

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

W.A.No.776 OF 2015

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

Heard Mrs.S.Nanda, learned counsel for the appellant and
Sri K.Ananda Rao, learned counsel for respondent Nos.1 & 2.

The 1st respondent in W.P.No.18146 of 2005 is the appellant herein. The appeal is directed the order dated 23.09.2014. Through order under appeal, the learned Single Judge set aside proceedings No.52/CC/28/2005-FF(HC) dated 01.08.2005 and further directed the appellant and 3rd respondent herein to sanction and pay the freedom fighters' pension to petitioner(s) and the said exercise shall be completed within a period of three months from the date of receipt of a copy of order dated 23.09.2014.

The circumstances relevant for disposal of the appeal are as follows:

One R.Prabhakar Rao/1st respondent (died) requested for sanction of Freedom Fighters' Pension (for short 'FFP') under Swantantrata Sainik Samman Pension Scheme. The 2nd respondent, being, the wife of respondent No.1, is pursuing the grievance of non-payment of FFP. The appellant through proceeding dated 01.08.2005 rejected the claim of 1st respondent. The 1st respondent for claiming FFP places reliance upon letter Outward No.2/CONG/56F dated 5th Aban, 1356 F to contend that 1st respondent satisfies the requirements of the scheme and eligible for sanction of pension. Admittedly, the learned Single Judge placed reliance upon the order of this Court in W.P.No.21159 of 2005 dated 21.03.2006 for setting aside the proceedings

dated 01.08.2005. The case of appellant is that the proceeding dated 5th Aban, 1356 F by itself does not satisfy the eligibility criteria for claiming FFP. It is further contended that the very proceeding on which the 1st respondent relies upon was subject matter of a writ appeal and the decision of the Apex Court in **UNION OF INDIA v. K.INDRASENA REDDY AND ANOTHER**. These two decisions have categorically held that the proceedings by itself is not sufficient for claiming FFP. Therefore, the appellant prays for allowing the appeal.

On the contrary, learned counsel for respondents 1 and 2 contends that the 1st respondent does not exclusively rely upon proceeding dated 5th Aban, 1356 F and the 1st respondent in support of his claim can certainly produce other documents which are permitted under the scheme and according to him, the available material is enclosed with the application and it is incorrect to contend that the proceeding is the solitary basis for claiming FFP. He objects to a new point urged in the appeal which was not canvassed before the learned Single Judge and by reference to a new point raised for the first time, he requests this Court not to consider, much less allow the appeal by setting aside the order dated 23.09.2014. He requests the Court to give respondents 1 and 2 an opportunity to establish their claim for sanction of FFP bearing in mind the principles laid down by the Apex Court in the **STATE OF MAHARASTRA v. NAMDEO AND OTHERS**. According to the learned counsel for respondents 1 and 2, respondents do have material in addition to 5th Aban, 1356 F communication to show that the proceeding dated 01.08.2005 is illegal and unsustainable.

We have carefully examined the material available on record and taken note of the submissions of the learned counsel appearing for the parties.

The learned counsel for the appellant fairly submits that the point now urged in the appeal was not specifically canvassed or the decisions on which now reliance is placed have been relied before the learned Single Judge,. Having regard to this admitted position, we are satisfied that the appeal, with consent, can be disposed of by this order.

The appeal is allowed and the matter is remanded to the learned Single Judge for decision in accordance with law.

The parties are given liberty to place additional material, if so advised after the matter is remanded. We request the learned Single Judge before whom the matter is listed to consider and dispose of the writ petition as expeditiously as possible.

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

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 20.11.2015

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