

JUDGMENT (Per A. M. Dhavale, J.):

1. This petition was originally filed for grant of freedom fighters' pension, both, under State Government Scheme as well as Central Government Scheme, but during the pendency of the petition, freedom fighters' pension under the State Government Scheme has been sanctioned from 30th May, 2018. Now the petition is prosecuted only for grant of pension under State Government Scheme from the alleged date of application i.e. 03.02.1995 and for grant of pension under Central Government Scheme for freedom fighters'.

2. Mr. Panpatte, the learned Advocate for the petitioner argued that the petitioner had taken part in Hyderabad Mukti Sangram in 1947-48. The petitioner had submitted applications dated 03.02.1995 and 03.02.2004 for freedom fighters' pension. The Government ought to have promptly verified her applications and should have granted pension from the date of application. In this regard, the learned counsel has relied on the judgment of the Apex Court in **Mukundlal Bhandari Vs. Union of India, AIR 1993 SC 1927** to submit that grant of freedom fighters' pension from the date of application is a rule. In fact, the learned counsel relied on the G.R. in favour of Shri Mallikarjun Chakote dated 11.10.2017, wherein he was granted freedom fighters' pension from 03.07.1980. The learned counsel submitted that the ground that certificate of imprisonment was produced late

cannot be sufficient to deny pension from the date of application as held in **Mukundlal Bhandari's** case. He submitted that inaction and delay on the part of the Government machinery in scrutiny of freedom fighters' pension claim of the petitioner should not cause loss to the petitioner. Mr. Panpatte, learned counsel also submitted that the petitioner is also entitled for freedom fighters' pension under the Central Government Scheme and the State Government should have forwarded her proposal for such pension.

3. Per contra, Mrs. Diggikar, learned AGP for respondent Nos. 1 and 2 and Mr. Dhongade, learned Advocate for respondent Nos. 3 and 4, have supported the impugned order granting pension to the petitioner from the date of order. In this regard, they submitted that there was no application filed on 03.02.1995 or 03.02.2004. Copies produced do not disclose any details of the participation of the petitioner in the Hyderabad Mukti Sangram which was to be verified by the State before granting pension. Subsequently, in 2010, Jail Certificate of Superintendent of Jail, Gulbarga was produced. It was for a period subsequent to the date of merger of Nizam State i.e. 17.09.1948. Subsequent detention could not be for freedom struggle and could not be considered. When this was pointed out, the petitioner submitted a correct jail certificate, much latter in 2013. Her earlier applications were rejected on 07.02.2013. The petitioner has filed fresh application on 29.11.2013, giving all

the necessary detail. In view of contradictory certificates, the Government required time to verify the claim. They relied on the Government Resolution dated 30.07.2016, which provides that, the Government had taken policy decision to grant freedom fighters pension only from the date of order. They further relied on the G.R. dated 04.07.1995, in which there is specific contention that application must be supported with requisite documents for proving the activities in freedom struggle.

4. The respondents relied on the **Union of India Vs. Kaushalyadevi, reported in (2007) 9 SCC 525**, wherein, it was explained that ratio of **Mukund Lal Bhandari's** case shows that pension cannot be granted from any date prior to the date of application, but there is no bar to grant pension from the date subsequent there to. They also relied on **Government of India Vs. K. V. Swaminathan, 1997 10 SCC 190** to submit that when the pension was to be granted on the basis of facts which are not proved beyond doubt, it should be granted from the date of order.

5. We have given thoughtful consideration to the arguments advanced and the facts on record.

6. We find that there is no acknowledgement to show that the petitioner had filed application dated 03.02.1995. There is copy of application dated 03.02.2004, which bears the acknowledgement of the Collector Office,

Latur. Besides, the Government, in its order dated 07.02.2013, has admitted filing of such application. However, this application as well as copy of the alleged application dated 03.02.1995 are devoid of any details about the manner in which the petitioner had participated in the freedom struggle. The application does not mean mere request letter, addressed to the Collector. It must show necessary details, which would be relevant for considering claim of the petitioner and which could be verified. Both these applications are totally silent, in what manner the petitioner had participated in the freedom struggle, whether she was imprisoned or whether she was underground and if, she was imprisoned, the period and place of detention. In absence of these details, the application dated 03.02.2004 cannot be said to be an application for freedom fighters' pension.

7. The petitioner produced the certificate of detention in jail. The petitioner obtained the first certificate on 23.02.2010 from Superintendent of Central Prison, Gulbarga about her detention during 1948-49. It is not clear when the certificate was presented, but this certificate shows detention for the period subsequent to the merger of Nizam State. This certificate was of no use and the application dated 03.02.2004, sans the details, could not have been granted on the basis of such certificate. The said application was rightly rejected on this ground by order dated 07.02.2013. Therefore, the petitioner cannot be said to have made application prior to 07.02.2013.

8. Meanwhile, the petitioner had filed some writ petition and later on, she produced a correct jail certificate of Central Prison, Gulbarga for a period prior to 17.09.1948. The first application giving all the necessary details produced on record is dated 29.11.2013. The correct certificate of Jail was filed earlier to that. The petitioner's claim can be said to be moved for the first time on 29.11.2013. I

9. In **Mukund Lal Bhandari's case (Supra)** it has been explained that freedom fighters' pension was extended to honour and acknowledge the sacrifices made by the freedom fighters in the independence. It was not meant for rewarding or compensating for their sacrifices. Initially, the freedom fighters' pension was made available only for needy persons whose annual income was less than Rs.5000/- but the said condition was removed in the year 1980. Initially pension was only Rs.100/- per month and it has gradually increased upto Rs.10,000/- per month.

