

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

WRIT PETITION NO.6766 OF 2014

Smt. Suman w/o. Ramratan Kabra,
Age : 80 years, Occ. Household,
r/o. New Bhagya Nagar,
Latur

..Petitioner

Vs.

1. State of Maharashtra,
Through its Secretary,
in the Department of General
Administration (Freedom
Fighter Section),
Mantralaya, Mumbai – 32

2. The Union of India,
Through its Secretary,
Ministry of Home Affairs
(Freedom Fighter Cell),
Loknayak Bhawan,
Khan Market,
New Delhi

3. The Collector,
Latur

..Respondents

Mr. V.S.Panpatte, Advocate for petitioner

Mr. A.S.Shinde, AGP for respondent nos.1 and 3

Mr. A.B.Dhongade, Standing Counsel for respondent no.2

CORAM : SUNIL P. DESHMUKH

AND

R.G. AVACHAT, JJ.

DATE : APRIL 22, 2019

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule, made returnable forthwith. Heard finally by consent of the parties.

By this petition under Article 226 of the Constitution of India, the petitioner seeks direction to respondent no.2 - Union of India to grant her husband (since deceased) pension under Swatantrata Sainik Sanman Pension Scheme.

2. Facts, giving rise to the present petition, are as follows :-

Petitioner is a widow of late Ramratan Kabra. Late Ramratan had participated in Hyderabad Freedom Movement in the year 1947-1948. On account of participation in freedom struggle, late Ramratan had been arrested, charged and ultimately sentenced to imprisonment for eight months. He underwent imprisonment in Central Prison, Gulbarga.

Central government, way back in 1972, introduced a scheme for grant of pension to freedom fighters and their eligible dependents. The scheme

was liberalised and renamed as "Swatantrata Sainik Sanman Pension Scheme, 1980". Late Ramratan had moved an application for grant of Sanman pension under the said scheme on 01.02.1985. Since respondent no.2 did not respond to the application, late Ramratan had to make correspondence reminding respondent no.2 for grant of his application. Ramratan passed away on 14.03.2014. Thereafter, the petitioner being his widow, pursued the application. Respondent no.2, however, rejected the application on the ground that the applicant (deceased) mentioned that he undergone jail suffering from 07.01.1357 Fasli to 20.12.1356 Fasli, which was not possible, even if the period was considered in reverse direction. As per the jail certificate issued from Central Jail, Gulbarga, Karnataka State, the name therein did not match with the name of the husband of the petitioner. Moreover, the period of sentence awarded, date of application, facts of the case and reasons for release, nature of crime/cases under which the applicant (deceased) was

convicted with corresponding Sections of Indian Penal Code, had not been clearly mentioned. A photocopy of the jail certificate, submitted with the application, was not duly authenticated by the Government of Maharashtra.

3. The petitioner, however, claims to have complied with all eligibility criteria for sanction of Sanman pension and also cleared deficiencies pointed out by the authorities of respondent no.2.

4. An affidavit-in-reply came to be filed on behalf of respondent no.2 containing reasons for refusal to grant the petitioner Sanman pension. It has been stated in the affidavit-in-reply that all the persons, who took part in the freedom movement in some way or the other, were not eligible for Sanman pension under the scheme. Only specified category of freedom fighters, who fulfill eligibility criteria and evidenciary requirement under the scheme by furnishing proof of suffering, in the manner

specified in the scheme itself and guidelines issued thereunder, are eligible for Sanman pension. Mere recommendations by the State Government without there being compliance of the requirements, does not entitle the claimant to get Sanman pension. It has been further stated in the affidavit-in-reply that since the petitioner did not comply with the requirements and clear the deficiencies, the claim came to be rejected with a specific rider that review of the claim of the petitioner would not be possible unless she fulfills eligibility criteria and evidentiary requirements under the central scheme.

5. Heard Mr.V.S.Panpatte, learned Counsel for the petitioner, Mr.A.S.Shinde, learned AGP for respondent nos.1 and 3, Mr.A.B.Dhongade, learned Standing Counsel for respondent no.2.

6. Mr.Panpatte, learned Counsel for the petitioner, would submit that late Ramratan Kabra had participated in Hyderabad Freedom Movement. On

account of his participation in that movement, late Ramratan was arrested, charged and ultimately sentenced to imprisonment. Necessary documentary evidence in proof thereof had been furnished along with the application. The deficiencies pointed out by the authorities of respondent no.2 have been complied with. Learned Counsel took us through the documents on record to substantiate his contentions. Learned Counsel would further submit that the petitioner is 85 plus. She is unable to move. This is a second round of litigation for grant of Sanman pension. He submit that instead of directing respondent no.2 to reconsider the claim of the petitioner, it may be directed to grant her Sanman pension since she has furnished all the necessary evidence for being eligible therefor.

