

(2017) 03 KL CK 0029
In the High Court Of Kerala
Case No : WP(C).No. 22711 of 2016 (L)

K.N. Haridasan

APPELLANT

Vs

The State Bank of Travancore

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

Citation : (2017) 2 KerLJ 347 : (2017) LIC 1996

Hon'ble Judges : Mr. Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : Sri. K. Ramakumar (Sr.), Sri. S.M. Prasanth, Smt. Asha Babu, Smt. R.S. Aswini Sankar and Smt. S. Parvathi, Advocate, for the Petitioner; Sri. P. Ramakrishnan, SC, State Bank of Travancore, for the Respondents Nos. 1 to 4

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J.—The employer is kind. But the employee complains that it is not kind enough. How kind should an employer be towards its employee, whose very entry into the service was found to have been on shaky, questionable grounds ?

2. Haridas K.N., the petitioner, joined the State Bank of Travancore, the respondent, on 28.07.1972 as a Peon. Promoted as a Record Keeper, he retired on 31.07.2012. While he was in service, there arose a dispute about his community status, because he secured his employment claiming to be a scheduled tribe candidate-Mala Araya. The dispute or the resulting litigation has run in two streams; parallel streams, if I may say so.

3. Briefly I will touch upon the judicial course of the dispute in both the streams: In 1978, certain people from Mala Araya community, including the petitioner's close relatives-but not the petitioner-filed O.S. No. 487 of 1978 seeking a declaration that they belong to Mala Araya community; the Government was a party. When the suit was allowed, the Government filed an appeal, but without success. Later, it filed a Second Appeal before this Court.

4. When the Second Appeal was pending, the State brought in legislation: the Kerala Schedule Casts and Schedule Tribes, Regulation of Issue of Community Certificate Act, 1996 ("the Act"). As a result, this Court closed the Second Appeal, leaving it open for the parties to agitate their claim under the Act. But the Court has also declared that the Civil Court is not competent to declare the plaintiffs' community status. Thus, the decree in O.S No. 487 of 1978 fell to the ground, stood nullified.

5. Under the Act, Haridas and two others agitated their right to community status before the Scrutiny Committee, which, on enquiry, found against them: their claim that they belong to Mala Araya Community was rejected; instead, the Committee declared that they belong to Araya Community, which is an OBC. Because of the findings by a competent authority, the Bank, the employer, asked Haridas to show cause why he should not be departmentally proceeded against for his securing employment using what is said to be a false community certificate.

6. Questioning the show-cause notice, Haridas filed W.P.(C) No. 36469 of 2007 and obtained a stay of all further proceedings. While the writ petition was pending, he superannuated. As the Bank refused to settle his terminal benefits, Haridas filed another writ petition-W.P.(C) No. 23031 of 2012. This Court, through Ext.P1 judgment dated 10.06.2013, disposed of both the writ petitions. As much depends on the result of how these two writ petitions came to be disposed of, it pays to quote the directions in the common judgment:

"8. In the result, these writ petitions are disposed of as above :-

W.P.(C) No. 36469/2007 is closed as the petitioner had already attained the age of superannuation and the Bank does not propose to continue with the disciplinary proceedings.

In W.P.(C) No. 23031/2012, the petitioner shall submit a representation to the respondent Bank highlighting his entitlement for the terminal benefits and pension which shall be considered by the Bank and appropriate orders in that regard shall be passed within a period of three months from the date of receipt of a copy of this judgment."

(Emphasis added)

7. Both the writ petitions disposed of, Haridas submitted Ext.P3 representation to the Bank for his terminal benefits. His claim rejected by the Bank through Ext.P4, Haridas approached this Court. He filed W.P.(C) No. 26438 of 2013 challenging Ext.P4. This Court in Ext.P5 judgment set aside Ext.P4 because the Bank's rejection provided no reasons why Haridas was not entitled to his terminal benefits. In other words, the order is non-speaking. The judgment, however, left it open for the Bank to proceed further by providing necessary reasons. In the light of Ext.P5 judgment, Haridas submitted Ext.P6 representation reiterating his request for having the terminal benefits. Eventually, the Bank once again refused

to pay the terminal benefits. That order of refusal (Ext.P7) Haridas impugned in this writ petition.

