

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7106 OF 2019

Omkarprasad S/o.Laxmanprasad Tandon
Deceased Through widow
Shakuntala W/o Omkarprasad Tandon
Age : 83 years, Occu: Nil,
R/o: Ganpati Galli, Old Jalna,
Tal. and Dist. Jalna.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
(Freedom Fighter Division),
Mantralaya, Mumbai-32.
 2. The District Collector, Jalna.
 3. The Additional Collector, Jalna.
 4. Freedom Fighters' High Power Committee,
(Freedom Fighter Division),
Mantralaya, Mumbai-32,
Through its Secretary.
- ...Respondents

Mr V.S. Panpatte, Advocate for Petitioner
Mrs R.P. Gour, A.G.P. for Respondent Nos. 1 to 4

**CORAM : S. V. GANGAPURWALA
AND
SHRIKANT D. KULKARNI, JJ.**
DATE : 11th MARCH, 2020

ORAL JUDGMENT: (PER SHRIKANT D. KULKARNI, J.)

1. Heard finally with the consent of both the sides at admission stage.

2. The petitioner widow by stepping into the shoes of her late husband Omkarprasad Laxmanprasad Tandon is claiming freedom fighters' pension by approaching this Court under Article 226 of the Constitution of India.

3. The factual matrix is as under :-

According to the petitioner, her husband – late Omkarprasad Laxmanprasad Tandon had taken active part in Hyderabad Liberation Movement during the year 1947-1948 and because of his active participation in the said movement, he was required to remain underground and away from the house for more than one year. The petitioner lost his one academic year of his intermediate college examination on account of his participation in Hyderabad Liberation Movement. Her husband had also participated in the College Chodo Andolan to protest against the Nizam Government and because of it, he was required to leave his education for one year.

4. It is contended that the petitioner's husband was fulfilling the requisite norms laid down by the Government for grant of freedom fighters' pension including the norms laid down in the Government Resolution dated 04.07.1995. Her husband had applied by submitting necessary documents. The supporting affidavits given by other freedom fighters also made it clear that the petitioner's husband had taken part in Hyderabad Liberation Movement under the leadership of Motilal Laxmichand Sharma, Khanderao Khalse, Ramkrishna Punjaji Bhise and Damodhar Haribhau Aher etc.

5. According to the petitioner, a proposal of her husband was considered by the District Freedom Fighters Honour Committee in its meeting held on 07.10.1998 and after verifying all the material on record, recommended proposal for grant of freedom fighters' pension. The Additional Collector, Jalna vide letter dated 16.12.1998 forwarded pension proposal to the State Government for further action. The State Government and the Hon'ble State Minister of General Administration Department also recommended grant of freedom fighters' Pension and proposal was forwarded to the State level High Power Committee of freedom fighters. The High Power Committee also recommended the proposal for grant of freedom fighters' pension on 27.01.2009. According to the petitioner, the Desk Officer at Mantralaya Mumbai rejected the proposal of the

petitioner's husband by overlooking the recommendations made by the High Power Committee. According to the petitioner, the Desk Officer cannot seat over the decision taken by the High Power Committee. The decision of the High Power Committee is final to consider the proposal of the concerned person for grant of freedom fighters' pension and the decision of the said Committee is binding upon the State Government. Even then, the State Government has turned down the proposal of the petitioner without assigning any reason.

6. Feeling aggrieved by the said decision by the State Government vide communication dated 25.10.1999 and 17.03.2010, the petitioner's husband had filed the Writ Petition No. 7348 of 2011, which came to be dismissed on 02.09.2014 by making certain observations.

7. According to the petitioner, even though the claim of the freedom fighter for pension is rejected, still the State Government has power to review the said decision and reconsider the claim afresh. The petitioner's husband had submitted fresh application on 21.04.2015 to the State Government/ the concerned authorities for grant of freedom fighters' pension with supporting documents and papers. The District Committee has forwarded the proposal to the State Government. It is contended that the fresh proposal submitted

by petitioner's husband came to be rejected by the State Government vide order dated 24.01.2019 by assigning the reason that the College Chodo Andolon cannot be considered as Hyderabad Liberation Movement. According to the petitioner, the decision taken by the State Government is erroneous and without considering the material placed on record.

