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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6972 OF 2017

Bapurao s/o Bhagwantrao Deshpande
Age – 84 years, Occ – Nil
R/o Khanapur, Taluka – Ahmedpur
District - Latur

PETITIONER

VERSUS

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| 1. The State of Maharashtra
Through its Principal Secretary,
General Administration Department,
(Freedom Fighters Section)
Mantralaya, Mumbai-32 | RESPONDENTS |
| 2. Freedom Fighters' High Power Committee,
New Administrative Building,
8 th Floor, Mantralaya,
Mumbai 32
Through its Member Secretary | |
| 3. The Desk Officer,
General Administration Department,
(Freedom Fighters Section)
Opposite Mantralaya, Mumbai – 32 | |
| 4. The Collector, Latur
District – Latur | |

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Mr. V. S. Panpatte, Advocate for the petitioner
Mr. P. N. Kutti, AGP for respondent - State

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[CORAM : SUNIL P. DESHMUKH AND
B. U. DEBADWAR, JJ.]

DATE : 18th FEBRUARY, 2020

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Petitioner had moved State government seeking *Swatantrya Sainik Sanman Pension scheme*, having participated in freedom movement, namely *Hyderabad Mukti Sangram*. Petitioner had submitted an application, as required pursuant to government resolution dated 4th July, 1995. The petitioner is before us under the writ petition against rejection of the same under communication dated 31st August, 2016.

3. It appears that members of the high power committee, going by depiction under the record as it goes, either have to approve comments and noting by desk officer or have to disapprove the same, however, they have purported to put up their signatures and a verbatim communication had been issued, as per the comments and noting by the desk officer, to the petitioner negating his application.

4. Learned advocate Mr. V. S. Panpatte, has referred to various aspects involved in the matter, particularly that the claims by veteran freedom fighters will have to be viewed seriously and would not be discarded casually under a pedantic

approach without application of mind. He vehemently submits that the situation ought to be otherwise and time and again the Apex Court as well as high courts have been anguished over the perfunctory roles played by concerned authority.

5. He contends that as a matter of fact, satisfaction of any one of the conditions, referred to under government resolution dated 4th July, 1995, is sufficient. Adjudicatory approach rather than determinative in the matters of freedom fighters shall be deprecated. He refers to the decision of division bench of this court in writ petition No. 2623 of 2011 emphasizing observations in the same reading, as under:

“ 4. On merits, he submits that impugned order proceeds on assumption that all norms prescribed for considering entitlement to pension as a Freedom Fighter must be fulfilled. According to him, satisfaction of one norm is enough. He is relying upon some affidavits to show that said norm has been fulfilled as petitioner has shown that he was underground Freedom Fighter. He contends that this fact itself shows that petitioner was required to stay away from his home.

5. Advocate Mr. Kulkarni disputes this. He is relying upon records available with him and also on reply affidavit. He contends that petitioner has improved his story later on. The affidavits of two veteran Freedom Fighters filed by him contend a different story while the affidavit submitted by petitioner on 22/03/1997 does not depict those facts. He contends that basic burden is upon petitioner and details disclosed by him then can be verified from affidavits filed by other

Freedom Fighters.

6. We find that similar orders passed have been set aside by this Court and those orders have not been assailed further by respondents. In this situation, to enable respondents to apply their mind afresh, we set aside the impugned communication dated 10/03/1999. It is made clear that respondents have to grant Freedom Fighter's pension, if any one of the conditions stipulated in the Government Resolution dated 04/07/1995 is fulfilled. Respondents shall accordingly apply their mind to the material on record and take necessary decision afresh within further period of 4 months. ”

6. He particularly points out that this order had been taken to the Supreme Court by the State government and the challenge has failed before the Apex Court, wherein the Supreme Court had passed an order to the following effect –

“ Upon hearing the counsel the court made the following order-”

‘ The special leave petition is dismissed on the ground of delay as well as on merits. ’

7. He submits that while division bench of this court, in similar case as in hand had dismissed writ petition, the Supreme Court in Petition for Special Leave to Appeal (Civil) No. 8899 of 2010 in the case of “*Kamalbai Sinkar V/s State of Maharashtra*” has observed, thus :

“ 8. In the said circumstances, we only state that the appellant’s husband made a genuine effort to collect all those credentials in his

support as required under the Resolution of the State Government dated 04.07.1995, and forwarded them to the State Government along with his application dated 05.08.1995. When the Collector, Amrawati forwarded his letter dated 20.12.1996 and reiterated his recommendation in his subsequent communications dated 14.10.2007 and 30.11.2007 there was no reason for the State Government to simply reject the application without assigning any reason. A perusal of the documents enclosed by the appellant's husband along with his application disclose that the appellant's husband made out a case for grant of Freedom Fighter's Pension under the category "Underground Freedom Fighter". Applying the broad principles laid down in the decision of this Court in Gurdial Singh (Supra), it will have to be held that there was nothing more for the State to examine to honour the claim of the appellant's husband for grant of Freedom Fighter's Pension. The claim of the appellant's husband cannot be held to be a fraudulent one or without any supporting material.

