

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6441 OF 2005

1. Bhagwat Rajaram Wankhede
(Deceased through his L.Rs.)
 - 1.a) Sakahari Bhagwat Wankhede
Age: 53 Years.
 - 1.b) Raghunath Bhagwat Wankhede
Age: 75 Years.
 - 1.c) Dattatraya Bhagwat Wankhede
Age: 72 Years.
Petitioner Nos. 1a to 1c
R/o Mahankal Vadagon,
Tq. Shrirampur, Dist. Ahmednagar.
 - 1.d) Kausalyabai Vinayak Avhad
Age: 65 Years,
R/o Undirgaon, Tq. Shrirampur,
Dist. Ahmednagar.
 - 1.e) Sau. Indubai Sudhakar Kapse,
Age: 55 Years, R/o Panache
Pargaon, Tq. Shrigonda,
Dist. Ahmednagar.
2. Keshav Devram Avhad
(Deceased through his L.Rs.)
 - 2.a) Parigabai Keshav Avhad
Age: 70 Years, Occu: Household
 - 2.b) Macchindra Keshav Avhad
Age: 50 Years.
 - 2.c) Gorakshnath Keshav Avhad
Age : 47 Years.
 - 2.d) Jagannath Keshav Avhad
Age: 43 Years.

- 2.e) Ramesh Keshav Avahad
Age: 40 Years.

All R/o Mahankal Vadgaon
Post Malewadi. Taluka Shrirampur,
District Ahmednagar.

- 3 Bajirao Vithal Badhak
(Deceased through his L.Rs.)

- 3.a) Smt. Anjanabai Bajirao Badakh
W/o Bajirao Badakh
Age: 65 Years.

- 3.b) Nivruti Bajirao Badakh
Age: 45 years.

- 3.c) Ramdas Bajirao Badakh
Age: 40 Years.

- 3.d) Sanjay Bajirao Badakh
Age: 30 years.

(Petitioner Nos. 3a to 3d
R/o Mahankal Vadgaon,
Post Malewadi, Tq. Shrirampur,
Dist. Ahmednagar.

- 3.e) Smt. Saraswati Jaganath Bhosale
Age: 43 Years, R/o At Waladgaon,
Tq. Shrirampur, Dist. Ahmednagar.

- 3.f) Mrs. Mangal Shivaji Thorat,
Age: 38 Years, R/o At Malewadi,
Tq. Shrirampur, Dist. Ahmednagar.

- 3.g) Mrs. Shobha Anil Modi,
Age: 28 Years, R/o At Haregaon,
Tq. Shrirampur, Dist. Ahmednagar.

4. Raghunath Abaji Chormal
Age: 72 Years.

5. Bhagwat Genuji Badhakh
(Deceased through his L.Rs)

- 5-a) Tarabai Bhagwant Badakh,
Age: 60 Years, Occu: Household,
Mahankhal Vadgaon, Tq. Shrirampur,
Dist. Ahmednagar.
- 5.b) Parshuram Bhagwant Badakh,
Age: 30 Years.
- 5.c) Sandip B. Badakh,
Age: 27 Years.
- 5.d) Surekha Ashok Chawan,
Age: 40 Years,
R/o Petitioner Nos 5.b to 5.d,
Bhagur, Tal. Vaijapur,
District. Aurangabad.
- 5.e) Savita Shivaji Chavan,
Age: 37 Years,
R/o Awalgaon, Tql. Vaijapur,
District. Aurangabad.
- 5.f) Sharada Khushalrao Chavan,
Age: 35 Years, Occu: H.H.
R/o At Chikalthan, Tql. Kanned,
District Aurangabad.

....Petitioners**Versus**

1. The Desk Officer,
Freedom Fighter's Pension
Cell, General Administration
Department, Mantralaya,
Mumbai 32.
2. The Collector, at Aurangabad
Aurangabad.
3. The Collector, At Ahmednagar
Ahmednagar.
4. The State of Maharashtra,
Through: General Administration
Department, Mantralaya,

Mumbai-32.

....Respondents

Mr. S.D. Kulkarni, Advocate for Petitioners.

Mr. Bhushan Kulkarni, Advocate for respondent Nos 1 & 4.

Mrs. V.N. Patil (Jadhav), AGP for Respondent Nos. 2 and 3.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATED : June 21, 2017.

ORAL JUDGMENT : [PER T.V. NALAWADE, J.]

. The petition is filed for giving directions to respondents to grant freedom fighter's pension to the petitioners. Both the sides are heard.