8. The petitioner's husband has challenged the said decision by invoking writ jurisdiction under Article 226 of the Constitution and after his demise, present petitioner/widow has prosecuted the proceeding.

9. The respondent/State has filed its affidavit and denied the claim of the petitioner for grant of freedom fighters' pension. According to the State, the decision taken by the Government is as per the Government Resolutions and guidelines. It is further contended by the State Government that the petitioner had earlier filed Writ Petition No. 7348 of 2011 before this Court for the same relief and same has been dismissed vide order dated 2nd September, 2014 observing that petitioner's husband does not satisfy the requirements laid down in the Government Resolution dated 04.07.1995.

10. It is further contended by the State Government that the State Government once again rejected the proposal of the petitioner's husband vide order dated 18.05.2017, after perusing newly submitted document i.e. Nirgam Register pertaining to the petitioner, no reason is shown for leaving the school. As such, the petitioner's husband was not found involved in Hyderabad Liberation Movement and as such, the claim of the petitioner's husband came to be rejected since it did not satisfy the criteria as laid down in the Government Resolution dated 04.07.1995.

Arguments

11. We have heard Mr Panpatte, learned Counsel for the petitioner and Mrs R.P. Gour, Assistant Government Pleader for the Respondents/State. We have also perused the record and earlier decision rendered by the Division Bench of this Court in Writ Petition No. 7348 of 2011 dated 2nd September, 2014.

12. Mr Panpatte, learned Counsel for the petitioner vehemently argued that the original petitioner had submitted necessary documents and papers while submitting fresh claim for his freedom fighters' pension. He was satisfying the criteria laid down in the Government Resolution dated 04.07.1995. The District Freedom Fighters' Honour Committee has also recommended the proposal of

the original petitioner. The affidavits of the concerned freedom fighters were annexed to the proposal. There was no reason for the State Government to reject the proposal when there was sufficient record showing involvement of the original petitioner in the Hyderabad Liberation Movement, during his college days. The original petitioner was satisfying the criteria and test given in the Government Resolution dated 04.07.1995.

13. Mr Panpatte, learned Counsel for the petitioner invited our attention to the Government Resolution No. POS 1097/Cases No. 76/97/F.F. Sec.-1 dated 10th March, 1999 issued by the General Administration Department, Mantralaya, Mumbai and strenuously argued that the Government has empowered the District Honour Committee to handle the applications for grant of freedom fighters' pension with more responsibility in case of incomplete evidence to reject such application. Appropriate cases should be referred to the Government with recommendations. While exercising such powers, the District Collectors/District Honour Committees shall take steps as prescribed in the said Government Resolution.

He further invited our attention that even after rejection of the applicant's request for grant of freedom fighters' pension, he may make an application to the Chief Minister, Minister or like officer for reconsideration of his request, in exceptional situation, such

application shall be entertained by freedom fighters' High Power Committee as an appeal. By taking the help of above said Government Resolution, Mr Panpatte, submitted that in the present case, the petitioner has submitted a fresh proposal for grant of freedom fighters' pension with an additional evidence and it was recommended by the District Honour Committee, so also, freedom fighters' High Power Committee and Hon'ble Minister of State for General Administration Department.

14. In the above premise, according to Mr Panpatte, learned Counsel for the petitioner, the decision/order dated 24.01.2019 issued by the State Government rejecting petitioners claim for freedom fighters' pension needs to be quashed and set aside. Mr Panpatte, learned Counsel has placed his reliance on the following citations in support of his argument :-

(i) Chhotubhai H.L. Patel Vs. State of Gujarat and Ors. reported in AIR 1996 GUJARAT 201

(ii) Mukund Lal Bhandari and others Vs. Union of India and others reported in AIR 1993 SC 2127

(iii) S.J. Pande Vs. P.K. Balakrishnan reported in AIR 1993 SC 2132

(iv) Gurdial Singh Vs. Union of India and Ors. reported in (2001) 8 SCC 8

(v) Indseam Services Ltd. Vs. Bimal Kumar Kejriwal (HUF) reported in (2001) 8 SCC 15

(vi) Smt Kamalbai Sinkar Vs. The State of Maharashtra and others Writ Petition No. 506/2009 Order by High Court of Bombay, Bench at Nagpur

(vii) Smt Kamalbai Sinkar Vs. State of Maharashtra & Ors. Civil Appeal No. 5344 of 2012 (SLP(c) No. 8899 of 2010) SC

(viii) State of Maharashtra and Ors. Vs. Namdeo etc.etc. Civil Appeal No. 7899-7901/2013 (arising out of S.L.P. (Civil) Nos. 26441-26443 of 2012) SC

(ix) Punjaram S/o Madhav Indewad Vs. The State of Maharashtra and Ors. Writ Petition No. 2632 of 2011, High Court of Bombay (Bench at Aurangabad)

(x) The State of Maharashtra and Ors. Vs. Punjaram - Petition(s) for Special Leave to Appeal (c)....cc No(s). 17614/2015 (Arising out of impugned final judgment and order dated 28.08.2013 in W.P. 2632/2011 passed by the High Court Bench at Aurangabad.

(xi) Kalidas Nivrutti Dhale Vs. State of Maharashtra & os. reported in 2014 (4) Bom.C.R. 397

(xii) State of Tamil Nadu & Anr. Vs. A. Manickam Pillai reported in 2010 DGLS (Soft.) 54

(xiii) Kisan Hanuji Jambhulkar (Dr) Vs. State of Maharashtra and others reported in 2004(2) Bom.C.R. 433 and,

15. On the other hand, Mrs Gour, learned A.G.P. for the State invited our attention to the order passed by the Division Bench of this Court in Writ Petition No. 7348/2011. By placing reliance on the said decision, Mrs Gour, the learned A.G.P argued that the Division Bench of this Court was pleased to observe in the said order that the petitioner does not satisfy the requirement laid down in the

Government Resolution dated 04.07.1995 and refused to exercise extraordinary jurisdiction under Constitution of India and further observed that the petition is devoid of substance and same is rejected. Mrs Gour, the learned A.G.P. submitted that two legal remedies were available to the petitioner. The petitioner could have approached to the Apex Court by challenging the said decision or moved review petition. The petitioner did not avail any legal remedy available to him at that time. The petitioner once again moved to the State Government for grant of freedom fighters' pension. It came to be turned down by the State Government and the same decision is again challenged before this Court. According to Mrs Gour, the learned A.G.P., the present petition is not at all maintainable and needs to be dismissed.

16. Mrs Gour, learned A.G.P. further invited our attention to the various Government Resolutions, more particularly, Government Resolution dated 04.07.1995 and 2nd June, 2016. Mrs Gour, learned A.G.P. argued that the proposal for freedom fighters' pension to the petitioner came to be turned down since he did not satisfy the requirements laid down in the Government Resolution dated 04.07.1995.

17. Mrs Gour, learned A.G.P. further invited our attention to one more Government Resolution vide No. निवृत्ते-२०१६/प्र.क्र. ७८/स्वासेक-९, Mantralaya, Mumbai dated 2nd June, 2016. Mrs Gour, learned A.G.P. submitted that widow cannot claim freedom fighters' pension after the death of her husband when during his life time, proposal for freedom fighters' pension was rejected by the State Government.