9. *In our considered view, the high court ought to have examined the grievance of the appellant before confirming the order of rejection of the respondent State. In the circumstances, the appeal deserves to be allowed. The impugned orders are set aside. The respondent State is directed to grant Freedom Fighters Pension in favour of the appellant's husband and since he is no more, grant the same with all arrears to the appellant by passing appropriate orders expeditiously preferably within four weeks from the date of communication of copy of this order. We hope and trust that the State Government will not indulge in any further delay in the matter of grant of pension so as to enable the appellant to avail the benefits at least during the life time. The appeal stands allowed with the above directions to the respondent State. No costs."*

8. He submits that another division bench of this court had an occasion to deal with similar situation, wherein the court had

taken stock of the situation and had found that the certificate sufficiently refers to that the petitioner had to abandon his residence and education. Petitioner therein had as well produced recommendations of the District Honour Committee and affidavits filed did give indication of that petitioner therein having participated in underground freedom movement against *Nizam* governance. It was found by division bench that out of requirements under the government resolution, petitioner had complied with recommendations of two freedom fighters, who had been sentenced to imprisonment for two years and more. He had to leave his house and stay outside and had to leave education and that he had to stay at a place other than the native place. This gives quite a good quality of proof. The court had, thus, declined to go by the observations under the impugned order therein that requirement No. 1 is not complied with.

9. Here, in the present case, may be, the comments by the desk officer suspect the contents of police patil's certificate and affidavit by one Mr. Patil. Both, in any case, are pointer to that petitioner had abandoned and left his place of residence as well as education. The application had been supported by certificate issued by an age old police patil and two affidavits accompanied

by imprisonment certificates of co-workers who had been awarded *swatantrya sainik pension*. In such a case, this hyper sensitive and suspective approach does not appear to be compatible with the object, purpose and intention underlying the bringing in of the scheme.

10. Besides aforesaid, petitioner's case had also been recommended by District Honour Committee, Latur. It appears that application of the petitioner had been scrutinized by Desk Officer and he had put up a note along with his comments opining that there is no definitive proof with respect to that the petitioner had to abandon his residence or education, purporting to appreciate police patil's certificate and the affidavit filed by one of the freedom fighters namely Mr. Patil, to be discrepant on this aspect, raising suspicion about its veracity. The noting also refers to that there is recommendation by District Honour Committee. With such an approach, the desk officer had put up the matter for decision before the high power committee.

11. Division bench in the decision, referred to above, had further observed that it was not the case of the petitioner therein that the government record or original papers showing that petitioner was not underground freedom fighter were available. In such a case, even if the petitioner has not complied with

requirements No. 3 and 4, his claim cannot be rejected on said ground. It is further been observed that District Honour Committee recommendation was that petitioner was underground freedom fighter. In the present case, there is no comment whatsoever in respect of the recommendation by the District Honour Committee.

12. Above all, it has to be referred to that a hyper technical pedantic approach shall be eschewed while considering claims by freedom fighters, especially age old ones while claims are being made when they are in dire need.

13. Going by the observations of the Supreme Court in "*Gurdial Singh V/s Union of India and Others*" reported in 2001 (8) SCC 8 as well as the decisions referred to above and having regard to that high power committee has not done its bit and exerted itself to apply mind to the application by the petitioner, it appears to be expedient that the State Government shall re-consider the case of the petitioner for aforesaid purpose. As such, we deem it appropriate to set aside the impugned order in the present writ petition.

14. In view of aforesaid, impugned order is set aside. State Government to re-consider petitioner's case appropriately

viewing the case having regard to laudable object underlying bringing in the scheme and having regard to decisions which have been referred to in this order. It is reported that age of the petitioner is eighty seven years and he frequently requires medical attention and often hospitalization. Having regard to the same, re-consideration of the application of the petitioner shall be done as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of writ this order. It would also be pertinent that matter would not be approached perfunctorily and hyper technically.

15. Rule is made absolute in aforesaid terms. Writ petition stands disposed of. Original record, which is stated to be with government pleader, shall be sent back forthwith to the State government.

[B. U. DEBADWAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE