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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7389 OF 2013

Baban Narayan Kokne

...Petitioner

v/s.

State of Maharashtra and Anr.

...Respondents.

Mr.Avinash Mukund Gokhale, for the Petitioner.

Ms.M.P.Thakur, AGP for the Respondent Nos.1 and 2.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 12th AUGUST, 2015.

P.C.

1. Heard the learned counsel appearing for the petitioner. The challenge in this petition is to the impugned communications dated 10th January, 2000 as well as 18th February, 2008 by which the claim made by the petitioner for grant of freedom fighters' pension has been rejected.

2 On 17th February, 2015, when this petition came up before this Court, the following order was passed :-

“The learned counsel appearing for the Petitioner states that the

Petitioner is possessing certain documents which will show that he was entitled to receive freedom fighters' pension. He states that some of the documents have been already filed by the Petitioner with the District Level Committee. He states that some of the documents which were to be filed earlier have not been filed. He, therefore, submits that the matter may be sent back for reconsideration. The present age of the Petitioner is more than 82 years. No purpose will be served by sending the matter back to the Authorities unless the Petitioner prima facie satisfies this Court that he is eligible to receive freedom fighters' pension as per the policy of the State Government. We permit the Petitioner to file an additional compilation along with copies of the relevant Government Resolutions and documents within a period of two weeks from today.”

3. Accordingly, a detailed affidavit running into 15 pages and a compilation of documents running into 152 pages has been filed by the petitioner.

4. By the impugned communication dated 10th January, 2000 the application made by the petitioner for grant of freedom fighters' pension on the basis of the Government Resolution dated 4th July, 1995 was rejected. Even according to the case of the petitioner, he falls in the category of 'underground freedom fighters' in the Government Resolution dated 4th July, 1995. The communication dated 10th January, 2000 records

that the petitioner did not comply with the requirements set out in the Government Resolution dated 4th July, 1995.

5. The learned counsel appearing for the petitioner submitted that initially an application was made by the petitioner in March 1984 for grant of freedom fighters' pension. He pointed out that the said application was rejected on the ground that the petitioner did not fulfill the criteria of age. He pointed out that when the application was made in the year 1994, in the Government Resolution dated 5th September, 1992 there was a requirement of age prescribed. The requirement was that at the relevant time, the age of the applicant must be 16 years. The said requirement of age was relaxed by the Government Resolution dated 2nd November, 1995. His submission is that but for the said requirement of age, the petitioner was eligible to get the pension under the Government Resolution dated 5th September, 1992. He urged that the petitioner ought to have been considered as per the Government Resolution dated 4th July, 1995 on the basis of the application made by the petitioner on 26th July, 1995. He invited our attention to the School Leaving Certificate annexed to the additional affidavit which shows that the petitioner could not attend the school for a long time and therefore, he was removed from the school. He

therefore, submitted that the second criteria which is applicable to the underground freedom fighters was satisfied by the petitioner as he was required to give up his education. He urged that even the first criteria of remaining away from the house was satisfied by the petitioner. He submitted that the document in the form of school leaving certificate was sufficient to favourably consider the case of the Petitioner for grant of freedom fighters' pension. Lastly, he urged that the criteria fixed by the Government Resolution dated 4th July, 1995 is unjust. After we started the dictation of the order, he submitted that an opportunity may be granted to the petitioner to file additional documents.

6. We have given our careful consideration to the submissions. On 12th March, 1984 the petitioner applied for grant of freedom fighters' pension. A copy of the said application has been annexed. On the first page of the application, the petitioner has claimed that he participated in the freedom movement as well as in the processions (Prabhat Feri). The said application was rejected by a communication dated 29th December, 1989 on the ground that the petitioner did not fulfill the criteria of age. It appears from the communications dated 16th January, 1991 (Exhibit - 'D') and 5th October, 1991 (Exhibit - 'E') that there were further applications