7. Learned Counsel for respondent no.2 – Union of India would, on the other hand, submit that the claim of the petitioner has rightly been refused for want of proof. He would further submit that the case

of the petitioner would again be considered and if her claim is found in consonance with the requirements of the claim, the same would be granted.

8. The Central Government introduced a scheme for grant of pension to freedom fighters and their eligible dependents (where freedom fighters have already expired) with effect from 15.08.1972. In 1980, the scheme was liberalised and renamed as "Swatantrata Sainik Sanman Pension Scheme, 1980". All the persons, who participated in the freedom movement in some way or the other, are not eligible for Sanman Pension. Only following categories of freedom fighters are eligible for Sanman Pension under the scheme, subject to furnishing specified evidences:-

"....

2.1 Eligible dependents of martyrs:- A martyr is a person who died or who was killed in action or in detention or was awarded capital punishment due to

participation in the freedom struggle of India. Relevant documents from official records and newspapers of the relevant time are considered as evidences in such cases.

2.2 Imprisonment:- *A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:-*

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration

concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the certifier happens to be a sitting or Ex. M.P./M.L.A., only one certificate in place of the two is required.

- 2.3
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3. Procedure

Persons who consider themselves eligible for Sanman Pension under the Scheme and desire the Sanman Pension, should apply in duplicate of the prescribed application form. The application, duly filled in and supported with required documents as proof of claim of suffering, should be sent to the Chief Secretary of the concerned State Government/Union Territory Administration. A copy of such application should be sent to the Deputy Secretary to the government of India FF Division, MHA, New Delhi as an

advance copy. However, claims can be processed by the Central Government only on receipt of verification and entitlement to pension report from the State Govt./U.T. Administration concerned. In case the requirements of the Scheme are fulfilled, Sanman pension is granted to the applicant.

4. Acceptability of Secondary Evidence

Secondary evidence can be considered only if supported by a valid Non-Availability of Records Certificate (NARC). The provisions of the Scheme were clarified to the State Governments in several circulars of the Govt. of India, gist of which is available in the Appendix attached herewith. The instructions on NARC were reiterated by the Govt. of India, Ministry of Home Affairs, vide Circular No.8/12/95-FF(P) dated 2.11.98, relevant extracts of which are reproduced as follows-

"As per the Scheme, claims of the applicants for Sanman pension are required to be supported by the duly verified official records of the relevant times. Only in case of non-availability of such

records, secondary evidences, as specified in the scheme, can be made basis of such claims. However, due care and caution is required in such cases in view of several instances of bogus/forged claims which have come to the notice of the Central Government. It is of utmost importance that before recommending such cases, complete facts of the case in which the applicant claims involvement, are verified from all the agencies which could have been concerned with the matter. These may include the police station concerned, the District administration, the jurisdictional court, competent authority issuing detention order, the advisory board/appellate court, prison authorities, and intelligence agencies. Discrete enquiry should also be made to ascertain genuineness of the claims. The NARC should be issued only after the above verification. It is reiterated that the NARC should invariably be worded as follows

“All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that

the official records of the relevant time are not available.

9. In the case of **Gurdial Singh Vs. Union of India and ors., (2001)8 SCC 8**, the Hon'ble Supreme Court has highlighted the manner in which, claims for grant of freedom fighters' pension are to be considered. It has been observed in paragraph 7 of the judgment as under :-

The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country

about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probabilsed that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

10. The scheme itself mentions the documents which are required to be produced before the Government as regards sufficiency of the proof. Let

us, therefore, scrutinise the documents submitted by the petitioner.

11. Admittedly, late Ramratan had been granted freedom fighters pension under the scheme introduced by the State Government. The application for claim of pension under the Central Government scheme, needs to be routed through the State Government. Accordingly, the Government of Maharashtra, General Administration Department, forwarded late Ramratan's application dated 13.08.2012 along with the affidavit and the other documents. Vide communication dated 05.09.2013, Under Secretary to the Government of Maharashtra informed the Deputy Secretary, Government of India, Ministry of Home Affairs, that on verification of requisite documents received through the Collector, Latur, it was observed that late Ramratan satisfied the conditions for grant of pension from Government of India. Hence, the State Government recommended his case. Before giving recommendations, the case has

been scrutinised by the high-power committee appointed by the State Government.

