

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9003 OF 2014

Mallikarjun S/o Gurbasappa Chakote
Age 95 yrs, Occu- Agri.,
R/o At Post Borsuri, Tq. Nilanga,
Dist. Latur.

... Petitioner

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
General Administrative Department,
Mantralaya, Mumbai – 32.
- 2) The Chairman,
High Power Committee,
Freedom Fighters Cell,
New Administrative Building,
Mantralaya, Mumbai – 32.
- 3) The District Collector,
Dist. Latur.

... Respondents

.....
Mr. Monish S. Nilwant, Advocate for the petitioner
Mr. S. G. Karlekar, A.G.P. for respondent Nos. 1 and 3
Mr. B. B. Kulkarni, Advocate for respondent No. 2
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**CORAM : R.M. BORDE AND
V. K. JADHAV, JJ.**

DATED: 06.04.2015

JUDGMENT (PER JADHAV, J.) :-

1. Rule. Rule made returnable forthwith. By consent, heard finally.

2. According to the petitioner, he had actively participated in Hyderabad Liberation Movement and as such, he is entitled to receive freedom fighters pension in view of Government Resolution dated 4.7.1995, issued by the State Government, laying down its policy for grant of pension to the freedom fighters. According to the petitioner, he was convicted on 28.12.1356 Fasli to undergo 10 months imprisonment in connection with the freedom movement and a copy of jail certificate dated 1.8.2012 issued by the Superintendent of Central Prison, Gulbarga, filed alongwith the application for grant of freedom fighters pension. The petitioner was imprisoned in connection with Hyderabad Liberation Movement and the same is concluded and established in terms of clause 3(A) of Government Resolution dated 4.7.1995. Even though the petitioner has submitted his representation on 1.9.2014, till date no final decision is taken by the respondents. The petitioner seeks direction to respondent No.3 to forward the proposal to respondent No.1 State Government. The petitioner, by way of amended prayer clause B-1, seeks direction to the respondent-State authorities to grant freedom fighters pension to him, as he had participated in Hyderabad Liberation Movement.

3. The learned counsel for the petitioner submits that the Superintendent of Jail, Gulbarga, had responded positively to the inquiry made by respondent No.3 Collector and accepted that the

petitioner was imprisoned in connection with Hyderabad Liberation Movement. The Superintendent, Central prison, Gulbarga by its letter dated 16.10.2012 (Exh. F, page 36) informed the District Collector, Latur, that on verification of record available with his office, for the year 1356-57 Fasli, it appears that the petitioner was detained in the prison on 7.1.1357 Fasli on his transfer from Osmanabad jail as he was convicted on 28.12.56 Fasli to undergo 10 months imprisonment, under section 27-58 Tahafuz and the petitioner was released on 27.10.1357 Fasli. The learned counsel further submits that the petitioner is entitled for pension, as his case is squarely falls under clause 3(A) of Government Resolution dated 4.7.1995. Learned counsel further submits that instead of accepting the letter of verification sent by the Superintendent of Central Jail, Gulbarga, respondent No.3 Collector, is insisting the petitioner to produce copy of judgment of conviction delivered by the Court. The petitioner had accordingly approached the District Court, Osmanabad and filed an application on 13.8.2014 seeking copy of decision in his case. However, his application was filed by the District Court on the ground that said file is not traceable. Learned counsel further submits that subsequent to filing of petition, one Shri Ramhari Yadav Mullge, who was a colleague of the petitioner during Hyderabad Liberation Movement, submitted an affidavit in favour of the petitioner stating therein that the petitioner was imprisoned and detained in Gulbarga

jail alongwith him on account of movement of freedom struggle against Nizam Government. The said Ramhari Mullge has been granted freedom fighters pension by order dated 16.7.2005 by the State Government. Learned counsel lastly submits that at present the petitioner is 95 years old and therefore, instead of directing respondent No.3 Collector to forward the proposal of the petitioner to the State authorities, the State authorities may be directed to grant freedom fighters pension to the petitioner, as his case is squarely covered by clause 3(A) of Government Resolution dated 4.7.1995.

