



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6647 OF 2024

1. Sanjay S/o Motising Gautam
Aged about 58 yrs, Occ. Retired,
R/o Plot No. 7, Rameshwari, Hawrapeth, Route No.7,
Nagpur-440027.

... **PETITIONER**

...VERSUS...

1. Municipal Commissioner,
Nagpur Municipal Corporation,
Civil Lines, Nagpur-440001.
2. Executive Engineer
(Electricity Division),
Nagpur Municipal Corporation,
Civil Lines, Nagpur-440001.

...**RESPONDENTS**

Mr. S.R. Narnaware, Advocate for petitioner.
Mr. S.M. Ukey, Advocate for respondent Nos. 1 & 2.

CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 22nd APRIL, 2026.

PRONOUNCED ON : 08th MAY, 2026.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The present petition seeks a direction to the respondent Municipal Corporation to release the entire retiral benefits such as pension, gratuity, leave encashment, GPF, GIC etc. The petition also prays for a direction to accord time-bound promotional benefits and increments to the petitioner.

3. The facts as stated in the petition are as under:

a) On 19.10.1991, the petitioner was appointed as a 'Wireman' against a vacancy reserved for Nomadic Tribe, and the petitioner was thereafter continued in service vide order dated 10.03.1993. The petitioner secured the said employment on the basis of a caste certificate dated 04.08.1979 issued by the Executive Magistrate, Nagpur. After a considerable lapse of almost 32 years, the caste claim of the petitioner was referred to the District Caste Certificate

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Scrutiny Committee, Nagpur, on 10.08.2022 for verification. The caste claim was invalidated on 28.03.2023, the petitioner stood retired on attaining the age of superannuation on 31.05.2024.

b) After his retirement, the petitioner was not paid retiral benefits. The petitioner made various representations on 23.02.2024 to the respondents for release of pensionary benefits, but the same were not respondent to. The petitioner has challenged the action of the respondent Corporation in withholding the retiral benefits in the present petition.

4. We have heard Mr. S.R. Narnaware, learned counsel for the petitioner as also Mr. S.M. Ukey, learned counsel appearing for the respondent nos. 1 and 2.

5. Mr. S.R. Narnaware, learned counsel for the petitioner, submits that the action of the respondent Corporation in withholding the retiral benefits is in direct contradiction with the mandate of Article 300-A of the Constitution of India, inasmuch as the right to pension is not a bounty but a right of the retired

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employee. He relies on various judgments, including *State of Jharkhand and Ors v. Jitendrakumar Srivastava and Anr.*, reported in 2013 (12) SCC 210, and *Dr. Uma Agrawal v. State of U.P.*, reported in 1999(3) SCC 438, to support that the grant of pensionary benefits is not a bounty but a right of the employee and cannot be denied without proper justification. He further submits that there is no provision in the Rules applicable to the respondent Corporation to withhold the retiral benefits after retirement. He therefore submits that the petition be allowed and a direction be issued to the respondent Corporation to release the entire retiral benefits.

6. In support of his claim, the learned counsel for the petitioner places reliance on following judgments:

- i) *Nirmala Dattaram Padelwar Vs. The State of Maharashtra and Ors.* in Writ Petition No. 2577 of 2014.
- ii) *Dattu s/o Namdev Thakur Vs. State of Maharashtra and Others*, reported in (2012) 1 SCC 549.

