

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11952 OF 2016

Subhadrabai w/o Dattu Gate
age 90 years, Occ. Nil
R/o Kati, Tq. Tuljapur
Dist. Osmanabad

Petitioner

Versus

1. The Union of India
through the Secretary to the Govt. of India
New Delhi.
2. The Under Secretary to the Govt. of India
Ministry of Home Affairs,
Second Floor NDCC-II Building,
Sansad Marg,
New Delhi.
3. The Chief Manager,
The State Bank of India
Centralized Pension Processing Centre Dept.
Head Office, Methedix Complex
First Floor, ABIDS,
Hyderabad 500 001.
4. The State of Maharashtra
through the Secretary in the General
Administration Dept.,
Mantralaya Fort
Mumbai 400 032.
5. The Collector,
Osmanabad District,
Osmanabad

Respondents

Mr. S.S. Choudhary, advocate for petitioner.
Mr. S.B. Deshpand, ASG for respondent no. 1.
Mr. A.R. Kale, AGP for respondents 4 and 5.
Mr. B.B. Kulkarni, advocate for respondent no.2.
Mr. S.R. Deshpande, advocate for respondent no.3.

**CORAM : R.M.BORDE &
SMT. VIBHA KANKANWADI, JJ.
DATE : 19th DECEMBER, 2017**

JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioner- widow of freedom fighter aged 90 yrs is praying for quashment of communication issued by the Government of India on 06-01-2015 rejecting her claim for disbursement of freedom fighters' family pension to her after demise of her husband, who was receiving freedom fighters' pension during his lifetime.
4. According to petitioner, her husband by name Dattu Gate participated in freedom movement for liberation of India and as such, considering his request, the State of Maharashtra by order dated 09.10.1991 granted freedom fighters' pension to him payable with effect from 24.04.1989. The amount of pension was enhanced subsequently as per the policy adopted by the State Government. The Government of India also sanctioned provisional pension amounting to Rs. 750/- in favour of deceased freedom fighter with effect from 14.10.1991 onwards. The husband of petitioner passed away on 30.09.1995 because of old age at village Kati leaving behind his widow, petitioner Subhadrabai.

5. After demise of freedom fighter, considering the application tendered by petitioner, the Collector, Osmanabad by order dated 05.01.1996 directed release of amount of monthly freedom fighters' pension to her. Petitioner however, was not receiving the pension receivable from the Union of India. She tendered application to the Branch Manager of the Bank on 24.07.2007 putting forth her grievance that she is not receiving freedom fighters' pension from the Union of India. While tendering application to the bank, she also transmitted said application to the Pay and Account Officer of the Ministry of Home Affairs. After constant persuasion, petitioner was communicated by the Under Secretary of Government of India on 06.01.2015 that the deceased husband of petitioner who was a freedom fighter passed away some 20 years back and, during the intervening period, no claim on behalf of widow was received by the Union of India. It was further stated that pension granted in favour of deceased freedom fighter shall be deemed to have been cancelled as per revised guidelines issued on 06.08.2014. Copy of the guideline issued by the Union Government is placed on record. In paragraph no. 5.2 it is recorded that after death of the pensioner (whether freedom fighter himself or his spouse) the transfer of pension to the spouse/daughter will only be considered if she applies for transfer of pension within 6 months of the death. Application received after 6 months shall not be considered by the Bank but referred to the Ministry. The Ministry shall then take a view whether to allow dependent pension or not or whether any arrears are to be paid.

6. In the instant matter, though petitioner tendered application belatedly, that ought not to have been rejected merely on the

ground of delay however, it would have been referred to the Ministry for consideration. It is not a matter of dispute that deceased husband of petitioner had participated in the freedom struggle and the State of Maharashtra was regularly disbursing freedom fighters' pension to him during his lifetime and, after his demise, his widow, petitioner herein is receiving freedom fighters' pension in accordance with the scheme framed by the State Government. The fact that petitioner is a widow of deceased freedom fighter and that she is receiving freedom fighters' pension as per the scheme formulated by the State Government, is not a matter of dispute. It also cannot be controverted that deceased husband of petitioner was receiving pension granted by the Union Government during his lifetime and that the widow after his demise is entitled for the family pension. The identity of petitioner is also not disputable since she is receiving freedom fighters' pension released by the State Government. Petitioner is 90 years of age and her claim ought not to have been rejected on technical ground. It has been held by the Honourable Supreme Court in the matter of *Mukund Lal Bhandari and others vs. Union of India and others* reported in **AIR 1993 Supreme Court 2127** that the object of framing of freedom fighters' pension scheme is to assist and honour the freedom fighters and delay would not affect their entitlement. In paragraph no. 4 of the judgment, the Honourable Supreme Court has observed thus:

4.It is common knowledge that those who participated in the freedom struggle either at the National level or in the erstwhile Nizam State are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more

almost all of them must have now grown pretty old if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims the position may still be worst with regard to their knowledge of the prescribed death. What is more if the scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country it ill behoves the Government to raise pleas of limitation against such claims. In fact the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such schemes."

Considering the object of the scheme, according to us, it would not be open for the Union Government to deny the claim of petitioner who is in evening of her life and is aged 90 years, by raising technical pleas.

7. In view of reasons recorded above, writ petition is allowed. Respondents 1 to 3 are directed to release the freedom fighters' family pension amount receivable by petitioner together with arrears, as expeditiously as possible, preferably within a period of four months from today and shall continue to pay her monthly admissible family pension regularly. The communications issued by the Union Government on 11th April, 2016 and 6th January, 2016 stand quashed. Rule made absolute accordingly. No costs.

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JUDGE

JUDGE