

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 7799 OF 2014

Kewalbai wd/o Mariba Gaikwad  
Age 74 years, Occ. Household,  
R/o. Donwada, Tq. Basmatnagar  
District Hingoli

...Petitioner

versus

1. The State of Maharashtra  
Through the Secretary General  
Administration Department,  
Mantralaya, Mumbai

2. The Chairman,  
Freedom Fighter High Power Committee  
Through Deputy Secretary,  
General Administration Department,  
19<sup>th</sup> Floor, Mantralaya, Mumbai

3. The Collector, Hingoli  
District Hingoli

4. Zilla Gaurav Samiti,  
Hingoli, District Hingoli

...Respondents

.....  
Mr. S.K. Adkine, Advocate for the petitioner  
Mr. K.J. Ghute Patil, A.G.P. for respondent Nos. 1 and 3  
.....

**CORAM : R. M. BORDE AND  
V. K. JADHAV, JJ.**

**DATED : 24<sup>th</sup> MARCH, 2015**

**JUDGMENT (PER V.K. JADHAV, J.):**

1. Rule. Rule made returnable forthwith. By consent of the parties, petition is taken up for final disposal.

2. The petitioner, who is widow of freedom fighter, was granted freedom fighter's pension w.e.f. 1.4.2014 by order dated 1.4.2014. The petitioner seeks direction to the respondents to grant her freedom fighters pension from the date of application i.e. from 13.5.1989 as per the Government Resolutions issued in this behalf from time to time.

3. Brief facts giving rise to the present writ petition are as follows:-

The husband of the petitioner late Shri Mariba Meghaji Gaikwad had participated in Marathwada freedom movement against erstwhile Hyderabad Nizam Government. During his life time, he had applied for grant of freedom fighters pension alongwith other companion freedom fighters on 13.5.1989. Though the pension was granted to the similarly situated freedom fighters, application of petitioner's husband remained pending. After death of her husband, the petitioner had received reply from concerned authority on 25.7.2003 informing her that her husband's application cannot be considered for grant of pension since the F.I.R. registered with Kurunda police station appears to be suspicious document. Consequently, the petitioner had challenged the said communication by filing writ petition No. 1974 of 2012. This Court by order dated

19.9.2013 has partly allowed the said writ petition and set aside the order dated 25.7.2003 issued by the State Government and further directed to place the matter before State Government for its fresh consideration, in accordance with law, at the earliest. Thereafter, on 1.4.2014 the respondent State has granted freedom fighters pension to the petitioner from the date of order instead of granting the pension from 13.5.1989. Hence, this writ petition.

4. Learned counsel for the petitioner submits that crime No. 18 came to be registered with Kurunda police station on 24.2.57 Fasli against 7 persons from that area, for the offences punishable under Sections 33, 37, 53 and Section 27/11 of Maintenance of Public Peace and Security Act. The petitioner's husband was accused No.7 in the said F.I.R. Learned counsel further submits that the first six persons named in the said F.I.R. were already granted freedom fighters pension and the case of the husband of petitioner was kept pending by the authorities by questioning genuineness of said F.I.R. Learned counsel has also brought to our notice that one Shri Vitthal Gangaram Kurude, who is also named in the said F.I.R. as an accused, was granted freedom fighters pension by the State Government by order dated 17.4.1997 w.e.f. 13.5.1989, however, freedom fighters pension was granted to the petitioner from the date of order i.e. from 1.4.2014, which is improper, incorrect and

discriminatory. Learned counsel further submits that as per the order dated 1.4.2014, the petitioner was granted freedom fighters pension from the date of order by placing reliance upon the decision rendered by the Hon'ble Apex Court. The learned counsel thus submits that the said case cannot be made applicable to the facts and circumstances of the present case. Lastly, learned counsel submits that the petitioner is entitled for the freedom fighters pension from 13.5.1989 to 31.3.2014.

5. The learned A.G.P. for the respondents submits that the respondent No.1, by Government Resolution dated 1.4.2014, relying upon decision of Hon'ble Apex Court in the case of ***Union of India vs. Kaushlyadevi, (Appeal (civil) 783 of 2007 decided on 15.2.2007)***, has rightly granted pension to the petitioner from the date of order. The learned A.G.P. further submits that since the petitioner had not claimed pension from 13.5.1989 in her previous writ petition and therefore, now she is not entitled to get the relief as claimed in instant writ petition. The learned A.G.P. thus lastly submits that the writ petition is devoid of any merits and deserves to be dismissed.

6. We have heard learned counsel appearing for respective parties. It appears that the respondents, on relying upon very same F.I.R., have granted pension to the persons whose names are

appearing at Sr. Nos. 1 to 6 therein as an accused. The husband of the petitioner was accused No.7 in the said F.I.R. However, he was not granted pension by questioning authenticity of the said F.I.R. It is pertinent to note that one Shri Vitthal Gangaram Kurude, who was accused No.6 in the said F.I.R. was awarded pension by the respondent State vide order dated 17.4.1997 w.e.f. 13.5.1989. Initially, the respondent State has denied pension to the husband of petitioner by order dated 25.7.2003 on the ground that original F.I.R. is not available and thus authenticity of the F.I.R. cannot be ascertained. However, the case was reconsidered by the respondent State as per the directions given by this Court in writ petition No. 1974 of 2012 by order dated 19.9.2013. It appears that the respondent State, for no reason, has not considered the claim of the petitioner for grant of pension from 13.5.1989. We do not find any reason to justify the stand taken by the respondent State.

7. In the case of Union of India vs. Kaushlyadevi (supra) the Hon'ble Apex Court has directed to award pension from the date of order for the reason that the pension in that case was awarded to the claimant on the basis of oral statement of some other detainee and not on the basis of jail certificate. The issue involved in this case is that on the basis of the same F.I.R. the first six persons', whose names appear in the F.I.R., were awarded pension and only in the

case of husband of petitioner, authenticity of F.I.R. was questioned by the respondent State. The respondent State has reconsidered its earlier decision and awarded pension to the petitioner. Thus the facts and circumstances of the case in hand are altogether different.

8. In writ petition No. 1974 of 2012, filed earlier, the petitioner had challenged the order of rejection of claim for grant of freedom fighters pension. On perusal of prayer clauses of the said writ petition, it appears that the petitioner sought directions against respondent State to grant freedom fighters pension as per the Government Resolution. Thus, according to us, there is no substance in the submissions made on behalf of the State that in earlier writ petition, the petitioner has not claimed pension from 13.5.1989.

9. In view of the above, we hold that the petitioner is entitled for grant of freedom fighters pension since 13.5.1989 up to 31.3.2014. We thus allow the writ petition in terms of prayer clauses "A" and "B" with costs of Rs.5000/- (Rupees five thousand only) to be paid to the petitioner by the respondent-State. Rule is made absolute in the above terms. Writ petition stands disposed of.

**( V. K. JADHAV, J.)**

**( R. M. BORDE, J. )**