

(2023) 08 BOM CK 0062
In the Bombay High Court
Case No : Writ Petition No. 2904 Of 2019

Hemant

APPELLANT

Vs

Deputy Director And Others

RESPONDENT

Date of Decision : 25-08-2023

Acts Referred:

Citation : (2023) 08 BOM CK 0062

Hon'ble Judges : Avinash G. Gharote, J;Urmila Joshi Phalke, J

Bench : Division Bench

Advocate : S.R. Narnaware, M.K. Pathan, S.W. Deshpande

Judgement

Urmila Joshi- Phalke , J

1. RULE. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for both the parties.
2. The petitioner was appointed as a 'Senior Ayurvedic Vaidya' on 11/05/1994 and joined the services on 17/05/1994 against the vacancy reserved for Scheduled Tribe category. He claims to belong to 'Parja' scheduled tribe.
3. The caste certificate dated 16/12/1993 was issued to him by Executive Magistrate, Amravati. According to the petitioner, the caste certificate was only the requirement and condition precedent for the purpose of appointment. There were no terms or conditions to submit the Caste Validity Certificate to show that he belongs to 'Parja' scheduled tribe. He had completed his entire service on attaining the age of superannuation on 30/06/2020. During his service period, the respondents never asked any validity certificate. He had completed 58 years of age and was retired on 30/06/2020 as a Medical Officer Grade-B. The provisional pension was sanctioned to him for six months period from 01/07/2020 to 31/12/2020 and thereafter again for six months from 01/01/2021 to 30/06/2021. As communication was issued to him by respondent No.2 dated 07/06/2021 was also addressed to respondent No.1 for releasing the provisional pension from 01/07/2021 till further period.

4. Subsequently, respondent No.1 communicated that for releasing the provisional pension the validity certificate of the petitioner is required and after completing the said requirement the retiral benefits would be given to the petitioner. Respondent No.2 District Health Officer, Zilla Parishad, Nagpur has issued a letter dated 17/06/2021 addressed to the petitioner to submit the Caste Validity Certificate and thereafter the proposal for the retiral benefits shall be forwarded. Thus, the retiral benefits were not released to the petitioner only on the ground that the petitioner has not submitted the validity certificate belonging to 'Parja' scheduled tribe.

5. As per the contention of the petitioner, during his service tenure he was never asked for the validity certificate. The provisional pension was also given to him without asking for validity certificate. Thus, the communication issued to him for submitting the validity certificate is unauthorised and illegal and challenged the order withholding his retiral benefits.

6. Learned Counsel for the petitioner reiterated the contention and submitted that the petitioner was never asked to submit the validity certificate by the respondents. He has completed his entire service. Only requirement was to submit the caste certificate which he had submitted during service tenure. The validity certificate was never asked to be submitted even at the time of granting the provisional pension also. The respondents never asked for validity certificate. The communication of respondent Nos.1 and 2 asking the petitioner to submit the validity certificate is illegal and unauthorised. The petitioner further submitted that the communication issued to him to submit the validity certificate and the impugned order dated 13/01/2021 and 17/06/2021 issued by the respondents withholding the pension, gratuity, leave encashment etc. are liable to be set aside. Learned Counsel for the petitioner placed reliance on the State of Jharkhand and ors. Vs. Jitendra Kumar Srivastava and anr. [(2013) 12 SCC 210] wherein it is held that in absence of any statutory prohibition, the petitioner's retiral benefits could not have been withheld. He further submits that this view has been reiterated in the subsequent decision in Civil Appeal Nos.1770-1771 of 2023 (Arising out of Special Leave Petition [Civil] Nos.5356-5357/2003 and Diary No.15448/2020) (R Sundaram Vs. The Tamil Nadu State Level Scrutiny Committee & Ors.) decided on 17/03/2023. He by inviting our attention towards paragraph Nos.72 and 73 of the decision in the case of Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and ors. [(2017) 8 SCC 670] submits that the petitioner's retiral benefits ought to be released.

7. Learned Assistant Government Pleader for respondent No.1 submitted that as the petitioner has not submitted the validity certificate which is the requirement and in view of that the pensionary benefits are withheld. So there is no illegality committed by the respondent, and therefore, the petition deserves to be dismissed.

8. Having heard learned Counsel for the parties and perused the documents on

record. We find that though the communication was issued to the petitioner to submit the Caste Validity Certificate, however, during his entire tenure of service he was never asked to submit the validity certificate. Only requirement was to submit the caste certificate as per the appointment order issued to the petitioner dated 11/05/1994. There is no order passed by any authority depriving the petitioner of his retiral benefits. As observed by the Hon'ble Apex Court in the case of V. Sukumaran Vs. State of Kerala and anr. in Civil Appeal No.3984 of 2010 decided on 26/08/2020, that pension is succour for post-retirement period. It is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee. It is further held that the pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind, i.e., to facilitate a retired Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities. In another case of Jitendra Kumar Srivastava and anr. (supra) it has been held that withholding of pensionary benefits has been supported by a statutory order in that regard. Similar view has been taken in R Sundaram (supra). In absence of any such order the petitioner is not liable to be deprived of his pensionary benefits. In the case of Jagdish Balaram Bahira and ors. (supra) in paragraphs 72 and 73 while considering the case of a similarly situated person it was noted that the claim of belonging to Mahadeo Koli was held to be not admissible. The payment of retiral benefits already effected was not interfered with.

9. This Court has also considered the issue in Vishnu Gangaram Sonawane Vs. Chief Executive Officer, Zilla Parishad, Nashik and ors. [2015 (3) Mh.L.J. 41] wherein it is held that in absence of any provision of law pensionary benefits which is recognised as property cannot be withheld and/or stopped. In another judgment of Shri Trimbak s/o Ramchandra Sontakke Vs. The State of Maharashtra and ors. [2016 (5) ALL MR 343] also it is held that withholding of pensionary benefits without passing order under Rule 27(1) is illegal and it is held that the petitioner was held entitled to the benefits with interest.

10. In the present case also we find that there is no statutory adjudication while the petitioner was in service. As far as production of his validity certificate is concerned, no order is passed by any authority depriving him from getting or withholding of any pensionary benefits.

We find in absence of any statutory adjudication while the petitioner was in service he cannot be deprived of his retiral benefits.

11. For the aforesaid reasons considering that during his service tenure there was no adjudication as to deprivation of his statutory benefits on the ground that he has not produced the validity certificate, and in fact, there is no document on record to show that at any point of time during his service period he was asked to produce any validity certificate even at the stage of sanctioning the provisional

pension, therefore, the communication issued to him for producing the validity certificate now and withholding of his pension and other retiral benefits for want of validity certificate are illegal and liable to be quashed and set aside.

12. In view of that, the petition deserves to be allowed by directing respondent Nos.1 and 2 to release the petitioner's retiral benefits along with the pensionary benefits within a period of six weeks, on receiving the copy of this judgment.

13. Rule made absolute in the above terms. No costs.