made by the Petitioner which were rejected. It appears that after 5th October, 1991, the petitioner did not make any grievance and did not file any proceedings. Only after the Government Resolution dated 4th July, 1995 was issued, the petitioner made a fresh application on 26th July, 1995. It is this application which was rejected by impugned communication dated 10th January, 2000. The communication dated 10th January, 2000 reproduces the requirements of the Government Resolution. It appears that on 9th May, 2002 another application was submitted by the petitioner to the Chairman of the State Level Committee appointed to deal with the applications of the freedom fighters. In the said application, the petitioner contended that he had participated in the 'Chale Jao' movement of the year 1942. He had claimed that he had assisted the freedom fighters in the activities such as removal of fish plates of railway and cutting of telegraph cables. In the said application, the petitioner did not claim that he belongs to the category of "underground freedom fighters". On the contrary, his claim appears to be of actual participation in the freedom movement of 1942. On 18th February, 2008 the petitioner was informed that as his case was not covered by the said Government Resolution, he has been already informed by letter dated 10th January, 2000 that his application cannot be considered. The communications dated 10th January, 2000 and 18th

February, 2008 have been impugned by the petitioner by filing the present petition on August, 2012.

7. There is a reply filed by Shri Pundlik Rajaram Harchande, Deputy Secretary to the Government, General Administration Department, Mantralaya, Mumbai wherein the issue of delay has been raised. However, we are not dealing with the issue of delay and we are considering the case of the petitioner on merits.

8. As stated earlier, the submission of the learned counsel appearing for the petitioner is that the petitioner falls in the category of “underground freedom fighters” in the Government Resolution dated 4th July, 1995. As far as the said Government Resolution is concerned, for this category of freedom fighters, the applicant has to satisfy that he had participated in 'Bharat Chhodo Andolan' of 1942 to 1944 or 'Hyderabad Mukti Sangram' of 1947- 48. The learned counsel appearing for the petitioner states that the case of the petitioner is that he participated in 'Bharat Chhodo Andolan' of 1942 to 1944 by remaining underground. Such applicant has to satisfy that he suffered extreme hardship due to his participation in the aforesaid movement by producing evidence of the

existence of one of the three contingencies viz., (a) He was required to leave his house ; or (b) He was required to give up his education or that he was rusticated from the School or ; (c) As a result of assault by the police, he became disabled.

9. The learned counsel appearing for the petitioner has relied upon the school leaving certificate which is at page 76 of the additional compilation. It discloses that the Date of Birth of the petitioner is 11th August, 1931. So in the year 1942, his age was 11 years. He was admitted to the school on 30th December, 1938. Most importantly, he left the school on 27th August, 1947 when he was in VII standard. The remark is that for a long time, the petitioner was absent. Thus, the petitioner continued to be the bonafide student of the school till 27th August, 1947 even after independence. It is not his case that he participated in Hyderabad Freedom Struggle in 1947 – 1948.

10. Therefore, by no stretch of imagination it can be held that as a result of the participation of the petitioner in the movement of 1942 – 1944 as an underground freedom fighter, he was either removed by the school or that he was required to give up the education.

11. We must also note here that as pointed out earlier, in the application dated 9th May, 2002 made by the petitioner to the Chairman of the State Level Committee, the case made out by the petitioner is of actual participation in 1942 freedom movement and has given instances of alleged actual participation. In the said application, the petitioner did not claim that he belongs to the category of “underground freedom fighters” who participated in the freedom struggle of 1942 to 1944. It is not even the case made out in the said application or in the applications filed either in the year 1984 or in the year 1995 that the petitioner was required to remain away from his home on account of his participation in the freedom struggle. It is not the case of the petitioner that he suffered any disability due to the assault made by the police. Therefore, it follows that the petitioner does not satisfy the criteria laid down in the Government Resolution dated 4th July, 1995 for the category of “underground freedom fighters”.

12. As regards the rejection of the earlier applications, the same has taken place in the year 1989 as well as in the year 1991. The petitioner made no grievance about the said rejection and infact on 26th July, 1995

filed a fresh application in terms of the Government Resolution dated 4th July, 1995. Therefore, no fault can be found with the decision of the State Government holding the petitioner as ineligible.

13. In this petition, there is no challenge to the validity of any of the conditions imposed in the Government Resolution dated 4th July, 1995. Therefore the submission belatedly made about the illegality cannot be considered.

14. As regards the request for permission to file additional documents, as noted earlier, the petitioner was permitted to file additional affidavit running into 15 pages and a compilation of additional documents containing more than 115 documents right from the year 1984. Hence, no further time can be granted to the petitioner. Moreover, by granting permission to file additional compilation, we fail to understand as to how his case can be improved.

15. The petition must fail and accordingly we reject the petition.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)