

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

WRIT PETITION NO.2990 OF 2018

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Smt. Gangabai w/o Laxman Hasanpalle
..VS..
The State of Maharashtra and others.

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Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

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Mr. V. S. Panpatte, learned Counsel for the petitioner.
Mr. S. G. Karlekar, learned A. G. P for the respondents
1 to 3.

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CORAM : S.V. GANGAPURWALA AND
AVINASH G. GHAROTE, JJ.

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ORDER RESERVED ON : 05 /12/2019
ORDER PRONOUNCED ON : 16/06/2020

ORDER (PER : AVINASH G. GHAROTE, J.)

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1. Heard Mr. Panpatte, learned Counsel for the petitioner and
Shri Karlekar learned AGP for the respondents. By the present
petition, the petitioner challenges the order dated 10/03/1999,
passed by the respondent no.2, rejecting the claim of the petitioners
35 husband for grant of Sanman Pension.

2. Mr. Panpatte Learned Counsel for the petitioner submits as
follows :

a) The petitioners deceased husband Shri Laxman Bhuma Hasanpalle, was a Freedom Fighter, who had participated in the Hyderabad Liberation movement.

5 b) An application was submitted by the deceased husband of the petitioner on 27/11/1990 for grant of sanman pension which is claimed to have been submitted along with 25 other Freedom Fighters. The application was been accompanied with certificates of two Freedom Fighters, namely Vitthal Nagoba Bhosale and Kondiba Laxman Surne, which was the
10 requirement for grant of Sanman Pension as per the G.R. dt.05/09/1992.

c) The application of the husband of the petitioner was kept pending whereas the claims of only 4 persons were allowed and of the rest 21 was rejected, vide orders
15 dt.15/09/1992 and 23/09/1992, respectively.

d) A fresh application was filed by the husband of the petitioner on 23/04/1994 which was accompanied by the certificates of 4 Freedom Fighters, namely Vitthal Nagoba Bhosale, Kondiba Laxman Surne, Govindrao Narsingh More
20 and Nagorao Bhujangrao Mugal.

e) As the application filed by the deceased husband of the

petitioner was not considered, W.P. No.4320/1995 came to be filed by him, in which the Court directed to decide his claim within 6 months, with liberty to him to produce additional evidence.

5 f) Again a representation was submitted by him on 27.07.1996.

g) The claim was recommended by the District Honor Committee on 01/07/1998, which recommendation was sent to the Government by the Collector, Nanded.

10 h) The claim was rejected on 10/03/1999.

i) Other persons whose claims were rejected had filed various petitions, in which orders have been passed, of which benefit is sought to be applied to the petitioner, on the ground of being similarly situated.

15 j) It is contended that the reliance placed on the G.R. dt.02/06/2016, by the respondent/State while rejecting the claim of the husband of the petitioner, is incorrect, as the same is not applicable, and it was the G.R. dt. 05/09/1992, which was applicable in the matter and by which the claim of
20 the husband of the petitioner would be governed.

k) Reliance is placed upon : (i) ***Mukund Lal Bhandari and***

- others Vs. Union of India and others AIR 1993 SC 2127* (ii)
- Kishan Hanuji Jambhulkar (Dr.) Vs. State of Maharashtra and others 2004(2) Bom. C.R. 433,* (iii) *Chhotubhai H.L. Patel Vs. State of Gujarat and others AIR 1996 Gujarat 201,* (iv)
- 5 *Gurdial Singh Vs. Union of India, 2001 AIR (SC) 3883,* (v)
- State of Tamil Nadu and Anr. Vs. A. Manickam Pillai 2010 AIR (SC) 670,* (vi) *Kamalbai Sinkar Vs. Sate of Maharashtra and Ors. Civil Appeal No.5344 of 2012 (@ SLP © No.8899 of 2010) SC,* (vii) *Kishansinha s/o Tukaramsinha Chandel Vs.*
- 10 *The State of Maharashtra and others Writ Petition No.2831 of 2000 decided on 26th July 2010,* (viii) *Kalidas Nivrutti Dhale Vs. State of Maharashtra & ors. 2014 (4) Bom. C.R. 397,* (ix)
- Punjaram s/o Madhav Indewad Vs. The State of Maharashtra and others Writ Petition No.2632 of 2011 decided on*
- 15 *28/08/2013,* (x) *The State of Maharashtra and Ors. Vs. Punjaram Special Leave to Appeal © CC No(s).17614/2015 SC,* (xi) *Rajabai w/o Pandoji Kshirsagar Vs. The State of Maharashtra and others Writ Petition No.3087 of 2013 decided on 4th February 2016,* (xii) *Tulshiram s/o Eknathrao*
- 20 *Kolhe Vs. The State of Maharashtra and others Writ Petition No.6730 of 2014 decided on 20/03/2018,* (xiii) *Smt.*

Laxmibai wd/o Bapurao Kadam Vs. The State of Maharashtra
Writ Petition No.7189 of 2014 decided on 26th March, 2019,
(xiv) *Tukaram Ramji Koli Vs. State of Maharashtra and others*
1999(3) Mh.L.J.735.

