

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8194 OF 2014

Smt. Kamal Jagannath Jadhav ...Petitioner

Versus

The State of Maharashtra, through the Secretary, ...Respondents
General Administration Department & Ors.

Mr. Uday P. Warunjikar, for the Petitioner.
Mrs. M.P. Thakur, AGP, for Respondent No. 1.

CORAM: A. S. OKA & G.S. PATEL, JJ.
DATED: 10th December 2015

PC:-

1. Heard the learned counsel appearing for the Petitioner and the learned AGP appearing for the Respondent No. 1. The Petitioner claimed that her husband late Jagannath Pandurang Jadhav participated in Goa Freedom Struggle in the year 1955 and he participated in the Satyagraha. An application was made on 14th August 1995 by the said Jagannath for grant of freedom fighters' pension. By the Government Resolution dated 11th July 2014, freedom fighters pension has been granted to the Petitioner from the date of the Government Resolution.

2. The challenge in this Petition is to that part of the Government Resolution by which the pension is denied till the date of the Government Resolution. The contention is that the freedom

fighters' pension ought to have been granted from 14th August 1995 which is the date on which an application was made by the said Jagannath for grant of pension.

3. There is a Reply filed by Mr. Pundlik Rajaram Harchande, Deputy Secretary, General Administration Department, Mantralaya, Mumbai. In the said Reply, a reliance is placed on a decision of the Apex Court dated 15th September 2007 in the case of *Union of India v. Kaushalyadevi*.¹ It is contended in the Reply that as held by the Apex Court, in the present case, the prayer for sanction of pension retrospectively was rejected as the pension was sanctioned on the basis of secondary material. Hence, the pension could be granted from the date of the order and not from the date on which an application for grant of pension was made. Reliance is placed on the Government Resolution issued on 13th March 2014. The documents on the basis of which pension was granted to the Petitioner are also set out in paragraph 4 of the Affidavit.

4. The learned counsel appearing for the Petitioner submitted that though he is not in a position to dispute the factual statements made in paragraph 4 of the Affidavit in Reply, by way of Rejoinder, he has pointed out that there are 43 cases of freedom fighters from Osmanabad District in which freedom fighters' pension has been granted from the date of making the application and not from the date of the order though in these 43 cases, there was no primary evidence produced by the Applicants of their entitlement. He has relied upon the orders which are annexed at Exhibit "BB" to the Rejoinder. He would, therefore, submit that the Petition be made

¹ Civil Appeal No. 783 of 2007

absolute and the State Government be directed to release the pension from the date of the application.

5. We have given careful consideration to the submissions. We have perused all the Government Resolutions annexed at Exhibits “B” to “E”. We find that the said Government Resolutions have been issued prior to 13th March 2014. On 13th March 2014, the State Government issued a Circular for giving effect to the aforesaid decision of the Apex Court dated 15th February 2007 in the case of *Union of India v. Kaushalyadevi*. The Circular records that if the claim for grant of freedom fighters pension is allowed on the basis of the evidence of secondary nature or on the basis of benefit of doubt, the pension should be granted not from the date of the application but from the date of the order. The said Circular quotes the said decision of the Apex Court. The Apex Court observed thus:

“Heard Learned counsels for the parties and perused the record. The short question in this case is whether the Freedom Fighter’s Pension should be granted to the respondent from the date of the application or the date of the order granting the pension.

It has been held by this Court in Government of India vs. K.V. Swaminathan (1997) 10 SCC 190 that where the claim is allowed on the basis of benefit of doubt, the pension should be granted not from the date of the application but from the date of the order.

In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other

words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenue. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.”

(underlines added)

6. The application made by the Petitioner has been allowed by the Government Resolution dated 11th July 2014 and, therefore, the State Government has naturally abided by the Circular dated 13th March 2014 based on the decision of the Apex Court in the case of *Union of India v. Kaushalyadevi*.

7. In paragraph 4 of the Affidavit of Mr. Pundlik Rajaram Harchande, it is stated thus:

“I further say that so far as the case of the husband of the petitioner is concerned, he is sanctioned pension for his participation in Goa Liberation Movement, on the basis recommendations of the Zilla Guarav Samiti and three other freedom fighters i.e. Shri Baburao Annasaheb Jadhav, Shri Bhanudas Dyanu Patil and Smt. Kamal Bhagvat, who had participated in Goa Liberation Movement. While scheme for sanction of pension for participation in Goa Liberation Movement stipulates a certificate from Goa Liberation Committee about participation in satyagraha and copy of the original news item appeared in the news paper of the relevant time describing his participation of felicitation on return. Therefore, Ruling mentioned above squarely applies to the case of husband of the petitioner. In view of this fact, the State Government took conscious decision to sanction the pension to the

petitioner from the date of the order sanctioning the pension.”

8. Thus, it appears that the case of the Petitioner's husband was recommended on the basis of recommendations by three freedom fighters who have participated in Goa Liberation Movement. On the basis of the recommendations of the three freedom fighters, the District Gaurav Samiti recommended the case of the Petitioner. Admittedly a certificate of the Goa Liberation Committee about the participation in satyagrahya was not produced. The correctness of the statements made in paragraph 4 which are reproduced above have been accepted by the Petitioner in view of what is stated in paragraph 5 of the Affidavit in Rejoinder. Hence, the pension has been granted on the basis of secondary evidence.

9. Therefore, the impugned decision taken by the State Government is within four corners of the law laid down by the Apex Court and the Circular dated 13th March 2014. The Government Circular dated 13th March 2014 has been issued in terms of the law laid down by the Apex Court and, therefore, there is no illegality associated with the said Circular.

10. There is no merit in the Writ Petition and the same is dismissed.

(G. S. PATEL, J.)

(A. S. OKA, J.)