

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 WRIT PETITION NO. 11728 OF 2015

Chimnabai w/o Dhondiba ... **Petitioner**
Waghmare
Age 87 years, Occu: Household
R/o Adas, Tq. Kaij Dist. Beed

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Central Administration
Department(Freedom Fighter
Division), Mantralaya, Mumbai.
2. The District Collector, ... **Respondents**
Beed, District Beed

Advocate for Petitioner : Mr. Thombre S. S.
AGP for Respondents State: Mrs. A. V. Gondhalekar
Advocate for Respondent No.2 : Mr. Bhushan Kulkarni

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 21st December, 2016

ORAL JUDGEMENT:

1. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.
2. The petitioner was given Freedom Fighter Pension on the ground that the husband of the petitioner had participated in the Hyderabad Mukti Sangaram. Subsequently, the order is passed for cancelling the

said pension and further claiming recovery and criminal action against the petitioner.

3. The learned counsel for the petitioner submits that the petitioner is presently aged about 88 years. Based on the documents received initially, the husband of the petitioner had applied for the grant of Freedom Fighter Pension and upon his death the petitioner has applied for grant of Freedom Fighter Pension on account of participation of deceased husband of the petitioner in Hyderabad Mukti Sangaram. The learned counsel submits that after considering the entire record, Freedom Fighter Pension was sanctioned in the year 2009 w.e.f. December, 2005. The learned counsel submits that the petitioner has not submitted any fake document. Even the report submitted by the Civil Judge, Senior Division Ambejogai on 16.02.2008 states that the husband of the petitioner was imprisoned and charged for the offence under section 243 of the Nizam Penal Code. The husband of the petitioner had participated in the movement against the Nizam State. Only on the basis of the report of the Superintendent of Central Prison, Andhra Pradesh, the respondents came to the conclusion that the petitioner has obtained Freedom Fighter Pension on forged document. The same is

not the case. The learned counsel relies on the judgment of the Apex Court in the case of Ram Rao Vs. District Collector, Beed, delivered in Civil Appeal Nos. 10624-10636/2013 dated 25th November, 2013 and another judgment of the Apex Court in Civil Appeal Nos. 10237-38 of 2016 (Lala Laxman Kirdat & Etc. Vs. State of Maharashtra & ors) dated 21st October, 2016.

4. Mr. Kulkarni, learned Advocate for respondent No.2 submits that relying on the documents submitted, the Freedom Fighter Pension was granted assuming that the husband of the petitioner had participated in the Hyderabad Mukti Sangram. However, upon further enquiry, it was revealed that the certificate of imprisonment produced by the petitioner was never issued by the Superintendent, Central Prison Hyderabad and the said document was forged and fabricated. Such communication was also made on 31.01.2014 by the Director General of Prison and Correctional Services, Government of Andhra Pradesh. According to the learned counsel, the petitioner is guilty of fraud, forgery and preparing fake document. As such, the order of cancelling the said Freedom Fighter Pension, recovery and to prosecute the petitioner is rightly passed.

5. The learned AGP submits that the person who is benefited on the basis of erroneous document cannot be protected.

6. We have considered the submissions.

7. It appears that the petitioner has produced the documents issued by the Superintendent, Central Prison, Hyderabad i.e. the certificate of imprisonment of her husband dated 04.11.2006 stating that he was under trial under section 243 of the Nizam Penal Code. Upon subsequent verification, it was found that the said certificate was never issued by the Superintendent, Central Prison, Hyderabad. There is no reason to doubt the communication of the Director General of Prison and Correctional Services, Government of Andhera Pradesh stating that no certificate was issued by the Superintendent, Central Prison, Hyderabad.

8. It does not appear that the claim of the petitioner was totally unfounded. The Civil Judge, Senior Division, Ambejogai has communicated to the Collector under communication dated 16.02.2008 that original record of the Court is in Urdu and with the help of Urdu expert, the record has been verified again and combined report of the accused has been

given, vide letter No.2175 dated 20th June, 2007. The said record was reverified and it was found that name of Dhondiba Tuka (Mang) Waghmare i.e. Husband of the petitioner appears and that he was arrested and was charged for the offence under section 243 of the of Nizam Penal Code and even charge sheet was filed wherein the name of the deceased husband of the petitioner also appears. Such communication of the learned Civil Judge Senior Division Ambejogai to the Collector, Beed, dated 16.02.2008 is not disputed. The said communication does exist. As such, it cannot be said that the claim, initially made by the husband of the petitioner and subsequently by the petitioner, of the deceased husband of the petitioner participating in the Hyderabad Mukti Sangaram was baseless or unfounded. We may observe that, the same would not be sufficient in view of the subsequent communication of the Director General of Prison and Correctional Services, that no certificate was issued by the Superintendent, Central Prison, Hyderabad, at the relevant time. We are not interfering with the order cancelling the pension granted to the petitioner. However, considering that the petitioner is aged 88 years and a widow, who has no other avocation for livelihood, directing recovery

against the petitioner would place the petitioner in hardship. We set aside the order impugned to the extent of claiming recovery and prosecution against the petitioner. The rest of the order cancelling the pension is upheld.

9. Rule is accordingly made partly absolute in above terms. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC