

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3033 OF 2013

Sitaram S/o Rupaji Zalake,
Age: 87 years, Occu; Pensioner,
R/o Talyachiwadi, Tq. Hadgaon,
Dist. Nanded.

...PETITIONER

versus

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai.
2. Freedom Fighter's High Power Committee
New Administrative Building,
8th Floor, Mantralaya
Mumbai-32
Through its Member Secretary.
3. The Desk Officer,
General Administration Department,
(Freedom Fighters Section)
Mantralaya, Mumbai – 32.
4. The Collector,
Nanded, Dist. Nanded.

...RESPONDENTS

.....
Mr. V.S. Panpatte, Advocate for petitioner
Mrs.N.B. Patil, AGP for respondents No.1, 3 and 4
Mr. B.B. Kulkarni, Advocate for respondents No. 2
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**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

**RESERVED ON : 28th JUNE, 2016.
DELIVERED ON : 5th JULY, 2016.**

ORAL JUDGMENT :- (Per: K.K. Sonwane, J.)

1. Rule. Rule made returnable forthwith. Heard the learned counsel appearing for parties finally with consent.

2. This petition arises out of order dated 3rd November, 2006 rebuffing claim of the petitioner for grant of benefit of "*Sanman Pension*" as contemplated under '*Freedom Fighter Pension Scheme 1972*'. According to petitioner, he had an involvement in '*Hyderabad Mukti Sangram*' as underground freedom fighter. He played prominent role in the combat occurred in village Kalhali Tahsil Kandhar. He had participated in the activities like campaign against *Nizam* Government, supply of arms and weapons to the activist of the liberation movement, providing them meals, secret information about police activities, cutting of trees etc. The petitioner had also taken part in "*Jungle Satyagraha*" under the leadership of Jaywantrao Wipankar, Tagadpallay, More etc.. The petitioner attended State Congress Party Session held at Hyderabad.

3. It has been contended that the Government of Maharashtra has introduced "*Sanman Pension Scheme*" to provide monetary assistance to the freedom fighter for their scarifies in the freedom movement. Therefore, petitioner moved an application on 07-10-1995 in the prescribed proforma for grant of pension being underground freedom fighter. He had also submitted his own affidavit accompanied with affidavits of his associates, namely, Kondiba Sakharam Pawar, Maroti Narayan Amrate. The application of the petitioner was processed by the '*District Gaurav Samiti*' and forwarded the same to the respondent -authority with favourable recommendation to grant pension benefits to the petitioner. But, lateron there was no communication to the petitioner in regard to the progress into the matter. The petitioner

made endeavour for the informations about the decision, if any, taken by respondent - authority on his application for awarding pension benefits to him. But, he did not receive any response. Therefore, petitioner ventured to seek information by invoking remedy under Right to Information Act, 2005. Eventually, petitioner received the letter on 03-11-2011 from respondent-authority and it was communicated to him that his application came to be rejected on 03-11-2006 for want of sufficient proof as prescribed under Government Resolution dated 04-07-1995.

4. Being dissatisfied with the decision of respondent – authority, petitioner immediately submitted detailed representation dated 07-04-2012 and furnished additional evidence comprising documents of certificates of Police Patil, affidavits of Bajirao Garole, Smt. Anusayabai Dhole, Pundlik Bhise, Kashiba Mirasse, Ganpatrao @ Ganya Tagadpallay etc. All these veteran freedom fighters, in their affidavits had given details about participation of the petitioner in freedom movement. The petitioner also produced certificates of these freedom fighters with his application. It has been contended that petitioner has complied with all requisite criteria of eligibility for freedom fighter pension. Hence, he requested to upset the impugned order dated 03-11-2006 and grant benefit of pension under "*Pension Scheme*" introduced by the Government.

5. Mr. Panpatte learned Counsel for petitioner vehemently submitted that impugned order dated 03-11-2006 is perverse, unsustainable and not within ambit of object and purpose of the

scheme. It would unreasonable to expect the evidence beyond reasonable doubt to prove the eligibility criteria of the freedom fighter. The evidence of the affidavits of veteran freedom fighters were liable to be considered in favour of petitioner. But, the respondent-authority did not apply mind in proper manner and by adopting superficial approach rejected the application of the petitioner. According to learned counsel Mr. Panpatte, the petitioner has filed representation dated 07-04-2012 with additional evidence. But, respondent-authority did not consider the same uptill this time. The petitioner submitted the affidavits of his associate freedom fighters, namely, Bajirao Garole, Smt. Anusayabai Dhole, Pundlik Bhise, Kashiba Mirasse, Ganpatrao @ Ganya Tagadpallay etc. The petitioner had participation in the movement as underground freedom fighter. The respondent-authority was pleased to award benefit of pension to the other associates of the petitioner without any documents of their sufferings, hardship etc. However, the application of the petitioner was turned down by applying different yardstick, which caused injustice to the petitioner. It is settled rule of law that claim of the freedom fighter is required to be determined on the probabilities and not on test of beyond reasonable doubt. The learned counsel Mr. Panpatte blamed that respondent – authority did not consider the recommendations of “*District Gaurav Samiti*” favourable to the petitioner and arbitrarily rejected the application without any reasonable cause. The act of rejection of claim for non-availability of direct evidence is contrary to the requirement of the scheme. The Division Bench of this Court in *writ petition No. 2632 of 2011 (Poonjaram S/o Madhav Indewad Vs. State of Maharashtra)* held that

freedom fighter's pension is essential to be granted, if any one of the conditions stipulated in the Government Resolution dated 04-07-1995 is fulfilled. Therefore, learned counsel requested to appreciate the additional evidence produced on record on behalf of the petitioner and grant him the benefit of pension under Government Resolution dated 04-07-1995.

6. We have given anxious consideration to the arguments canvassed on behalf of both sides. Admittedly, earlier application for the petitioner for grant of benefit of pension came to be rejected by respondent – authority on 03-11-2006. Thereafter, petitioner took efforts to convince the respondent - authority under his representation dated 07-04-2012 accompanying with additional evidence as required under Government Resolution dated 04-07-1995. The petitioner had produced affidavits of his other associate freedom fighters, namely, Bajirao Garole, Smt. Anusayabai Dhole, Pundlik Bhise, Kashiba Mirasse, Ganpatrao @ Ganya Tagadpallay etc. He had also submitted the certificates issued by concerned Police Patil in regard to involvement of the petitioner in liberation movement. According to the petitioner, these documents are sufficient to prove eligibility criteria for pension benefit as required in Government Resolution dated 04-07-1995. But, all these efforts on the part of petitioner did not evoke result. Therefore, circumstances constrained the petitioner to approach this Court by filing the present writ petition.

7. It is to be noted that respondent-authority filed affidavit in-reply on record and admitted the contentions put forth on behalf of

petitioner about his representation dated 07-04-2012. It is also not put into controversy that the petitioner attempted to produce additional evidence comprising documents of certificates of Police Patil, affidavits of veteran freedom fighters, namely, Bajirao Garole, Smt. Anusayabai Dhole, Pundlik Bhise, Kashiba Mirasse, Ganpatrao @ Ganya Tagadpallay etc. But, no concrete decision has been communicated on the part of respondent-authority to the petitioner on the factum of additional evidence accompanied with representation dated 04-07-2012. We find that respondent - authority has to consider all these vital documents produced on record on behalf of the petitioner afresh to redress his grievances.

8. At this juncture, it is worthy to mention that the Apex Court in the case “*Mukundlal Bhandari vs. Union of India*” reported in *AIR 1993 SC 2127*, observed that the object of the scheme was to honour and where it is necessary also to mitigate the suffering of those who had given their all for the country in the honour of its need. It is made clear that the scheme was not to reward or compensate the sacrifices made in the freedom movement. The scheme is meant to provide benefits to the freedom fighters as token of honour to them. The object of the scheme was to assist, honour and acknowledge valuable sacrifices of the freedom fighters in liberation movement. No doubt, the benefit of pension was required to be sanctioned only after requisite proof in support of petitioner's claim as laid down under Government Resolution dated 04-07-1995. Once application is completed in all respect as per Government Resolution dated 04-07-1995, the Collector shall place it

before the "Zilla Gaurav Smiti" for its recommendations. As mentioned supra the scheme is not to reward or compensate the sacrifices made in the liberation movement, but it is in token of honour to them. Therefore, in case petitioner has the sufficient documents in his custody to prove eligibility criteria for benefit of pension, it would imperative that sufficient opportunity is essential to be given to the petitioner to establish his *locus-standi* for such pension benefit.

9. The learned counsel Mr. Kulkarni for respondent-authority taking recourse of the legal guidelines delineated in the case of *State of Maharashtra and others Vs. Raghunath Gajanan Waingankar* reported in (2004)6 Supreme Court Cases 584 has rightly pointed out that the additional evidence produced on behalf of the petitioner cannot be re-appreciated by exercising the writ jurisdiction. The High Court cannot sit in judgment over the decision of the State Government like appellate authority. Therefore, it would unjust and inappropriate to accept the contentions put forth on behalf of respondent.

10. It is true that as held by the Apex Court in the case of *Raghunath Gajanan Waingankar (Supra)*, the High Court exercising its jurisdiction could not sit in judgment being appellate authority over the decision of the State Government. But, it is for the respondent – authority to re-appreciate and re-consider the evidence, if any, produced on record to determine eligibility criteria of the petitioner for benefit of pension under the scheme. It would be reiterated that in case there would not be any re-appraisal of the additional evidence of the petitioner, definitely, it would cause prejudice and injustice to him.

Obviously, the document by way of additional evidence as stated above would be the vital evidence to prove eligibility criteria of the petitioner to claim pensionary benefit under the scheme. Hence, we find it justifiable to relegate the matter to the respondent-authority for its re-appraisal and decision afresh. It would sub-serve the purpose to enable the petitioner to establish factum of his eligibility criteria for pension purpose.

11. In light of above, the impugned order dated 03-11-2006 is hereby quashed and set aside. The matter is remanded back to respondent - authority for reconsideration of the claim of the petitioner afresh. The petitioner is at liberty to produce additional documents, if any, by way of evidence before the respondent-authority for appreciation on its own merit.

12. The petitioner is senior citizen of nearabout 90 years old. Therefore, respondent-authority shall take endeavour to decide his claim expeditiously at earliest, preferably within a period of four (04) months from the date of this order.

13. In the result, the Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

Sd/-

[K. K. SONAWANE, J.]

MTK

Sd/-

[S. V. GANGAPURWALA, J.]