

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

WRIT PETITION NO. 7598 OF 2013

Shivram s/o Rama Lokhande,
age 87 years, occ. Nil,
R/o Paradh, Tq. Bhokardan,
District Jalna

...Petitioner

VERSUS

- 1] The State of Maharashtra,
through Principal Secretary,
General Administration Department,
(Freedom Fihter's Section),
Mantralaya,
Mumbai-400 032,
 - 2] Freedom Fighter's High Power
Committee, New Administrative
Building, 8th Floor,
Mantralaya, Mumbai-32,
through its Member Secretary,
 - 3] Desk Officer,
General Administration Department,
(Freedom Fighters Section),
Mantralaya, Mumbai-400 032,
 - 4] The Collector, Jalna,
District Jalna
- ...Respondents

.....
Shri S.R.Choukidar, advocate h/f
Shri V.S.Panpatte, advocate for petitioner
Smt. M.A.Deshpande, A.P.P. for respondent nos. 1 and 4
Shri Bhushan Kulkarni, advocate for respondent nos. 2 and 3
.....

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

DATE OF RESERVING

THE JUDGMENT

: 1. 2.2017

DATE OF PRONOUNCEMENT

OF THE JUDGMENT

: 3.3.2017

J U D G M E N T : (Per K.L.Wadane, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the respective parties.

2. The petitioner assails the order passed by respondent no.2 dated 9.10.2012 whereby claim of the petitioner for grant of Sanman Pension as underground freedom fighter is rejected.

3. The brief facts of the case may be stated as follows : -

It is the contention of the petitioner that he had participated in freedom movement called as "Hyderabad Mukti Sangram" during the period 1947-48 and has worked as underground freedom fighter in the said movement. The

petitioner had actively participated and involved in the activities, such as :

- (i) Campaigning the people against Erstwhile Nizam.
- (ii) Distributed pamphlets to the people against Nizam Government.
- (iii) Collection of funds for the movement.
- (iv) Supply of arms/weapons and information to the volunteers.
- (v) Providing meals to the Senior volunteers.
- (vi) Sharing secret information of police movement to the workers.
- (vii) Arranging for attacks on police.
- (viii) Cutting of trees on Government land.
- (ix) Making arrangement for meeting of Senior freedom fighters.

4. The petitioner had worked as underground freedom fighter under the leadership and guidance of veteran freedom fighter Wamanrao Lokhande, Khanderao Khalse and had participated and taken training at Jambhora Camp.

5. The Government of India has introduced the pension scheme, namely "Swabhiman Sanman Pension" whereby the persons who fought in various freedom struggles and participated were declared to be entitled and eligible for the benefits flowing from the said scheme.

6. The petitioner submitted an application to respondent no.1 on 29.12.1981 requesting the respondents to grant Sanman Pension as underground freedom fighter for his participation in the Hyderabad Mukti Sangram movement.

7. The Collector/respondent no.4 by communication dated 20.8.1984 informed to respondent no.3 that the petitioner had participated in the movement and is eligible to get the Pension, but the respondent no.2 has not taken any decision.

8. On 5.1.1982 the petitioner forwarded an application to the respondent in prescribed form, so also the affidavit of one Janu Narwade, however, the claim of the petitioner was

rejected by respondent no.2 on 14.5.1999 without giving any special reason. Said decision was not communicated to the petitioner. The petitioner came to know about rejection of his claim in the year 2012.

9. Again on 1.3.2012 the petitioner has submitted an application for reconsideration of his claim with affidavit of one Khanderao Khalse. Subsequently, the petitioner was given questionnaire to which he has answered. It is further contended by the petitioner that the claim of the petitioner was accepted by two members of the Committee, however, the Hon'ble Chief Minister has disapproved the same and accordingly it was communicated by the impugned communication, dated 9.10.2012.

10. The claim of the petitioner was rejected on the ground that there was no evidence to show that the petitioner was required to stay away from home. He was required to leave the education or expel from the education or he suffered atrocities

from police and also suffered disablement. Similarly, there is no evidence on record to show that the petitioner suffered imprisonment for two years or was proclaimed offender. The petitioner had not submitted any Government record certifying that the petitioner was underground freedom fighter, nor he submitted a document in the form of news paper indicating that he was underground freedom fighter. Lastly, the claim of the petitioner was not recommended by Zilla Gaurav Samiti.

11. Affidavit on behalf of respondent nos. 1 to 3 is placed on record and it is contended that the case of the petitioner is governed as per Government Resolution dated 4.7.1995 and the criteria or the conditions laid down in the afore said Government Resolution have not been complied with by the petitioner. Therefore, the petitioner is not entitled to claim Sanman Pension.

12. The proposal of the petitioner was placed before Zilla Gaurav Samiti on 24.3.1998. The Zilla Gaurav Samiti did not

recommend the name of the petitioner for grant of Sanman Pension. On 4.7.1995 the proposal of the petitioner was placed before the High Power Committee. The High Power Committee rejected the proposal and accordingly it was communicated to the petitioner.