4. The learned A.G.P. for respondent Nos. 1 and 3 submits that the petitioner has filed applications for seeking freedom fighters pension on 20.3.2010 and 9.8.2012 without any supporting documents. Respondent No.3 has therefore, issued letter on 7.9.2012 to the petitioner for submission of documents and also on the same day issued letter to the Principal Civil Judge, Junior Division and J.M.F.C. Gulbarga, for verification of arrest warrant. Respondent No.3 has also issued letter to the Superintendent of Central Jail, Gulbarga for verification of jail certificate. The Superintendent of Central Prison, Gulbarga, on verification, informed respondent No.3 that the petitioner was detained in the prison for 10 months on his transfer from Osmanabad jail, as he was convicted on 28.12.1356 Fasli to undergo 10 months imprisonment under Section

27-58 Tahafuz and the petitioner was released on 27.10.1357 Fasli. So far as the arrest warrant is concerned, as per the report given by the translator, photo copy of warrant is not legible and further that translator had no knowledge of Modi language and therefore, is unable to translate the document. The learned A.G.P. further submits that the petitioner has not produced on record report of Osmanabad jail authority. The learned A.G.P. further submits that the jail authority of Gulbarga Central jail has not stated that the petitioner was imprisoned in connection with Hyderabad Liberation Movement. The learned A.G.P. thus lastly submits that there is no merit in the petition and petition deserves to be dismissed.

5. We have also heard learned counsel for respondent No.2.

6. On perusal of Government Resolution dated 4.7.1995 and more particularly clause 3(A) thereof, it appears that the certificate issued by jail authorities is required to be submitted by the person to substantiate his contention that he has undergone sentence in the jail. In the instant case the Superintendent, Central Prison, Gulbarga, by its letter dated 16.10.2012 (Exh. F page 36) has informed the District Collector, Latur that on verification of the record available in the office, for the year 1356-57 Fasli, it appears that the petitioner was detained in prison on 7.1.1357 Fasli on his transfer from Osmanabad jail, as he was convicted on 28.12.56 Fasli to

undergone 10 months imprisonment for the offences under section 27-58 Tahafuz. The petitioner was released on 27.10.1357 Fasli. It thus appears that the petitioner was imprisoned in Gulbarga Central prison for 10 months. On perusal of extract at Exh. D, page 33 issued by the Central Prison Gulbarga, it appears that the said extract is issued from the Register 1356-57 Fasli maintained for convicted (political prisoners). We do not find any substance in the contentions raised on behalf of the respondents that the petitioner was not arrested and undergone conviction in connection with Hyderabad Liberation Movement.

7. Respondents are required to take liberal view and not technical, while determining merits of the case of petitioner seeking pension under the scheme. Even though the scheme requires the production of jail certificate, respondent No.3 Collector, is insisting the petitioner to produce judgment of conviction rendered by the Court and also further directing the petitioner to submit documents from Osmanabad jail about transfer of petitioner from Osmanabad jail to Gulbarga jail. We are of the opinion that respondent No.3 has adopted hyper-technical approach thereby ignoring the objectives of the scheme. It is rather well settled that standard of proof required in such a case of seeking freedom fighters pension, is not such standard which is required in criminal case or in a case adjudicated

upon rival contentions or the evidence of the parties. The claim in such cases is required to be determined on the basis of the probabilities and not on the touchstone of "beyond reasonable doubt".

8. It also appears from the compilation of writ petition that one Shri Ramhari Yadav Mullge, who was colleague of the petitioner in Hyderabad Liberation Movement, filed an affidavit stating that the petitioner was imprisoned in Gulbarga jail alongwith him on account of anti Nizam activities. The said Ramhari Yadav Mullge has been granted freedom fighters pension by order dated 16.7.2005 by the State Government. On perusal of similar extract of said Ramhari Yadav Mullge, issued by the Superintendent of Gulbarga jail, it appears that he was also convicted for the same offences and transferred from Osmanabad jail to Central jail, Gulbarga and the period of imprisonment is almost same.

9. In view of the above, the petitioner's case squarely falls under clause 3(A) of Government Resolution dated 4.7.1995. The petitioner is at present 95 years old and not able to move from one place to another place. Thus, by exercising extra ordinary writ jurisdiction under Article 226 of the Constitution of India, instead of directing respondent No.3 i.e. the Collector, Latur to forward the proposal of the petitioner to the State authorities, we direct the State

authorities to grant freedom fighters pension to the petitioner.

10. In the result, writ petition is allowed in terms of prayer clause B-1. We direct respondent No.1 to grant freedom fighters pension to the petitioner from the date of his application, within four months from today.

11. Rule made absolute in the above terms. Writ petition is disposed of. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

(R.M. BORDE, J.)

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