- iii) *State of Jharkhan & Ors. Vs. Jitendra Kumar Srivastava & Anr.*, in Civil Appeal No. 6770 of 2013.
- iv) *V. Sukumaran Vs. State of Kerala & Anr.*, in Civil Appeal No. 3984 of 2010.
- v) *R Sundaram Vs. The Tamil Nadu State Level Scrutiny Committee & Ors.*, in Special Leave Petition Diary No. 15448/2020.
- vi) *Vishnu Gangaram Sonawane Vs. Chief Executive Officer, Zilla Parishad, Nashik and others*, reported in 2015(3) Mh.L.J. 41.
- vii) *Trimbak Vs. The State of Maharashtra and Ors*, reported in MANU/MH/1335/2016.
- viii) *Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. And Others*, reported in (2007) 1 SCC 663.
- ix) *Ashok Natthuppa Shelgenwar Vs. Accountat General and Ors.*, in Writ Petition No. 2397/2021.
- x) *Bharatee Balaji Rapatward Vs. The State of Maharashtra and Anr.*, in Writ Petition No. 1485 of 2020 with connected matters.

xi) ***Surekha Baljorsingh Thakur Vs. Caste Scrutiny Committee & Anr.***, in SLP (c) No. 15632 of 2021.

7. The learned counsel for the respondent Nos.1 and 2, Mr. S.M. Ukey, vehemently opposes the contentions canvassed by the learned counsel for the petitioner. He submits that the petitioner was appointed against a vacancy reserved for Nomadic Tribe and, therefore, a caste validity certificate was mandatory in terms of The Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation Of Issuance And Verification Of) Caste Certificate Act, 2000 (for short the 'Act of 2000'). He further submits that in the appointment order itself, it was mentioned that the appointment is made to a post reserved for VJ/NT category and therefore now the petitioner cannot turn back to say otherwise.

8. By taking us to the provisions of the Act of 2000, the learned counsel for the respondents submits that the Section 10 of the Act of 2000, provides that the benefits secured on the basis of a false
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caste certificate are to be withdrawn, and therefore he supports the action of the respondent Corporation. He submits that the Government of Maharashtra issued a Resolution on 18.05.2013 directing all the Backward Class employees of the State Government / Semi-Government, Constitutional Institutions, District Councils, Nagar Parishad, Municipal Councils, Municipal Corporations, Grampanchayat, Boards, etc. to get verified the caste claim from the concerned Caste Scrutiny Committee as per the provisions of the Act of 2000.

9. He further submits that the said Government Resolution also mentions the procedure and the measures to be taken by the employer in respect of such employees. It is his submission, that the petitioner has miserably failed to comply with the Government Resolution dated 18.05.2013, even though there were ample communications by the respondent Corporation for compliance with the same. He submits that instead of complying with the same, the petitioner submitted his documents for verification only in the month of July 2022, and accordingly his claim was submitted to the concerned Caste Scrutiny Committee on 04.07.2022. The said Shubham

Scrutiny Committee rejected the caste claim vide reasoned order dated 28.03.2023, which is not challenged by the petitioner.

10. He further submits that thus the fact remains that the order of the Scrutiny Committee invalidating the caste claim, having attained finality, the benefits to be given to the employee are rightly withheld by the Corporation. As far as Government Resolutions dated 05.06.2018, 21.12.2019 and 14.12.2022 are concerned, learned counsel for the respondents submits that the benefits of the said Resolutions are to be extended only to the Scheduled Tribe category and cannot be extended to other categories like the petitioner. He further submits that, in view of this position, the respondent Corporation has already submitted communications to the State Government on 20.04.2022, 29.05.2023, and 11.10.2024 to guide the said Corporation in respect of such employees like the petitioner.

11. He further submits that the respondent Corporation has not denied the pension and pensionary claims but has only withheld the

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same shall be released, if so directed, in accordance to the directions issued by the Government of Maharashtra.

12. In rejoinder, the learned counsel for the petitioner submits that the withholding of retiral benefits for quite a long period of time itself amounts to denial of the same. He further submits that a vague reply has been given by the respondent Corporation regarding it seeking guidance from the State Government without placing any details on record. He submits that the petitioner has put in more than 30 years of service with the respondent Corporation and he is having a clean and unblemished service record.

