constitution, it cannot be inferred that the respondents have taken recourse to principle of *intelligible differentia* so as to claim that the petitioner can be treated unequal with that of the petitioners in Writ Petition Nos.8557/2018 and 2397/2021, so also in Writ Petition No. 1404/2018.

14. In the aforesaid backdrop, this Court is of the view that the petitioner in this case is entitled for similar reliefs which are extended by the respondents-Employer to the aforesaid petitioners. That being so, we deem it appropriate to allow the present petition with directions to the respondents-Employer to release terminal benefits to the petitioner

considering that he has superannuated on 30.09.2018 in accordance with law. Order accordingly.

14. Rule is made absolute in aforesaid terms with no order as to costs.
Pending civil application, if any, also stands disposed of.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.