12. In response to the communication dated 05.09.2013, Under Secretary to the Government of India, on 03.10.2013, wrote back pointing some deficiencies as under :-

"..... As per the Jail Certificate issued from Central Jail, Gulbarga, Karnataka the name of sufferer is Ram Rathan s/o. Motilal which does not match with the name of the applicant. The period of sentence awarded, date of admission, facts of the case and reasons for release, nature of crime/cases under which the applicant was convicted with corresponding Sections of IPC have not been mentioned clearly. A photo Copy of Jail certificate has been submitted which is not duly authenticated by the State Government of Maharashtra.

13. In response thereto, a copy of the jail certificate duly authenticated by the resident Deputy Collector came to be submitted to the Government of Maharashtra.

14. It appears from one of the communications of the State Government that the State Government informed that late Ramratan had participated in Goa Liberation Movement, Phase-2. The State Government, however, immediately rectified informing that mention of 'Goa Liberation Movement' was an inadvertent error and the same be read as 'Hyderabad Liberation Movement'. Despite such communication, the Central Government came with a reply that no reply to the deficiencies pointed out in the letter dated 18.03.2014 was given and therefore, the claim of the petitioner could not be reviewed. Thereafter, again a chain of communications ensued between the State and the Central Government. The record indicates that the Superintendent of Central Prison, Gulbarga, verified the jail certificate and informed the

Central Government on 02.09.2014 that one Ramratan s/o. Motilal was admitted in Central Prison, Gulbarga, on his transfer from Osmanabad jail on 07.01.1357 Fasli, he was convicted on 20.12.1356 Fasli, to undergo eight months' imprisonment under Section 27 *Tahfuz* and was released on 24.07.1357 Fasli. The jail certificate in Urdu has been duly translated by Advocate M.A.Rauf. Again on 16.06.2014, the Additional Director General of Police and Inspector General of Prisons, State of Karnataka, was requested to confirm, whether the jail certificate was issued by the Central Prison, Gulbarga. The Chief Superintendent, Central Prison, Gulbarga, in turn, informed the State of Maharashtra, that the jail certificate was issued by his office on 16.07.2008. Again on 30.12.2014, the Chief Superintendent, Central Prison, Gulbarga, informed the Central Government to have verified the jail suffering of Shri Ramratan Kabra and that one Ramratan s/o. Motilal was admitted in Central Prison, Gulbarga, on

his transfer from Osmanabad jail on 07.01.1357 Fasli, he was convicted on 20.12.1356 Fasli, to undergo eight months' imprisonment under Section 27 *Tahfuz* and was released on 24.07.1357 Fasli. Then, on 30.01.2015, the Additional Director General of Police and Inspector General of Prisons, State of Karnataka, certified genuineness of the jail certificate of late Ramratan. There is also on record a communication dated 31.03.2017 by Additional Director General of Police (C.I.D.), Maharashtra State, informing that the documents submitted by 28 applicants including the present one, have been scrutinised to find that the jail certificate corresponds with the entries in the register of prisoners maintained by Gulbarga Central Prison.

As such, the record and more particularly, the jail certificate, authenticity whereof has been vouched by Additional Director General of Police and Inspector General of Prisons, State of Karnataka, undoubtedly, indicate that late Ramratan Kabra was

admitted in Central Prison, Gulbarga, on his transfer from Osmanabad jail on 07.01.1357 Fasli. He was convicted on 20.12.1356 Fasli to undergo eight months' imprisonment. The jail certificate indicates late Ramratan to be eligible for Sanman pension.

15. We could have relegated the matter back to respondent no.2 to reconsider the claim of the petitioner for grant of Sanman Pension, but for this being a second round of litigation, the petitioner is 85 Plus, genuineness of the jail certificate has been made out, to avoid delay on account of one or the other reason for grant of Sanman pension by respondent no.2 to the petitioner, we propose to allow the petition by giving direction to respondent no.2 to grant the petitioner Sanman pension.

The question is from what date the pension is to be granted. There is no tangible evidence to suggest that late Ramratan had made an application on 01.02.1985. The record indicates that the application

was dated 13.08.2012. The petitioner, therefore, shall not be entitled for grant of pension from 01.02.1985, as claimed in the petition. With this, the petition succeeds in terms of following order :-

- (i) The Writ Petition is allowed.
- (ii) Respondent no.2 is directed to grant the petitioner Sanman Pension within a period of six months from today.
- (iii) Rule made absolute accordingly.

[R.G. AVACHAT, J.]

[SUNIL P. DESHMUKH, J.]

kbp