

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.A.No.1091 OF 2014

PC: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mrs.S.Nanda, learned counsel for the appellant,
the learned Government Pleader for Revenue for respondent Nos. 2 and
3 and Mr. K.Chinna Baba for respondent No.1.

First respondent in the writ appeal filed W.P.No.2699 of 2009 for
Mandamus for direction to restore the Freedom Fighters' Pension (for
short 'FFP') and to pay arrears by setting aside letter No.112/6197/97-
FF(HC)(A) dated 04.08.2006 of the 1st respondent and consequential
orders vide Lr.No.52/CC/25/2009-FF(HC) dated 21.04.2009 and
28.10.2009, as illegal and unconstitutional.

The parties are referred as arrayed in the writ petition.

That on the application of writ petitioner for grant of freedom fighters'
pension, the 1st respondent granted preliminary pension to the petitioner
vide letter No.112/6197/97-FF(HC)(A) dated 29.07.2003. The 1st
respondent issued sanction proceedings on 04.11.2003. The petitioner
received family pension till the family pension was withdrawn through
impugned letter dated 04.08.2006. Pursuant to the suspension or
withdrawal of freedom fighters' pension to writ petitioner, show-cause
notice Rc.No.C6/1592/06 dated 02.12.2006 has been issued. The
petitioner claims to have filed his reply together with documentary
evidence to the show- cause notice dated 02.12.2006 and the 2nd
respondent admittedly as on date has not examined the reply of
petitioner or taken any decision on the entitlement of petitioner for
continuation of FFP. The grievance of petitioner is that by reference to
Voter List, withdrawal of FFP is arbitrary and unconstitutional. That
issuance of show-cause notice shows that the entitlement of continuation
of FFP is examined and withdrawal of FFP is violative of principles of
natural justice and illegal.

The respondents opposed the writ prayer in law and fact. For the nature of order we propose to pass in the appeal, we are not referring to the claims of parties on either entitlement to FFP or justification for denying FFP to petitioner. Through the order impugned in the writ appeal, the learned Single Judge, after referring to **GURDIAL SINGH v. UNION OF INDIA AND OTHERS**^[1], **KAMALABAI SINKAR v. STATE OF MAHARASHTRA AND OTHERS**^[2], **BOMMAKANTI VENKAVVA v. UNION OF INDIA AND OTHERS**^[3] and by applying the ratio of the aforementioned decisions, allowed the writ petition. The relevant portions of the impugned order read thus:

14. From a reading of the principle laid down in the above referred judgments, it would be absolutely clear that while dealing with the claims pertaining to the freedom fighters a rational and pragmatic approach is required to be adopted by the authorities. In the instant case, without issuing any notice and without giving any opportunity of being heard to the petitioner herein to enable him to disprove the allegations alleged to have been made in the complaint by a third party, the second respondent recommended for cancellation and the first respondent, having acted upon the same, cancelled the freedom fighters pension granted in favour of the petitioner after holding through enquiry earlier.

15. Since the enquiry initiated against the petitioner herein by the second respondent State authorities pursuant to the notice in Rc.No.C6/1582/06, dated 02.12.2006 has not attained any finality, in the considered opinion of this Court, it would not be open for the respondents herein to cancel the freedom fighters pension granted in favour of the petitioner herein earlier after through verification and recommendation of the Hyderabad Special Screening Committee.

16. For the aforesaid reasons and having regard to the principles laid down by the Hon'ble apex Court and this Court in the above referred judgments, writ petition is allowed and the impugned orders in Lr.No.112/6197/97-FF(HC)(A), dated 04.08.2006 and the consequential impugned orders in Lr.No.52/CC/25/2009-FF(HC), dated 21.04.2009 and

28.10.2009, are set aside and consequently the first respondent is directed to continue to pay freedom fighters pension to the petitioner herein in terms of the Lr.No.112/6197/97-FF(HC)(A), dated 04.11.2003, issued by the first respondent herein. It is also made clear that the petitioner herein is also entitled for arrears of pension from 04.08.2006 to till date and the respondents are directed to pay the said arrears within a period of three months from the date of receipt of this order. Consequently, pending miscellaneous petition, if any, shall stand dismissed. No order as to costs”.