10. At the time of increasing the pension, the terms and conditions for grant of such pension were modified by the Government from time to time. The Government Resolution dated 04.07.1995 specifically lays down that application for freedom fighters pension should be accompanied with evidence about participation in the freedom struggle. It specifically shows that the application must be accompanied with the evidence about issuance

of warrant and certificate of officer executing warrant, certificate of undergoing imprisonment and in case of abscondance, certificate of publication of news of abscondance was to be produced.

11. In **Mukund Lal Bhandari's case (Supra)**, in the light of the policy then existing and in the surrounding circumstances, the Apex Court observed that petitioner could not be denied freedom fighters' pension from the date of application till the date of order, because the petitioner require time to collect such documents. It does not mean that the petitioner can keep silence for 10 to 15 years and produce certificate after 15 years and claim pension from the date of vague applications moved much earlier.

12. It is common knowledge that subsequently the Apex court noticed that there were several bogus persons claiming freedom fighters' pension. As per direction of the Apex Court, Justice Palekar Committee was appointed and several such bogus claims were detected and the pensions granted to them were cancelled. In the light of these facts, the State Government was fully justified in minutely scrutinizing the claims. The State Government was also justified in negating the claim, when the claim was not supported with necessary details for verification.

13. The claim of the petitioner was certainly governed by the Government Resolution dated 04.07.1995 which mandates that application

must be accompanied with necessary documents. In **Mukund Lal Bhandari's** case it has been specifically laid down that freedom fighters' pension cannot be granted for the period prior to the date of application, it is not by way of compensation but it is to honour the sacrifices made by the freedom fighters and for giving them financial assistance. In the light of these facts, payment of pension from the date of starting of the scheme to Mallikarjun Chakote by the Government was certainly contrary to the provisions of law. It is also evident that the said payment was made in view of the directions of this Court, but this cannot be a precedent.

14. In case of **Kaushalyadevi (Supra)**, it has been explained that the pension can be awarded from the date of application or from the date subsequent thereto. In that case, judgment in **Mukund Lal Bhandari's** case has been considered. In case of **K. V. Swaminathan (Supra)**, it has been held that when the pension was awarded in the light of facts which were not free from doubt, the pension can be awarded from the date of order. No doubt, the said case is related to the claimants who claimed pension on the ground of underground activities and not on the ground of imprisonment. But in the present case, there were two jail certificates which were contrary to each other.

15. Looking to the facts of the case, we find that when the petitioner

first produced the application with all necessary details on 29.11.2013 which was accompanied with correct certificate, the petitioner was entitled to freedom fighters' pension from 29.11.2013. Judgment in **Mukund Lal Bhandari's** case indicates that normal rule is to grant the pension from the date of application. Any delay on the part of the Government machinery in scrutiny of application should not come in way or adversely affect the pension claim. It is also pertinent to note that as the application with all necessary details was moved on 29.11.2013, the G. R. dated 30.07.2016 relied upon by the respondents would not be made applicable retrospectively.

16. When the application giving all necessary details alongwith correct jail certificate was before the Competent Authority, the Competent Authority was expected to take appropriate decision within reasonable time and if there is any delay, the petitioner cannot be made to suffer for the same. The same was wrongly rejected on 21.01.2016 and the petitioner was compelled to repeatedly approach this Court. We therefore hold that the petitioner is entitled for freedom fighters' pension from the date of her application dated 29.11.2013, which was complete in all respect alongwith necessary certificate as required under the Government Resolution dated 04.07.1995. The earlier applications were rightly rejected on 07.02.2013. Therefore the date of application for grant of freedom fighters' pension will have to be taken as 29.11.2013.

17. As far as claim of pension of Central Government is concerned, Respondent No.4 has produced G.R. of Swantratra Sainik Samman Pension Scheme, 1980. It prescribes the format and procedure of filing application. The application should be duly filled in and supported with required documents as proof of claim of suffering and should be sent to the Deputy Secretary to the Government of India. Such application has to be verified and the State Government is supposed to submit report of entitlement to the pension. Terms and conditions for grant of pension under Central Government Scheme and State Government Scheme are different in some aspects. It was therefore necessary for the petitioner to file separate application for the pension under the Central Government Scheme. In the result, the petitioner's claim for pension of Central Government Scheme cannot be considered at this stage. However, if the petitioner moves an application for Central Government pension in prescribed form alongwith necessary details as per procedure prescribed in the scheme, the State Government shall expeditiously verify the same and forward it to the Central Government alongwith necessary report regarding entitlement or otherwise for pension under the Central Government Scheme.

18. With these observation, we hold that, the petition deserves to be partly allowed.

19. Respondent Nos. 1 to 3 are directed to grant freedom fighters' pension to the petitioner from the date of her application dated 29.11.2013.

20. As per order of this Court, the respondents were directed to deposit an amount of Rs. One lakh. Considering the respondent State's attitude, we direct that respondent Nos. 1 to 3 shall bear the exemplary cost of the petition quantified at Rs.25,000/- out of the said amount. The remaining amount shall be adjusted towards freedom fighters' pension payable to the petitioner from 29.11.2013. The petitioner is allowed to withdraw the entire amount of Rs. One lakh.

21. With respect to the pension under the Central Government Scheme, the petitioner is at liberty to file application in the prescribed form as per the procedure, which shall be decided by the Government expeditiously.

22. Writ petition is accordingly disposed of .

(A. M. DHAVAL, J.)

(S. V. GANGAPURWALA, J.)

JPC