



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

WRIT PETITION NO.3314/2020

Rajendrasingh s/o Gopalsingh Chandel Vs. State of Maharashtra and others

...
Mr. Anil Mardikar, Senior Advocate a/b Mr. Harsh Kanchawani, Advocate and Mr. S.G.Joshi, Advocate for petitioner.
Mr. S.S.Hulke, AGP for respondent nos.1 to 4.
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CORAM : BHARATI DANGRE & ABHAY J. MANTRI, JJ.
DATE : OCTOBER 07, 2024.

P.C.:

1. Heard Mr. Mardikar, learned Senior Counsel, representing the petitioner and Mr. Hulke, learned Assistant Government Pleader representing the respondent nos.1 to 4.

The petitioner was appointed by the respondent no.3 on the post of Pharmacy Officer, a post reserved for 'Rajput Bhamta', Nomadic Tribe (NT).

It is not in dispute that on 9.3.2017, the respondent no.2-Committee invalidated the claim of the petitioner as belonging to N.T. category.

2. This constrained the petitioner to approach this Court by filing Writ Petition No.2227/2017 and in the wake of the decision of the Apex Court in case of ***Chairman and Managing Director, FCI Vs. Jagdish Balaram Bahira and Ors*** (2017(4) Mh.L.J. 898), this Court declined the prayer for protection of the employment of the petitioner, but conferred liberty upon him to take such steps, as may be open to him and the writ petition was disposed off.

3. The petitioner has, therefore, filed present Writ Petition, raising a challenge to the order of rejection passed by the District Caste Scrutiny Committee, Nagpur, on 9.3.2017 and, therefore, this petition is placed before us.

Between the time when his claim was rejected and today when we are taking up the petition for hearing, various developments have taken place and we find that the State Government has issued Resolutions from time to time through the General Administration Department; the first Government Resolution issued on 5th June, 2018, resulted into constitution of the Cabinet Sub Committee for implementation of the decision of the Apex Court in case of *Chairman and Managing Director, FCI Vs. Jagdish Balaram Bahira and Ors.* (supra) under the Chairmanship of Hon'ble Minister, Tribal Development Department as well as the Hon'ble Minister of the distinct departments, including the Higher and Technical Education Department, etc.

Pursuant to this, steps were being taken by the State Government and the Government Resolution was issued on 21.12.2019, where a decision was taken that the employees, whose services were required to be terminated on account of invalidation of their caste/tribe claim and those who have been absorbed on supernumerary posts, they shall be entitled for the benefit of pension. However, as far as promotion as well as appointment on compassionate grounds, they were denuded of these benefits.

This Government Resolution dated 21.12.2019, however, was substituted by another Resolution dated 14.12.2022, reiterating the earlier policy decision, as regards to the release of pensionary benefits in respect of the candidates belonging to the scheduled tribe, whose claims were invalidated but, who have been continued in service on supernumerary posts.

4. Both the Government Resolutions were subject matter in a group of writ petitions before the High Court of Judicature at Bombay, Bench at Aurangabad and by an order dated 16th December, 2022, by referring to the two Government Resolutions and the benefits that were intended to be conveyed thereunder, the petitioners before the Court sought withdrawal of the writ petitions in the wake of issuance of the Government Resolution dated 14.12.2022, subject to the liberty, to take recourse of such remedies, as are permissible in law, as and when the contingency arises.

As far as the present petitioner is concerned, he would have retired on attaining the age of superannuation on 31st August, 2020 but, before the date has superannuation, on 21st August, 2020, the respondent nos.3 and 4 terminated him and this is what is specifically set out in the affidavit-in-reply filed on behalf of the respondent no.3, as the termination was purely on the ground that he could not establish his claim for belonging to Nomadic Tribe and as he was appointed under the said category, he could not be continued in service.

5. The focal point of the respondent nos.3 and 4 in regard to the decision in case of **Chairman and Managing Director, FCI Vs. Jagdish Balaram Bahira and Ors** (supra), unmindful of the facts that thereafter the Government itself has taken a decision and granted protection in favour of those employees, who were appointed under the reserved category and by creating supernumerary posts, they were continued in service.

Vide Government Resolution dated 15.12.2022, it was clarified that they shall not be deprived of pensionary benefits and this is what the petitioner is claiming as on date, as he stand retired from 31st August, 2020.

6. We find substance in the arguments advanced by Mr. Mardikar, as the Government itself has taken a policy decision to continue the services of the petitioner by creating supernumerary post and, in fact, till 21st August 2020, he continued to work on the post of Pharmacy Officer and this fact is not disputed by the respondents in their affidavit in reply.

At the fag end of services i.e. on 9.3.2017, the claim of the petitioner is invalidated but, he definitely continued to enjoy the protection, extended through various Government Resolutions and therefore, Mr. Mardikar do not press the request for prayer clause (a), which raised a challenge to the impugned order dated 9.3.2017, rejecting his claim as belonging to 'Rajput Bhamta' nomadic tribe.

As far as the prayer clause (c) is concerned, which seek quashing and setting aside of the impugned order dated 21.8.2020 passed by the Deputy Director of Health Services, Nagpur, the respondent no.3 and order dated 21.8.2020 passed by the District Civil Surgeon, Nagpur, the respondent no.4, terminating the services of petitioner, we deem it appropriate to grant the relief, in view of the said Government Resolutions dated 21.12.2019 and 14.12.2022, and direct the respondent-authorities to release the pensionary benefits in favour of the petitioner.

The petition is made absolute in terms of prayer clause (c), which reads thus:

"c. By way of appropriate writ, Order and direction, quash and set aside the impugned orders dated 21.08.2020 passed by the respondent No.3-Deputy Director of Health Services, Nagpur Region (Annexure-P-8) and order dated 21.8.2020 passed by respondent no.4 -The District Civil Surgeon, Nagpur (Annexure P-9) being illegal, arbitrary and does not stand to the Scrutiny of law."

Needless to state that the respondent-Authorities shall accept the pension papers of the petitioner and process the same and release the pensionary benefits within a period of three months from today.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)