Hence, this appeal.

Mrs.S.Nanda, learned counsel for the appellant, contends that withholding of FFP through order dated 04.08.2006 is passed on valid material and sufficient reasons and no exception is either taken or proved by the petitioner. The decisions relied upon by the learned Single Judge are distinguishable on facts and by reference to these decisions, it cannot be argued that FFP granted cannot be suspended or withheld. The learned counsel further contends that the writ petition ought to have been dismissed, when the enquiry initiated through notice 02.12.2006 is pending and prays for setting aside the order impugned in the appeal.

Mr.K.Chinna Baba, learned counsel appearing for petitioner, submits that the reason for withdrawing the FFP is by reference to the voters list of the year 1995 where the age of the petitioner is shown as 53 and the voters list cannot be the conclusive proof to determine the age of the petitioner and the petitioner has placed documentary evidence before the 2nd respondent pursuant to notice dated 02.12.2006 to establish his credentials. The reasons stated in the order withdrawing pension, it is contended, are arbitrary and the decisions relied upon by the petitioner apply to the facts and circumstances of the case and prays for dismissal of the appeal.

From the material available on record and the rival contentions urged by the learned counsel appearing for the parties, the point for

decision is whether the order dated 11.04.2014 in W.P.No.2699 of 2009 is tenable and if not what is the relief the petitioner is entitled to in the facts and circumstances of the case.

Summarily restated, the 1st and 2nd respondents through letters 29.07.2003 and 04.11.2003, on being satisfied with the reports forwarded by the revenue authorities on the petitioner's application for grant of freedom fighters' pension to petitioner, issued preliminary pension sanction order and final sanction proceedings. On a complaint received on the entitlement of petitioner through proceedings dated 04.08.2006, the freedom fighters' pension is withheld. Simultaneously, as the recommendation for grant of freedom fighters' pension was from the State Government, notice dated 02.12.2006 was issued to petitioner to show-cause why the freedom fighters' pension already granted shall not be cancelled. The petitioner has submitted explanation and also filed supporting documents in assertion of his claim for continuation of FFP. When the enquiry into petitioner's entitlement of FFP is pending with the

2nd respondent, in our considered view the learned Single Judge erred by allowing W.P.No.2699 of 2009 and directing the respondents to pay FFP. The order impugned in the appeal results in anomalous situation if the outcome of enquiry is against the petitioner. The continuation of FFP certainly is dependant on the outcome of enquiry pending in notice dated 02.12.2006. We are conscious of the observations of the Apex Court in the decisions referred to above and we hope and trust that the 2nd respondent takes note of these precedents in considering the claims of freedom fighters for pension under the schemes of either State or Central Governments and expeditious decisions are rendered. Therefore, to meet the ends of justice, we are satisfied that the appeal can be disposed with the following order.

- “1. The petitioner is given a further time of two weeks from today to file explanation/documents, if any, in support of his claim for grant of freedom fighters' pension.
2. The 2nd respondent is directed to afford opportunity of

hearing to the petitioner while conducting enquiry into the allegations against the petitioner.

3. If the 2nd respondent intends to rely upon the report or documents in the ongoing enquiry, it is needless to observe that the copies of such documents/reports are made available to the petitioner to meet the requirements of principles of natural justice.
4. The 2nd respondent is directed to positively complete the enquiry initiated through notice dated 02.12.2006 within a period of eight weeks from the date of receipt of a copy of this order.
5. It is needless to observe that if the outcome of enquiry turns out in favour of petitioner, the respondents are under obligation to continue the FFP from the date of discontinuation of FFP.

Writ appeal is ordered as directed above. No order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

ACJ

DILIP B. BHOSALE,

S.V.BHATT,

J

Date: 09.07.2015

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[\[1\]](#) (2001) 8 SCC 8

[\[2\]](#) (2012) 11 SCC 754

[\[3\]](#) 2013 (5) ALD 173