Submissions :

Petitioner's :

8. Sri S.M. Prasanth, the learned counsel for the petitioner, has submitted that all along, ever since Haridas's childhood, his certificates-academic and non-academic-consistently reflected his community as Araya Mala. Neither the Bank nor even any statutory authority has alleged or found that Haridas obtained the community certificate fraudulently. In elaboration, he has submitted that while Haridas was in school, the Tahsildar, then competent, issued a certificate not questioned, much less cancelled, until Haridas retired from service.

9. Sri Prasanth has also further contended that Haridas challenged the Scrutiny Committee's decision, not on record though, in M.F.A No. 1007 of 1999. A Division Bench of this Court in its judgment dated 18.06.2007 has observed that Haridas did not obtain the community certificate by any fraudulent means. Though the Court has upheld the Scrutiny Committee's findings on Haridas's community status; it has, nevertheless, clarified that the benefits already given to Haridas should not be recovered, nor should there be any prosecution against Haridas and other employees who filed the M.F.A. Since Haridas was allowed to superannuate in the due course, the Bank cannot deny him the statutory benefit which he is otherwise entitled to.

10. Summed up, Sri Prasanth's contention is that, once a competent authority or forum holds that an employee has committed no fraud in obtaining the community certificate, no adverse consequences should follow. To support his contention, Sri Prasanth has relied on Kavita Solunke v. State of Maharashtra and others (2012) 8 SCC 430, Shalini v. New English High School Association and others (2013) 16 SC 526, Prakash v. State of Kerala 2002(2) KLT 580, Anila v. State of Kerala 2009(4) KLT 112 and Vijayan v. State of Kerala 2013(2) KLT 488.

Respondent-Bank's :

11. Per contra, Sri P. Ramakrishnan, the learned Standing Counsel for the respondent Bank, has submitted that a learned Division Bench of this Court has already declared that a Civil Court is not competent to declare the community status of an employee. Haridas's efforts to fall back on a non-existent decree initially granted by the Munsiff Court entails no benefit. He has further submitted that the Bank took recourse to the Act and sought the expert body's opinion under the Act to determine whether Haridas is a Mala Araya. Given the emphatic finding by the Scrutiny Committee under the Act, the Bank decided not to extend any benefits to Haridas, including pension.

12. Drawing my attention to para 5 of the judgment in MFA No.1007 of 1999 (dated 18.06.2007), Sri Ramakrishnan would further contend that only the benefits already given shall not be recovered. The pension, according to him, is

not a benefit already given, but yet to be given.

13. As to the finding whether Haridas has played fraud in securing the community certificate, Sri Ramakrishnan has also submitted that finding on that aspect is not necessary. In support, he relied on Managing Director, S.B.T v. Viswanathan K.G. ILR 2016 (3) Kerala 528. He has also drawn my attention to Section 16A of the Act to hammer home his contention that even the pensionary benefit can be denied to an employee who secured employment on a false community certificate. In this regard, Sri Ramakrishnan has relied on R. Vishwantha Pillai v. State of Kerala (2004(2) SCC 105.

14. Heard the learned counsel for the petitioner and the learned Standing Counsel for the Bank, besides perusing the record.

Issues :

15. A person had his community shown in school records as a reserved one; the certificate was issued by a competent officer. His education completed, he secured employment. While in service, his community was declared to be different, again, by a competent authority. This Court has ruled that he can be deprived of only future benefits. Is the pension a future benefit ?

Discussion :

16. Indeed, as has been rightly contended by the respondent-Bank, Haridas could take no advantage of the civil suit, in which some other persons initially got their community status declared. First, Haridas was not a party to the suit; second, a learned Division Bench of this Court in the Second Appeal has unambiguously held that a Civil Court is not competent to declare the community status of an employee.

17. Though I have not got the advantage of referring to the judgment rendered by the learned Division Bench, neither counsel contradicted that this Court invalidated the Civil Court's decree. But at the same time, this Court, I may note, has observed that the aggrieved parties could seek redressal under the Act.

18. As to the findings rendered by the Scrutiny Committee constituted under Section 8 of the Act, it is not in dispute that this Court in M.F.A. No. 1007 of 1999 did not interfere with them. The upshot is that Haridas does not belong to the community he claims to have belonged : Mala Araya. This Court, nevertheless, adjusting equities, has observed as follows :

"In view of the above facts and circumstances, we are of the opinion that the cancellation of the certificate that the appellants belong to Hindu Mala Araya community was done correctly and they will not be entitled to get any benefit which are enjoyed by the S.T. community in future. In view of the facts and circumstances of the case, especially considering the fact that the petitioner did not commit any offence, the benefits already given shall not be recovered from them and no prosecution proceedings shall be taken for the past Act. But the

Government or authorities or employers will be free to take action on the basis of the impugned order with prospective effect. It is true that children of the appellants are also not entitled to take any benefit in future on the basis of the earlier community certificate. Even though, we are confirming the decision of the Scrutiny Committee For Verification of SC/ST Claims regarding the community of the appellants, action on the basis of the same can be taken only prospectively as they got the benefit on the basis of a certificate issued by a competent authority. Appeal dismissed subject to the above observations."

