



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

**Writ Petition No.5541/2022**

Shri. Shambha V the Municipal Commissioner, Nagpur Municipal Corporation and others)

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

Court's or Judge's orders

Mr. G.G. Bade, Advocate for petitioner.  
Mr. J.B. Kasat, Advocate for respondent nos.1 to 3.

**CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ**

**DATE : 31-01-2024.**

The challenge in the petition is to the order dated 12-01-2021, whereby the respondent employer has directed fixation of pay of the petitioner who has superannuated on 30-06-2020 from the post of Malaria Surveillance Worker.

2. The facts necessary for deciding the petition are, as under-

After working on daily wages in Water Supply Department, petitioner was temporarily appointed on the post of Library Attendant w.e.f. 03-05-1985. Petitioner was selected and appointed on the post of Malaria Surveillance Worker on temporary basis on 18-11-1996. Mr. Bade, learned Counsel for the petitioner, has invited our attention to the judgment delivered by the Hon'ble Apex Court in the matter of *Union of India, through the Secretary Ministry of Environment and Forest vs Trilok S. Bhandari and others*, delivered in (Civil Appeal No.(s) 6091/2021 (arising out of

SLP (Civil) No(s).21736/2007) decided on 29-09-2021. Drawing support from the observations in para 19 therein, it is the contention of learned Counsel for the petitioner that the petitioner was continued in the employment by the respondent on the post of Malaria Surveillance Worker by treating him to be Scheduled Tribe candidate. In such an eventuality, the petitioner cannot be faulted with for drawing undeserving benefits, particularly, when he has already stood superannuated on 30-06-2020.

3. As far as the aforesaid contentions are concerned, learned Counsel appearing for the respondent employer would urge that the petitioner's entry in the service of the respondent Corporation was on the post of Library Attendant from Scheduled Tribe Category ('Halba'). As his claim of belonging to the Scheduled Tribe category was negated on 05-03-2015, he was not entitled for the promotion on the post of Malaria Surveillance Worker. That being so, he would claim that once the petitioner's tribe claim is negated in view of the judgment of the Hon'ble Apex Court in the matter of Chairman and Managing Director, Food Corporation of India and others vs Jagdish Balaram Bahira reported in (2017) 8 SCC 670, the petitioner's entitlement to all the terminal benefits has to be considered for the post of Library Attendant and not for the post of Malaria Surveillance Worker. He would try to

draw support from the provisions of Section 10 of the Scheduled Tribe (Regulation of Issuance of Verification of Certificate) Rules, 2003, in support of above contention.

4. The fact remains that the initial entry of the petitioner in the employment of the Corporation was on the post of Library Attendant. Subsequent thereto, since the post of Malaria Surveillance Worker fel vacant, the petitioner lodged his claim from the reserved category to be entitled for the promotion to the said post. The fact that he has failed to produce Validity Certificate as is apparent from tribe invalidation order dated 05-03-2015. As such the respondent employers to consider his claim from the open category on the same position but on a supernumerary post. The petitioner continued in the employment of the respondent till the date of his superannuation i.e. 30-06-2020.

5. The petitioner's claim on the promotional post thereafter since was considered from the open category that too an supernumerary post by his employer w.e.f. 01-11-2007 based on an undertaking dated 01-11-2007. The respondent can be said to be justified in extending terminal benefits to the petitioner w.e.f. 01-11-2007 for the post of Malaria Surveillance Worker, even if, the petitioner's initial promotion on the said

post was on 18-11-1996. In view of his caste claim being invalidated on 05-03-2015 which order has attained finality, it cannot be said that the petitioner is entitled for the terminal benefits of the post of Malaria Surveillance Worker from the date of his initial promotion i.e. 18-11-1996. Said promotion of the petitioner was illegally obtained and that being so it can be inferred from the provisions of Section 10 of the Caste Scrutiny Act as referred above. In view of law laid down in the matter of *Chairman and Managing Director, Food Corporation of India and others* (supra), we are of the view that the petitioner is rightly held to be not entitled for terminal benefits for the post of Malaria Surveillance Worker from 18-11-1996 i.e. from the date of his promotion, but is rightly said to be entitled from 01-11-2007 as (a) the petitioner has already given an undertaking to that effect to the respondent employer; and (b) even otherwise his promotion on the said post was by misrepresentation that he belongs to Scheduled Tribe category. That being so, the judgment relied on by the petitioner in the case of **Trilok S. Bhandari** (supra), will be of hardly any assistance.

6. That being so, no case for causing interference is made out. The petition as such fails stands dismissed. No costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)