

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 5633 OF 2011**

TUKARAM GOVIND DAKLE

VERSUS

THE STATE OF MAHRASHTRA AND ORS

...

Advocate for Petitioner : Mr. Shinde Kalyan E.
AGP for Respondent/State : Mrs. M.A. Deshpande
Advocate for Respondent no.3 : Mr. B.B. Kulkarni

...

CORAM : S.S. SHINDE & V.L. ACHLIYA, JJ.**Dated: March 10, 2016**

...

PER COURT :-

Heard.

2. The learned counsel appearing for the petitioner submits that, the petitioner's case is supported by six freedom fighters by way of filing affidavits accompanied with certificates showing that, they were sentenced and as a matter of fact, for some period they have undergone imprisonment. He, therefore, relying upon the Government Resolution dated 4th July, 1995 submits that, the petitioner has fulfilled the requirement as mentioned in the said Government Resolution and the Respondents have not

properly appreciated the same and erroneously rejected the claim of the petitioner. As a matter of fact the petitioner's case was recommended by the Zilla Gaurav Samiti. Therefore, relying upon the pleadings in the Petition, annexures thereto and various affidavits filed by the freedom fighters, the learned counsel appearing for the petitioner submits that, the petitioner's case ought to have been favourably considered by the Respondents.

The learned counsel appearing for the petitioner has invited our attention to the judgment of the Division Bench of the Bombay High Court bench at Aurangabad in Writ Petition No. 4558/2000 (Nagorao S/o Babarao Halde V/s The State of Maharashtra and others), decided on 12th August, 2010, and submits that, in the facts of that case, this Court relying upon the decision taken in the Writ Petition No. 2831/2000 (Kishansinha S/o Tukaramsinha Chandel V/s The State of Maharashtra and others), and also affidavits of two freedom fighters, who have undergone imprisonment for more than two years, allowed the Petition and directed to award the Freedom Fighters' pension to the petitioners therein.

3. On the other hand, the learned counsel appearing for the Respondent No.3, relying upon the reasons assigned in the impugned communication/order, submits that, the petitioner did not fulfill the conditions laid down in the Government Resolution dated 4th July, 1995, and therefore, this Petition may be rejected.

4. We have heard the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the Respondent Nos.1 and 2 and the learned counsel appearing for the Respondent No.3. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, and in particular, the Government Resolution dated 4th July, 1995. Upon careful perusal of the contents of the said Government Resolution, so far claim of the petitioner is concerned, clause (e) is relevant, wherein in the said clause 8 requirements have to be fulfilled by the person, who has applied for freedom fighters pension. Upon careful perusal of the reasons assigned in the impugned communication/order, the petitioner did not fulfill the requirement stated in sub clause 1 to 4 in clause (e) of the

said Government Resolution. So far as sub clause (5) is concerned, it is true that, the affidavits of the other freedom fighters have been filed along with the copies of the documents showing that, as a matter of fact, the sentence was awarded to them and a part of sentence has been undergone by them. However, merely because there is compliance of sub clause (5) of clause (e) of the said Government Resolution, is not sufficient ground to entertain the prayer of the petitioner. Though the learned counsel appearing for the petitioner has placed reliance in the case of Nagorao (supra), in the said judgment itself, the Division Bench was conscious of the fact that, the criteria fixed by the Government cannot be relaxed. It is only relying upon the earlier order passed in Writ Petition No. 2831/2000 (Kishansinha S/o Tukaramsinha Chandel V/s The State of Maharashtra and others), the Petition came to be allowed.

5. In our considered view, the said decision is pronounced in the peculiar facts of the said case, and cannot be read as binding precedent. As already observed, while passing the order in case of Nagorao (supra), the Division bench was conscious of the fact that, the criteria

fixed by the Government cannot be relaxed. As already observed, the petitioner did not fulfill the criteria in clause (e) (1) to (4) of the aforesaid Government resolution. It is also relevant to mention that, when the affidavits filed by the petitioner does not mention the fulfillment of the requirement of sub-clause (1) to (4) of clause (e) of the said Government Resolution, viewed from any angle, we are unable to persuade ourself to give mandatory directions to the respondents as prayed by the petitioner. Hence Petition stands rejected.

(**V.L. ACHLIYA, J.)**

(**S.S. SHINDE, J.)**

...

SGA