2. It appears that initially the proceeding was filed by five persons, but during pendency of the petition, four petitioners died and their legal heirs have come on record to prosecute the matter.

3. The petitioners had applied for giving benefit of the aforesaid scheme, of freedom fighter's pension and as their applications were not considered and decided, they had filed various proceedings like Writ Petitions Nos. 1013/1994 and 4857/1997. Directions were given by this Court to take decision within the period fixed by this Court. Even the contempt proceeding was filed and it was submitted that they had supplied necessary record on the basis

of which the matters could have been decided. The learned counsel for petitioners submitted that when the applications were filed by the petitioners, there was a procedure provided for deciding the matters in Government Resolution ('GR' for short) of the year 1992 and that procedure ought to have been followed by the respondents for deciding the matters. The learned counsel submitted that in GR of the year 1995, procedure was changed and additional material mentioned in the GR was required to be produced for getting the benefit. It is contention of the petitioners that as their applications were already pending, the procedure prescribed in GR of 7.8.1992 ought to have been followed, but the procedure of subsequent GR was followed and so, interference is warranted in the matters.

4. Affidavit in reply is filed by respondents in which information is supplied on factual aspects of the matters. It appears that there was no recommendation of Zilla Gaurav Samiti of that district, of the districts of the petitioners for giving such benefit and the applications moved by the petitioners before that Samiti were rejected and so, the benefit could not have been given to the petitioners. The relevant dates are mentioned and in almost all the cases, in January 1995, the applications made before Zilla Gaurav Samiti were rejected by the said Samiti.

5. It appears that there were conflicting views of different benches of this Court on the point involved. Ultimately the matter was referred to the Full Bench and in the case reported as **1999 Mh.L.J. 735 [Tukaram Ramji Koli Vs. State of Maharashtra and Ors.]** this disputed point was set at rest. There was GR of 5.9.1992 in which the recommendation of Zilla Gaurav Samiti was necessary for granting freedom fighter's pension of the State Government. In GR of 1995 more conditions were imposed and the applicants were required to produce the record showing that the freedom fighters had undergone the imprisonment or there was other record like arrest etc. and that portion is quoted by Full Bench at para No. 3A of the judgment which is as follows :-

"3A. The freedom fighters are required to furnish the following evidence along with their applications.

(A) The freedom fighters who have undergone the imprisonment

(1) the original certificate issued by the concerned Jailor in respect of imprisonment undergone (by the freedom fighter),

(AA) Freedom Fighters who remained absconded due to issuance of arrest warrant.

(1) Certificate of concerned Officer in respect of arrest warrant.

(2) If declared as absconded by the Court, then the

certified copy of the Court Record (should be submitted).

(3) The original news report published in the relevant newspaper in respect of the absconded freedom fighter.”

At para No. 8 of the judgment, the Full Bench has laid down that :-

“8. Accordingly, we answer the above questions referred to this Court as follows:-

(a) The said Government Resolution No. POS-1093/FN.127/FF Cell Mantralaya, dated 4th July, 1995 shall apply to all pending applications before the Collector as on 4th July, 1995 except in cases where Zilla Gaurav Samiti has already recommended the case for pension to the Government.

(b) For the reasons recorded hereinabove, the decision of the earlier Division Bench in Writ Petition No. 5376 of 1995 decided on 2nd September, 1998 stands overruled.

(c) We have not examined the vires of the Government Resolution No. POS- 1093/FN.127/FF Cell Mantralaya dated 4th July, 1995. The said question is expressly left open.”

6. In the present matter, not only there was absence of the recommendations of the Zilla Gaurav Samiti, but there was decision of Zilla Gaurav Samit and the applications made for sending the

recommendations are rejected. This single circumstance was sufficient for using circular of 1995 and for rejection of claim.

7. The learned counsel for the petitioners tried to take support of some observations made by this Court in **Writ Petition No. 5496/2005 [Gajdhar s/o. Narayan Wankhede Vs. The Desk Officer and Ors.] decided on 6.1.2017**. The facts of this case were totally different and there were already recommendations of the Zilla Gaurav Samiti and the dispute was only in respect of condition of age which was already relaxed. Thus, the facts of the case were totally different and so, observations in decision of Writ Petition No. 5496/2005 cannot help the petitioners in the present matter. It is not possible to grant relief claimed by the petitioner. In the result, the petition stands dismissed. Rule stands discharged.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

ssc/