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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12781 OF 2015

Smt. Yashoda Kisan Ghadage ... Petitioner

Versus

State of Maharashtra ... Respondents

Mr. Umesh Mankapure for the petitioner.

Mrs. M. P. Thakur, AGP for respondent nos. 1, 3 and 4.

**CORAM : SHANTANU KEMKAR &
MAKARAND KARNIK, JJ.**

DATED : JULY 26, 2016

P.C.

Feeling aggrieved by the order dated 16.9.2015 passed by the second respondent whereby cancelling the freedom fighter pension sanctioned to her being widow of the freedom fighter Kisan Ghadage, the petitioner has filed the present petition under Article 226 of the Constitution of India.

2. Briefly stated, the case of the petitioner is that she is widow of the freedom fighter Kisan Ghadage who had participated in the freedom movement. He was also honoured by the then Chief Minister by issuing '*Sanmanpatra*' for the

same. In pursuance of the policy of the State Government for grant of pension to the freedom fighters or their family members, petitioner submitted an application for sanction of pension.

3. After considering various documents which are collectively filed with this petition as Exh. "C", the State Govt sanctioned the pension in her favour vide order dated 21.3.2014 from the date of the order. Feeling dissatisfied with the grant of pension from the date of the order, petitioner submitted an application for sanction of pension from the date of application submitted by her. While considering the petitioner's prayer for sanctioning the pension from the date of the application, the respondent State found that there was some discrepancy in the documents relating to the involvement of the petitioner's husband in the criminal case No. 3 of 1943 registered against him and as such a show cause notice dated 8.4.2015 Exh. "F" was issued to the petitioner to which petitioner submitted a detailed reply on 13.4.2015 at Exh."G". After considering the reply to the show cause notice, respondent State has passed the impugned order dated 16.9.2015 whereby recalling the sanction of pension

granted in favour of the petitioner.

4. According to the petitioner, the only reason which has been assigned in the impugned order for recalling the sanction of pension is that in the judgment passed by the Special Judge, Satara in Special Criminal Case No. 3 of 1943, names of total 16 accused persons were mentioned in which name of the husband of the petitioner Kisan Ghadage was not found. It is further observed in the said order that while making the original application, petitioner has filed copy of the chargesheet submitted by the police before the court in which petitioner's husband's name was there, but in the record, the name of her husband was missing. It is stated that in the said judgment passed by the Criminal Court, name of the petitioner's husband was not found, therefore, it was held by the respondent State that the petitioner submitted a false claim and got sanction of pension in her favour on the basis of forged and fabricated documents.

5. Learned counsel for the petitioner submits that respondent State has failed to consider that in the chargesheet dated 14.4.1943, petitioner's husband's name

was clearly mentioned as accused at sr. no. 27. However, in the judgment, petitioner's husband's name was missing as the chargesheet was filed against as many as 29 accused persons. However, the trial court proceeded only against 16 as other accused persons were absconding. Petitioner's husband since was absconding, the trial was not held against him and therefore his name is missing in the judgment. Learned counsel, however, submits that as the petitioner's husband's name was in the original chargesheet, reliance of the respondent State on a torn paper in which petitioner's husband's name is missing, cannot be sustained.

6. On the other hand, learned AGP for the State has supported the impugned order. According to her, the State has rightly taken the impugned decision as in the copy of the chargesheet which was available in the records of the respondents, the petitioner's husband's name was not mentioned.

7. Having considered the submissions made by the learned counsel for the parties and having gone through the annexures, impugned order as also the certified copy of the

chargesheet and the judgment in the Criminal Case No. 3 of 1943, we are satisfied that the petitioner's husband was made accused in the said Criminal Case and his name finds place at Sr.No. 27 of the chargesheet submitted by the police. However, since petitioner's husband was absconding, the trial could not be held against him and the trial proceeded only against 16 accused persons. In the circumstances, merely on the basis of the fact that in the record available with the respondents which undisputedly is a torn copy of the chargesheet, name of the petitioner's husband is not available, it cannot be said that the petitioner had made a false claim. Admittedly the copy of the chargesheet available in the record of the State is a torn document whereas the petitioner has filed full copy of the chargesheet at page 28 and shown certified copy of it to us during the course of the hearing. We also find that there are voluminous documents filed along with petition and after considering all these documents which were supporting the petitioner's claim that her husband had participated in the freedom movement, the order was passed on 21.3.2014 which could not have been revoked for the reason which in our considered view is unsustainable.

8. In view of the same, we set aside the impugned order and restore the order dated 21.3.2014. As a result, petitioner shall be entitled for freedom fighter pension in terms of the order dated 21.3.2014. Petition stands disposed of accordingly.

(MAKARAND KARNIK, J.)

(SHANTANU KEMKAR, J.)