13. Rival contentions fall for our consideration. As can be seen from the record, that the petitioner was appointed on 19.10.1991, his caste claim was forwarded to the Scrutiny Committee on 10.08.2022, the same was invalidated on 28.03.2023, and ultimately the petitioner retired on 31.05.2024 on attaining the age of superannuation. If the dates mentioned supra are closely perused, the invalidation order was passed on 28.03.2023 and the petitioner stood retired on 31.05.2024. It therefore follows that the

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petitioner continued to be in the employment of the respondent Corporation for about 14 months even after the invalidation of his caste claim. There is no material placed on record to show that, after the claim of the petitioner was invalidated by the Scrutiny Committee, any action has been taken by the respondent Corporation. On the contrary, the respondent Corporation has allowed the petitioner to superannuate on attaining the age of superannuation without even issuing any show cause notice and / or proceeding against him departmentally. Thus, the fact remains that the petitioner, during his entire service, record was never charge-sheeted nor proceeded departmentally. Even after the retirement of the petitioner on 31.05.2024 till this date, no material has been placed on record by the respondent Corporation to show that any show cause notice has been issued to the petitioner and his explanation has been called for regarding the invalidation of the caste claim. It therefore follows that the petitioner rendered service to the respondent Corporation without being proceeded against departmentally during his service tenure. As a corollary, it can very well be said that there is no order withholding/not paying retiral benefits taking aid of any rule.

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14. This question fell for consideration of the Hon'ble Supreme Court as to whether, in the absence of any provision in the Pension Rules, the State Government/employer can withhold a part of pension and/or gratuity during the pendency of departmental/criminal proceedings. The Hon'ble Supreme Court, taking note of the entire provisions in that regard, has held that such an exercise cannot be done. It also held that the right to receive pension is recognized as a right to property, finding its source in Article 300-A of the Constitution of India. Further, in the judgment of the Hon'ble Supreme Court as relied upon by the learned counsel for the petitioner ***V. Sukumaran v. State of Kerala and Anr.*** in **Civil Appeal No. 3984 of 2010** in which the Hon'ble Supreme Court has observed that "pension is a succor for post retirement period it is not a bounty payable at will. But a social welfare measurement as a post retirement entitlement to maintain the dignity of the employees". The learned counsel for the petitioner has also relied on a judgment of this Court in **Writ Petition No. 2397 of 2021, Ashok Nathhuppa Shelgenwar Vs. Accountant General and others** to show that in an identical set of facts this Court has

directed to grant pensionary benefits to the petitioner. However, in the said matter of *Ashok Nathhuppa Shelgenwar* referred supra, the petitioner therein suffered an order of invalidation only after his retirement, and therefore this judgment of *Ashok Nathhuppa Shelgenwar* supra, in our considered opinion, is not applicable. However, the other two judgments of the Hon'ble Apex Court lay down the principle of law that, in absence of a statutory Rule in that regard, the pensionary benefits cannot be withheld.

15. We are in respectful agreement with the learned counsel for the petitioner. As we have mentioned supra, there is no order withholding the retiral benefits, and it is only in the affidavit filed before this Court that the (NMC) has taken a stand that the benefits are not released but only withheld for want of guidance from the State Government. However, the fact remains that the petitioner has not been granted retiral benefits, and a person like petitioner cannot be made to wait indefinitely for want of guidance from the State Government. Apart from this, stand of the Corporation is as vague as it could be, and therefore we do not find it fit to be placed reliance upon. Furthermore, as we have already observed

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hereinabove, that there is no departmental proceedings pending against the petitioner, and he continued to work for about 14 months even after his caste was invalidated. It therefore follows that the petitioner is entitled to retiral benefits in accordance with law. We, therefore, allow the petition and pass the following order:

ORDER

- i) The Writ Petition is allowed.
- ii) The respondents are directed to release the entire retiral benefits, such as pension, gratuity, leave encashment, GPF, GIC etc. to the petitioner within eight weeks from today.
- iii) It is further directed that the respondents should release time-bound promotional benefits and increments to the petitioner, if applicable, within eight weeks from today.

16. Rule is made absolute in the aforesaid terms. The Writ petition is disposed of.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)

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