(emphasis added)

19. The above directions having attained finality, now the solitary issue to be determined is whether the Bank's denying the pensionary benefits to Haridas falls foul of the judicial directive in M.F.A. No. 1007 of 1999.

20. First, the Bank is not a party to M.F.A. No. 1007 of 1999. It is trite to observe that a judgment not in rem, but in personem, binds no third-party. However potent a judicial directive is, it is a dead letter vis-a-vis a third party. Of course, rendered by a court of record, the judgment will have precedential value. And, in that sense, it binds a third party, too.

21. But to be fair to Haridas, I must observe that the Bank, despite its being not a party to the MFA, proceeded throughout as if it had been bound by the judgment : its entire defence is that the Bank's denying pension to Haridas accords with the judgment. There is no whisper in the pleadings about the judgment's inapplicability, at least, to the Bank. In sum, first, the Bank knows of the MFA; and, second, it has acted on the judgment.

22. That accepted, I reckon that the technicality of Bank not being a party to the proceedings may not bog down this adjudication. Therefore, I want to proceed on the premise that the Bank has considered the judgment in question and issued Ext.P7. Then what follows is whether Ext.P7 accords with the judgment in MFA.

23. Sri Prasanth has persistently submitted that no authority has found against Haridas on the issue whether he obtained the community certificate fraudulently. He has further submitted that the Bank allowed Haridas to serve five more years after the judgment was rendered. And, so, for whatever period Haridas served- incidentally until his superannuation-he is entitled to all the terminal benefits, including the pension.

The Statutory Scheme :

24. Section 8A of the Act deals with how the false community certificates have to be dealt with. It reads:

Section 8A: Community Certificates, if found bogus, to be cancelled.

(1)Where on verification, the Scrutiny Committee finds that the community certificate issued in support of the Scheduled Castes or Scheduled Tribes claim of the individual is not genuine, it shall cancel the same and intimate such

cancellation to the appointing authority or local authority or head of the educational institution, as the case may be, together with a request to cancel the appointment or admission, as the case may be.

(2) Whenever an intimation is received under sub-section (1), the appointing authority or local authority or head of the educational institution, as the case may be, shall cancel the appointment or admission, without any further notice to the individual concerned and debar him from continuing in office or studying further.

25. Further, Section 11 deals with how a false community certificate is to be cancelled :

Section 11: Cancellation of false Community Certificate.-

(1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes or the Scheduled Tribes has obtained a false community Certificate to the effect that either himself or his children belongs or belong to such Caste or the Tribe, the Scrutiny Committee may either suo motu or on a written complaint or report by any person or authority, call for the records and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by order, cancel the certificate after giving the person concerned an opportunity of making a representation, if any.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government.

(3) The Scrutiny Committee while performing its functions for verification and cancellation of community certificates shall follow such procedure as may be prescribed.

(4) An order passed by the Scrutiny Committee shall be final and conclusive. No suit or appeal shall lie against the order passed by the Scrutiny Committee.

26. Of particular importance is Section 16A of the Act, which deals with how the pensionary benefit can be deferred:

16A. Deferment of pensionary benefits.-Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force or in any judgment, decree or order of any court, where a person secures any appointment in the Government or any Government Undertaking or local authority or any other authority against a post reserved for Scheduled Caste or Scheduled Tribe, by producing a fraudulent Community Certificate, and if on an enquiry by the Expert Agency it is found that his claim is not genuine and if the incumbent retires while the enquiry by the Government or the Scrutiny Committee is pending, the Government or the Government Undertaking or local authority or any other authority as the case may be, shall have the power to defer and withhold the pensionary benefits of the incumbent pending decision by

the Government or the Scrutiny Committee.

