

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

WRIT PETITION NO. 7121 OF 2019

Yashodabai Balwant Adhav

.. Petitioner

Versus

The Union of India and others

.. Respondents

Mr. Mahesh Ubale h/f Laxman K. Pradhan, Advocate for Petitioner.

Mr. Bhushan B. Kulkarni, Advocate for Respondent No. 1.

Mrs. G. L. Deshpande, AGP for Respondents-State.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 23rd JANUARY, 2020.

PER COURT:-

. Mr. Ubale, learned counsel for the petitioner strenuously contends that the petitioner has filed application for grant of Central Government dependent family pension on the ground that the deceased husband of the petitioner was a freedom fighter. The deceased husband of the petitioner was granted State Government freedom fighter pension and subsequently the petitioner is being given the State Government dependent family pension. The petitioner has filed application in the year 2003 for grant of Central Government dependent family pension. The same is not decided. According to the learned counsel, the reliance placed by the respondents under the

guidelines for disbursement of Central Government's Swatantra Sainik Samman Pension would not be applied in the present case to the petitioner as the application is already pending. The learned counsel relies on the judgment of the Division Bench of the Kerala High Court in a case of *Union of India Vs. State of Kerala and Anr.* dated 09.07.2015.

2. Mr. Kulkarni, learned counsel for respondent No. 1 submits that the petitioner is not entitled for pension in view of the guidelines. Moreover, the State Government has also not recommended the case of the petitioner for grant of pension.

3. We have considered the submissions canvassed by the learned counsel for the parties.

4. It appears that after the death of the husband of the petitioner, the petitioner has applied for grant of Central Government dependent freedom fighter pension. The husband of the petitioner was getting the State Government freedom fighter pension. Upon the death of husband of the petitioner, the petitioner is receiving the State Government dependent freedom fighter pension.

5. The contention of the petitioner is that the application of the

petitioner for grant of Central Government dependent freedom fighter pension on account of the death of her husband is pending since the year 2003 with the respondents and that the respondents cannot take benefit of their own delay and submit that the petitioner is not entitled for grant of Central Government dependent freedom fighter pension.

6. Clause 1.5 of the guidelines of disbursement of Central Government's Swatantra Sainik Samman Pension Scheme reads thus :

Sanction of pension after the death of Freedom Fighter – No pension shall be sanctioned in the name of the freedom fighter after his/her death even if his/her matter was under examination. This also entails that no Life time arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter.

7. Reading the same, it appears that the Clause 1.5 is self operative and self explanatory. It has been applicable even if the matter is pending before it.

8. In the case before the Kerala High Court referred to supra, the claim of the petitioner therein was rejected by the respondents in the year 2008. The petitioner filed writ petition in the year 2009 challenging the said judgment and during the pendency of the writ petition the scheme came into force.

9. In the present case, the eventuality is not such. The claim of the petitioner was never decided. The claim of the petitioner was never recommended by the State Government to the Central Government. Moreover, to **invoke doctrine of reading** down, the scheme was required to be assailed. The scheme is not under challenge in the present petition.

10. Considering the aforesaid prospectus of the matter, the relief claimed cannot be granted. Writ petition, as such is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.