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3. Mr. Karlekar, learned AGP, invites our attention to the date of the impugned order which is dated 10/03/1999 and the date of filing of the petition which is 13/03/2018 and submits that there is a delay of nearly 19 years, in challenging the impugned order, which
10 has not been explained properly and thus the petition is liable to be dismissed on the ground of delay and latches itself. In so far as the merits of the matter is concerned he invites our attention to the impugned order dated 10/03/1999, and submits that there was no material on record to indicate or demonstrate that the husband of
15 the petitioner, had indeed participated in the Hyderabad Freedom Struggle. He submits that there is not a single incident quoted, in any of the documents, including the affidavits filed in support of the application to indicate the participation of the petitioners deceased husband, in the Freedom Struggle, in light of which the claim, has
20 rightly been rejected. He further invites our attention to the affidavit in reply of the state, to submit that the contention that an

application was made in the year 1990 itself was incorrect as the stamp paper on which the supporting affidavits have been sworn, were purchased on 11/01/1995, which clearly falsified the claim that an application was filed in the year 1990. He therefore submits
5 that the plea in this regard being a false one and the husband of the petitioner having indulged in preparing false documents, the petition also needs to be dismissed on this count too. He submits that for this reason the G.R. dt.05/09/1992 would not be applicable to the case of the petitioner's husband. He further submits that the
10 contention that the petitioner or her husband were unaware of the order of rejection is clearly unjustified as the letter/order of rejection dt.10/03/1999 is addressed to the petitioner's husband, apart from which he submits that had the rejection not been received and accepted by him, he would not have kept quite, from
15 1999 till his demise on 20/06/2007 and neither would the petitioner have kept quite from 2007 till 2018. He further submits that the G.R. dt. 02/06/2016, is clearly attracted in the matter which states that once claim of an applicant about State Freedom Fighter pension is rejected and if the applicant dies, his/her spouse
20 would not be eligible to apply for review of the claim. He therefore submits that the petition on all these grounds is misconceived and

be rejected.

4. The first question to be considered is the delay in filing the petition. The order of rejection is dated 10/03/1999 and the
5 petition has been filed on 13/03/2018. Thus there is a delay of 19 long years in filing of the petition. Moreover, date of demise of the husband of the petitioner is 20/06/2007 and there is nothing on record, except a bland statement that the impugned order was not received. When the husband of the petitioner was conscious of his
10 rights, so as to file W.P. No.4320/1995, in this Court, nothing prevented him from again approaching this Court, in case he did not receive any communication as to the decision on his application, more so when this Court in W.P. No.4320/1995, vide order dt.13/02/1998 had directed the same to be decided within a period
15 of 6 months. This clearly indicates that the husband of the petitioner was aware of the order of rejection dt.10/03/1999 and had accepted the same and therefore there was complete absence of any activity on his part from 10/03/1999, till his demise on 20/06/2007, a period of more than 8 years. During this period there
20 is not even a single representation /application/communication by the husband of the petitioner, to any authority whomsoever. That

apart, consequent to the date of demise of the husband of the petitioner till the date of filing of the present petition, which is again a period of nearly 11 years, there is nothing on record as to whether the matter was pursued by the petitioner with any of the authorities.

5 A mere bland statement, without anything else, that the impugned order was not communicated and therefore the petitioner or her husband were unaware of the same, is clearly something which does not satisfy the parameters laid down for considering delay and latches. The petition therefore clearly suffers from delay and latches
10 and ought to be dismissed on this ground alone. The reliance on ***Mukund Lal Bhandari*** (supra) by Mr. Panpatte, learned counsel for the petitioner in support of his contention that the petition can be entertained, is clearly misplaced, as ***Mukund Lal Bhandari*** (supra) was on the issue of delay in filing of the application for grant of
15 Freedom Fighter Pension and not on filing of a Writ Petition. Thus the unexplained delay of 19 long years in challenging the impugned order dated 10/03/1999 is clearly fatal and the petition is accordingly dismissed on this count itself.

20 5. There is another reason not to entertain the petition. Learned AGP Mr. Karlekar has relied upon the G.R. dt. 02/06/2016 which

specifically provides that in case an application for grant of Freedom Fighter Pension has been rejected and the person making the application has expired, his / her spouse would not be entitled to any claim in this regard. For the sake of ready reference Clause (2)

5 of the G. R. dt. 02/06/2016 is quoted as under :

“२) एखाद्या प्रकरणात राज्य शासन — स्वातंत्र्य सैनिक निवृत्तीवेतन नामंजूर करण्याचा निर्णय घेण्यात आलेला असेल व त्यानंतर या प्रकरणातील अर्जदाराचा मृत्यू झाल्यास, अर्जदाराच्या जोडीदारास (पती किंवा पत्नीस) अर्जदाराच्या प्रकरणी निर्णयाचे पुनर्विलोकन करण्याबाबतचा (जरी अर्जदाराच्या मृत्यूनंतर त्याच्या स्वातंत्र्य लढयातील सहभागाबाबतचे पुरावे उपलब्ध झाले तरी) अर्ज करता येणार नाही. असा अर्ज करण्यात आल्यास त्या अर्जाचा विचार करण्यात येवू नये.”

15 The rejection of the application of the petitioner's husband is dt.10/03/1999. The petitioner's husband passed away on 20/06/2007, in light of which the present matter is squarely covered by Clause (2) of the G. R. dt. 02/06/2016, in light of which also the petition cannot be entertained, in absence of any challenge
20 to the vires of the G.R.dt. 02/06/2016.

6. The petition therefore not only suffers from delay and laches but is also hit by the G.R. dt. 02/06/2016, in light of which the same is dismissed with no order as to costs. Since the petition is being

dismissed on the above grounds, there is no need to consider the other judgments cited as they do not have any bearing on the points on which the petition is decided.

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(AVINASH G. GHAROTE, J.)**(S.V. GANGAPURWALA J.)**

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