(emphasis added)

Precedential Position :

27. In *Vijayan v. State of Kerala* 2013(2) KLT 488 a learned Division Bench of this Court has examined the provisions of the Act minutely and concluded that the consequences contemplated by the Act will not visit upon a person who has produced a community certificate later found to be false, so long as he was not alleged to have obtained it fraudulently. But, recently, another learned Division Bench of this Court in *Viswanathan K.G.* has held in paragraph 15 of the judgment that under Section 8A(2) of the Act, there is no necessity to arrive at a finding that fraud was committed.

28. A person secured employment claiming to belong to schedule tribe. He had a certificate issued by a competent authority. Later, the employer, on enquiry, found that the employee did not belong to ST. He was asked to quit. Despite the Act coming into force, the Scrutiny Committee enquired under an executive order. In *Prakash*, a learned Single Judge has held, first, that the employee played no fraud; and, second, that the invalidation is illegal for the proceedings were initiated under an executive order.

29. A mother claimed to have belonged to a schedule tribe. Her claim upheld by this Court, even her children got that benefit extended to them. Later, their education completed, the children secured employment as reserved candidates. The children, thus, had no occasion to obtain a certificate fraudulently. When a fresh challenge was laid against the children's community status, this Court has found that the mother's claim was founded on a wrong claim. In this backdrop, this Court in *Anila* has held that the children, now employed, could have their benefits deprived only prospectively: The employment secured by them, and the service benefits they derived till then were not touched.

30. A person belonging to one community secured employment claiming that his community enjoys reserved status. Then, his community was equated with another community, which was found in the Presidential Order, on the consanguinity basis. The officials and the Courts, too, initially treated both communities as equivalent. In fact, the Government's stand was ambivalent and shifting. The employee's community certificate was genuine. Later, because of the march of events and further developments-especially, because of the Supreme Court's judgment in one case-a clear position emerged: that those two communities are different, and only one community enjoys the reserved status. In that context, the Supreme Court in *Kavita Solunke* has held that there is no "reason to hold that the appellant had fabricated or falsified the particulars of being a Scheduled Tribe only with a view to obtain an undeserved benefit in the matter of appointment as a teacher." The later developments cannot deprive the employee of his service benefits.

31. In Shalini, the Supreme Court has dealt with the same communities as found in Kavita Solunke. The Court has held thus: An innocent statement which later transpires to be incorrect may be seen as false in general sense but would normally not attract punitive or detrimental consequence on the person making it, as it is only made by error. An untruth coupled with a dishonest intent, however, requires legal retribution. The Supreme Court has further held that if a false statement or representation is animated by deceitfulness, and aims at deriving an unfair or undeserved benefit, it stands on a different footing.

32. In R. Vishwanatha Pillai, a three-Judge Bench of the Supreme Court has denounced the practise of unscrupulous persons securing employment on fake community certificates; it has refused to overlook the employee's conduct just because he has served for decades. The Court did acknowledge that the employee put in about three decades of service. But it went on to emphatically hold that the rights to salary, pension, and other service benefits are entirely statutory in public service. The employee obtained the appointment against a post meant for a reserved candidate "by producing a false caste certificate and by playing a fraud." So his appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flow from a valid and legal appointment; "[T]he consequential right of pension and monetary benefits can be given only if the appointment was valid and legal." Such benefits cannot be given where the appointment was found to have been obtained "fraudulently" and rested on false caste certificate.

33. To sum up the precedential position, in all the decisions, except Viswanathan K.G., this Court and the Supreme Court have held that certificate fraudulently obtained is no valid certificate in the eye of the law; the benefits secured through that certificate, too, should no longer belong to the wrong-doer. In most of the cases, the certificate was valid when it was obtained but, later, it turned out to be invalid because of further developments. So there was an element of bona fides in the candidate's conduct-or, conversely put, the element of fraud was absent. In some cases, the candidates obtained no certificates on their own but continued their parents' community status, which turned out, later, to be false.

34. Here, I reckon, none of those precedents may influence the outcome. The reason is not far to seek : This Court's judgment in MFA No.1007 of 1999 binds; it has been accepted and acted upon. Did the Bank Act on the Judgment in MFA No.1007 of 1999 ?

35. The judgment was rendered on 18.06.2007. The Bank allowed Haridas to continue in service untill his retirement, despite the Scrutiny Committee's finding against the employee, and its affirmation by this Court. The Bank's defence why it allowed Haridas to continue in service is that in the later litigation Haridas obtained an interim stay. Indisputably, all those writ petitions came to an end. But the Bank did not try to ensure that the interim order earlier granted would not affect its rights as an employer vis-a-vis Haridas. It let go of that opportunity. In Ext.P1 common judgment, the Court observed thus : [T]he Bank

does not propose to continue with the disciplinary proceedings. Nor has it even contended that the judgment in MFA does not bind it. On the contrary, it acted in consonance with the judicial directive in that judgment.