13. It is further contended that the petitioner has produced Xerox copy of the list of persons who participated in the movement, however, the original thereof was not available with the Tahsildar. When the matter was placed before respondent no.2 for consideration, the Member Secretary and Sabhapati expressed their views in favour of the petitioner, however, the Chairman of the Committee i.e. the Hon'ble Chief Minister rejected the proposal.

14. The original record and proceeding of the file is available for perusal. We have gone through the entire record.

15. We have heard the arguments of Mr. Panpatte, learned counsel for the petitioner and Mrs. Deshpande, learned A.G.P. for the respondents/State.

16. Mr. Choukidar, learned counsel for the petitioner has contended that when the petitioner has initially submitted application for grant of Sanman Pension, there was no necessity to recommend the name of the petitioner by Zilla Gaurav Samiti, as Zilla Gaurao Samiti was not in existence at that time. Therefore, the Government Resolution, dated 4.7.1995 is not applicable.

17. Secondly Mr. Choukidar argued that two member of the High Power Committee has expressed their opinion in favour of the petitioner and have recommended to grant Sanman Pension to the petitioner. In such situation, the Hon'ble Chief Minister has no power to reject it, since majority members have recommended the name of the petitioner.

18. Thirdly, Mr. Choukidar contended that the name of the petitioner is appearing in the list of the persons who actually participated in the movement including underground freedom fighters. The said list is produced on record, which shows the name of the petitioner therein.

19. According to Mr. Choukidar this is a basic document on which it can safely be inferred that the petitioner has actively participated in the Hyderabad Mukti Sangram movement as underground freedom fighter.

20. As against this, the learned A.G.P. has argued that when the proposal of the petitioner was placed before the High Power Committee for its consideration, at that time the Government Resolution, dated 4.7.1995 was in existence and the conditions laid down in the afore said Government Resolution are not complied/fulfilled. So the petitioner is not entitled to claim the Sanman Pension.

21. We have gone through the averments of both the sides and heard the arguments advanced by them. Considering the rival claim of the parties, it is necessary to determine whether the petitioner has fulfilled all the criteria as per the Government Resolution of 1995 to get Sanman Pension.

22. We have perused the Xerox copy of the list produced on record, which is not an authentic document. Therefore, it is unsafe to rely upon contents of the Xerox copy of the list. Further, it is argued by Mrs. Deshpande, learned A.G.P. that the Zilla Gaurav Samiti has not recommended the name of the petitioner. In such circumstances, respondent no.2 has rightly rejected the claim of the petitioner.

23. Admittedly the petitioner has not produced any evidence to show that he was required to stay away from his home, nor he was required to leave the education or that he was not expelled from the educational institution. He further

failed to establish that he was subjected to any kind of atrocities by police due to his participation in the freedom movement. There is no evidence on record to show that the petitioner has undergone imprisonment for two years or he was proclaimed offender.

24. Though it is the contention of the petitioner that since he was underground freedom fighter, his name did not figure in any of the news paper and further it is contended that at the initial stage the Zilla Gaurav Samiti was not in existence. Therefore, question of its recommendation did not arise. It is material to note that except the affidavit of freedom fighter, nothing is placed on record to show that he had actively participated in the freedom fighters movement. The Xerox copy of the list of the freedom fighters, who attended the camp in the year 1947-48 is placed on record in which the name of the petitioner figured. However, we are of the opinion that since this document is Xerox copy, it is unsafe to believe on such document. The petitioner failed to produce the certified copy of

the list of freedom fighters which is one of the important condition. It is said that the Tahsil Office also does not have the original.

25. In such situation, the claim of the petitioner for grant of Sanman Pension on the basis of mere affidavit of freedom fighter is not sufficient, as it ought to have been coupled with the other documents showing participation of the petitioner in the movement and/or having suffered because of such participation in any of the ways as stated in Government Resolution, dated 4.7.1995.

26. On perusal of the minutes of the High Power Committee, it reveals that the Department has referred the available evidence on record. On perusal of further contents of the minutes it appears that point wise reasons are recorded about available evidence, and based upon such evidence the Department has recommended to reject the proposal of the petitioner. Based upon such reasons, the Hon'ble Chief

Minister has rejected the proposal.

27. In such circumstances, we are of the opinion that the opinion expressed by the Hon'ble Chief Minister is based upon the factual aspects. The recommendation made by other two members i.e. Member Secretary and Sabhapati are without any basis and contrary to the factual aspects of the matter. Furthermore, the Zilla Gaurav Samiti has not recommended the name of the petitioner and their opinion/finding is based upon the enquiry made by them.

28. Mr. Choukidar, learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of **Tukaram s/o Ramji Koli and others vs The State of Maharashtra and others**, reported in **2000 (1) Bom.C.R. 686** to contend that the petitioner has applied for pension in the year 1982. It cannot be said that the claim/petition of the petitioner submitted in the year 1982 was pending for consideration.

From the record, it appears that it was rejected long back and subsequently after the Government Resolution of 1995 the petitioner has again submitted an application in the format for reconsideration of his claim. Obviously, the provisions of the Government Resolution of 1995 are applicable to the facts of the present case.

29. In view of the above, we find no merit in the Writ Petition. therefore, it is liable to be dismissed and accordingly it is dismissed with no order as to costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

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