18. We have perused the Government Resolutions dated 04.07.1995, 10.03.1999, 23.05.2000 and 02.06.2006. We have studied the citations and decisions upon which Mr Panpatte, learned Counsel for the petitioner has placed his reliance. The original petitioner had moved earlier his proposal for grant of freedom fighters' pension and it came to be turned down by the State Government vide communication dated 25.10.1999 and 17.03.2010. Being aggrieved by the said decision of the State Government, the petitioner had filed Writ Petition No. 7348/2011 and same came to be dismissed vide order dated 2nd September, 2014. Instant is second round of litigation initiated by the original petitioner for grant of freedom fighters' pension on account of his involvement in the Hyderabad Liberation Movement and after his demise, widow has prosecuted the same.

19. It would be suffice to place reliance on the Judgment of the Hon'ble Supreme Court in case of **State of Maharashtra Vs. Namdeo etc. Civil Appeal No. 7899-7901/2013 (arising out of S.L.P. (Civil) Nos. 26441-26443 of 2012) SC**, wherein the Hon'ble Supreme Court has given guidelines for consideration of the claim of the freedom fighters for awarding them pensions. Para No. 19 of the said Judgment focused light on the guidelines which reads thus -

- "a. The claims of the freedom fighters are to be dealt with, with sympathy.
- b. The authorities are not to go by the test of "beyond reasonable doubt" and standard of proof based on this principle has to be discarded.
- c. On the contrary, the principle of probability is to be applied and eschewing the technicalities, the approach should be to uphold the entitlement.
- d. When scheme itself mentions the documents which are required to be produced by the applicant, normally those documents need to be produced to prove the claim.
- e. The High Court exercising with jurisdiction does not sit in judgment over the decision of the State Government like an appellate

authority. The order of the State Government is to be examined applying the parameters of judicial review which are available in examining the validity of such orders.

- f. Even if order is found to be perverse or flawed, the High Court can, at the most, remit back to the State Government to reconsider the case.

However, this Court has also observed that there may be cases where because of long lapse of time or other circumstances beyond the control of the applicant, it is almost impossible or cumbersome to procure and produce all the stipulated documents. In such cases, the claim cannot be summarily rejected for want of documents, even though as per the Pension Scheme, such documents are to be provided. We are of the opinion that to meet such eventualities, following principle needs to be added:

- g. On the basis of evidence/documents/material submitted by the applicant, the Government should examine whether it is a genuine case and the documents produced establish that the applicant had participated in the freedom fighter movement. It should be done applying the principle of probability. If the material/documents produced are otherwise convincing, the Government in appropriate cases may not insist on strict compliance with

all the requirements stated in the Scheme."

20. In case of ***Mukund Lal Bhandari Vs. Union of India reported in 1993 SC 2127***, it is held by the Hon'ble Supreme Court that for claim of the freedom fighters pension, there is no limitation. In case of ***Gurdial Singh Vs. Union of India and Ors. reported in (2001) 8 SCC 8***, it is held by the Hon'ble Supreme Court that the object of Freedom Fighters' Pension Scheme 1972 is to honour the freedom fighters. Liberal approach needs to be taken. The claim under the scheme should be determined on the basis of probabilities and not by applying the test of "beyond reasonable doubt". The Government Resolution dated 04.07.1995 provides for fulfillment of requirements for grant of freedom fighters' pension.

Reasons for conclusion

21. The main hurdle in the way of petitioner is the decision rendered earlier by the Division Bench of this Court in Writ Petition No. 7348/2011 dated 2nd September, 2014. It is an admitted position that by way of earlier round of litigation, the original petitioner had challenged the decision of the State Government rejecting his claim for grant of pension by invoking writ jurisdiction of this Court by filing Writ Petition No.7348/2011. The State Government was pleased to reject the proposal of the petitioner on

the ground that he did not fulfill the requirements laid down under Government Resolution dated 04.07.1995. The Division Bench of this Court after considering the rival contentions of both the sides, documents on record and considering Government Resolution as well as the decision of the Hon'ble Supreme Court in case of the *State of Maharashtra Vs. Namdeo (supra)* arrived at conclusion that since the petitioner did not satisfy the requirements laid down in the Government Resolution dated 04.07.1995, no case is made out for interference for exercising extraordinary writ jurisdiction and Writ Petition No. 7348/2011 came to be dismissed vide order dated 2nd September, 2014.