36. True, there is no gainsaying the fact that there is no express finding that Haridas committed any fraud in obtaining his certificate. The Act essentially proceeds on the lines that the adverse consequences should visit a person who obtained a false certificate only when it has an element of fraud. This is evident from even Section 16A of the Act, where the legislature has consciously employed the expression "a fraudulent Community Certificate". Had it chosen to use the expression "a false communicate Certificate", it could have, in my view, made a word of difference. But it has not.

37. As I adjudicate this issue, the ratio and the judicial dictum of a judgment rendered by a learned Division Bench binds me. Stare decisis is sound and secure. So, if the judgment in M.F.A. No. 1007 of 1999, on which the Bank has acted, stands undisturbed. I am only called upon to decide whether Ext.P7 falls foul of the judicial directive in that judgment.

The Ratio of the Judgment in MFA No.1007 of 1999 :

38. I need to examine whether the Ext.P7 accords with the judicial directive in MFA No.1007 of 1999. The judgment has rendered three findings:

- (1) Haridas did not commit any offence or "fraud"
- (2) the benefits already given shall not be recovered from him;
- (3) no prosecution proceedings shall be taken for the past Act; and
- (4) the employer can act against Haridas "prospectively". In other words, Haridas is not entitled to any future benefits-illustratively-promotion. Benefits such as promotion may not pose any decisional dilemmas to hold that is a future benefit. But can pension, an essential service attribute, be called a future benefit ? Or, in the first place, is it a benefit ?

What is Pension :

39. Pension is one of the few expressions constitutionally defined: Article 366 (17) defines it to mean a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund.

40. Indeed, it is not a felicitous semantic exercise. The definition uses the undefined term to define the very term as if its meaning were self-revealing. Perhaps, Constitution is the last of the places to have a word or an expression found defined. A definition is lexically a fossilized form-frozen for future. But Constitution is an organic, living document. Whether the canon of

contemporanea expositio applies to the constitutional interpretation is a raging controversy, unsettled still. For the originalism is supported by as many as it is opposed.

41. Corpus Juris Secundum defines Pension inclusively: The title "pension" includes pecuniary allowances paid periodically by the Government to persons who have rendered services to the public or suffered loss or injury in the public service, or to their representatives who are entitled to such allowances and rate and amount thereof; and proceedings to obtain and payment of such pensions. Vol.70, at p.423, as quoted in KSRTC v. K.O. Varghese (2003) 12 SCC 293, 301.

42. Halsbury's Laws of England defines "pension" to mean a periodical payment of lump sum by way of pension, gratuity, or superannuation allowance as respects which the Secretary of State is satisfied that it is "to be paid in accordance with any scheme of arrangement having for its object or one of its objects to make provisions in respect of persons serving in particular employments for providing them with retirement benefits and, except in the case of such a lump sum which had been paid to the employee." Halsbury's Laws of England 4th Edn., Reissue, Vol.16 as quoted in KSRTC v. K.O. Varghese, (2013 (12) SCC 293, 302.

43. The pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to a pension is a valuable right vesting in a Government servant. The right of the petitioner to receive pension is property under Article 31(1); and by a mere executive order, the State had no power to withhold the same. So holds Deokinandan Prasad v. State of Bihar AIR 1971 SC 1409 (Citing Article 31, Constitution of India, as it was prior to 1978 amendment]

44. In one of its landmark judgments on service law, D.S. Nakara v. Union of India 1983 (1) SCC 305, para 29, the Supreme Court has held that "Pension" is not only compensation for loyal service rendered in the past but it has a broader significance as it is a measure of socioeconomic justice which inheres economic security in the fall of life "when physical and mental prowess is ebbing corresponding to ageing process and therefore, one is required to fall back on savings." Nakara further held that the term has been judicially defined as a stated allowances or stipend made considering the past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore "can be said to be a deferred portion of the compensation for service rendered."

45. Similar sounding is the judgment in Vasant Gangaramsa Chandan v. State of Maharashtra 1996 (10) SCC 148, 149. The Supreme Court has reiterated that pension is not a bounty of the State. An employee earns it for the service rendered by him, and it is to fall back on after retirement. It is a right attached to the office and cannot be arbitrarily denied. Conceptually, the pension is a

reward for past service, as is held in *State of Punjab v. Justice S.S. Dewan* 1997 (4) SCC 569, 573.

46. "Pension," on analysis, reveals three facets: (i) the pension is neither bounty nor a matter of grace to depend upon the employer's sweet will; but, in fact, it creates a vested right in the employee, subject to the statute, if any, holding the field; (ii) the pension is not an ex gratia payment but a payment for the past service rendered; and (iii) it is social-welfare measure rendering socio-economic justice to those who in the hey days of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in the lurch. After analysing thus, the Supreme Court in *KSRTC v. K.O. Varghese* AIR 2003 SC 3966 has added a rider that the pension depends upon the additional condition of the employee's impeccable behaviour, even after his retirement.

47. *U.P. Raghavendra Acharya v. State of Karnataka* 2006(9) SCC 630, 640 has moved farther and held that "pension" is a deferred salary. It is akin to the right to property, not to be deprived save by authority of law, as constitutionally mandated under Article 300-A. This assertion echoes what the Black's Law Dictionary described "pension" to mean: deferred compensation for services rendered, 6th Ed. But 9th Ed. has a stripped down meaning: A fixed sum paid regularly to a person especially by an employer as a retirement benefit. Succinctly stated, the pension is a statutory right. Its deprivation, too, is statutorily permissible; it must be in accordance with law. Analogous is the assertion that the right to pension accrues from a valid appointment. If the appointment is found void, the benefit, if it were one, becomes unavailable.

Departmental Proceedings & Pension :

48. That pension is paid in recognition of past service is accepted, we may as well acknowledge that its payment depends on the service regulations that govern an employee. It is, indeed, a statutory right neither inviolable nor inherent as a post-retirement financial assistance to an employee. The service rules or regulations may provide that dismissal or removal from service will entail forfeiture of past service and, thereby, the pension, too. So the right to a pension is contingent upon an employee's fulfilling qualifying service. In other words, forfeiture of pension is not an anathema; the grant and disbursement of pension entirely depend on the service regulations governing an employee.

Is it a Future Benefit ?

49. Courts have emphatically, repeatedly held that pension is not a bounty or benefit extended to a superannuated or retired (they both being technically different) employee at the employer's sweet will. That accepted, we can safely hold that it is not a "future benefit." It is only a deferred compensation to an employee for his past services. First, absent a regulation, an employee cannot get the benefit-if at all we could call it a benefit-and, equally, absent a regulation, an employer cannot deny it to the employee: this denial is usual when an employee is departmentally found to have been guilty of grave

misconduct leading to, say, his removal from service.

Applying the Judgment in MFA No.2007 of 1999 :

50. Illustratively, I may observe that if an employee had secured a benefit, say promotion, after the judgment in MFA and that promotion was granted because the employee belongs to scheduled caste, it could certainly be said that the benefit thus granted is a future benefit in the face of the judgment. And it is unsustainable. Here, pension is an essential concomitant to the past service and it cannot be termed a future benefit. I may, at the cost of repetition, observe that the very Bank allowed Haridas to continue till his superannuation, for the judgment did not interdict his service. Haridas's continuing in service, then, for over five years after the judgment cannot be said to be because of an interim stay granted by this Court.

51. Had it not been for the judgment in MFA No.1007 of 1999, the employer would have had enough leverage in deciding on what benefits Haridas would receive after his retirement-pension not excluded. But the judgment is clear: only future benefits can be denied to Haridas, and nothing else. And the pension is not a future benefit.

52. To answer my question at the beginning whether the employer is kind enough, I may conclude holding that the employer is not kind enough in denying to the employee the pensionary benefits, though it was kind, having allowed him to serve even after its finding that he had secured employment using an "invalid" community certificate.

53. Therefore, this Court cannot but hold that Haridas is entitled to the benefit of pension, and the Bank's depriving him that benefit is unsustainable. Ext.P7, as a result, is declared illegal and inconsistent with the judgment in MFA No.1007 of 1999. Consequently, the respondent Bank should disburse to the petitioner the pension and other benefits due to him in terms of the provisions of the Bank Employees' Pension Regulation, 1995 with interest at the rate of 9% per annum from the date the benefits are due to him. I, therefore, allow this writ petition in the manner indicated above.

54.No order on costs.