22. It is rightly pointed out by Mrs Gour, learned A.G.P. for the State that two options were available to the petitioner (i) challenge the order before the Supreme Court, and (ii) file review petition. The petitioner did not exercise any legal remedy and after losing the battle by way of first round of litigation again initiated second round of litigation practically on the same set of facts and circumstances and same documents. Certainly, the present writ petition invoking the same relief cannot be entertained. No liberty was granted to the petitioner while disposing above said writ petition. In light of the above, we are of the considered view that Government Resolution dated 10th March, 1999 referred above, and relied upon by Mr Panpatte, learned

Counsel for the petitioner is not any way helpful to the petitioner.

23. There is one more legal aspect which needs to be focused. The Division Bench of this Court has dismissed the Writ Petition No. 7348/2011 on merits and that decision reached finality. In that background, it was not open for the original petitioner to again move to the State Government by filing fresh proposal for grant of freedom fighters' pension. The decision rendered in Writ Petition No. 7348/2011 was binding on him and out of the realm of State Government even to entertain fresh proposal, when the decision has reached finality. In that background even though, the District Honour Committee, High Power Committee and Hon'ble Minister for State again recommended for grant of freedom fighters' pension to the petitioner while considering fresh proposal, it was not within their domain.

24. We need to consider provisions of section 11 of the Civil Procedure Code in the background of earlier round of litigation and decision in Writ Petition No. 7348/2011. In case of ***Amalgamated Coalfields Ltd. and another Vs. Janpada Sabha Chhindwara and others reported in AIR 1964 SC 1013***, it is held by the Hon'ble Supreme Court that general principles of *res judicata* applies to writ petitions under Articles 226 and 32 of the Constitution of India.

In case of ***Raghvendra Rao and Others Vs. State of Karnataka and Others reported in 2009 (4) SCC 635***, the Hon'ble Supreme Court has followed the same view and held that the principles of *res judicata* applies also to the writ proceedings. It is undisputed position that the original petitioner had filed Writ Petition No. 7348/2011 against the decision of State Government for rejection of his claim for freedom fighters' pension and said writ petition came to be dismissed by making observations that the petitioner did not satisfy the requirements laid down in the Government Resolution dated 04.07.1995 and refused to exercise writ jurisdiction and pleased to dismiss the above said writ petition. Practically on the same set of facts and for the same relief, the petitioner had again approached this Court by invoking writ jurisdiction under Article 226 of the Constitution of India. Certainly, the principles of *res judicata* applies in this case. Therefore, the claim of the petitioner to seek freedom fighters' pension by present petition is barred by the principles of *res judicata*.

25. We respect freedom fighters and acknowledge their valuable sacrifices made during Hyderabad Liberation Movement. The freedom fighters' pension scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country. The grant of freedom fighters'

pension is dependent upon satisfying the criteria laid down under Government Resolution dated 04.07.1995. The freedom fighters' pension proposal of the petitioner's husband was rejected by the State Government. The husband of the petitioner preferred writ petition challenging the decision of the Government. This Court under Judgment and order dated 2nd September, 2014 rejected the writ petition of the husband of the petitioner holding that the criterias laid down in Government Resolution dated 04.07.1995 are not fulfilled. This Court upheld the decision of the State Government rejecting the freedom fighters' pension claim. The parties are bound by the said Judgment as discussed supra.

26. Having regard to the above reasons and discussion, and in view of earlier decision rendered by the Division Bench of this Court, the writ petition is devoid of any merit and liable to be dismissed.

27. The writ petition is accordingly dismissed. No order as to costs.

[SHRIKANT D. KULKARNI, J.] [S.V. GANGAPURWALA, J.]