

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 137 OF 2021

Shripati s/o Limbaji Jawale,
age: 95 years, Occ: At present Nil,
R/o Mendha,
Tq. & District Osmanabad.

Petitioner

Versus

01 The State of Maharashtra,
through the Secretary,
General Administration Department,
Maharashtra State, Mumbai-32.

02 The Collector,
Osmanabad,
District Osmanabad.

Respondents

Mr. N. L. Jadhav, advocate for the Petitioner.
Mrs. M. A. Deshpand, AGP for the Respondents.

CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.

DATE : 13 July 2022.

JUDGMENT (Per Sandipkumar C. More, J.) :

Rule. Rule made returnable forthwith and heard
finally by consent of learned Counsel for respective parties.

2 By way of this petition under Article 226 of the

Constitution of India, the petitioner is seeking a declaration that the Government Resolution dated 30.07.2016 in respect of grant of freedom fighter's pension is not applicable to him. The petitioner further claims that Respondent No.1-State be directed to modify the impugned order dated 05.08.2019 by which freedom fighter's pension was granted to him with effect from 08.11.2019. The petitioner claims that Respondent No.1-State ought to have granted him freedom fighter's pension from the date of his first application i.e. 17.10.1995.

3 According to the petitioner, he had participated in the freedom movement of Hyderabad Mukti Sangram. He was convicted on 20.12.1956 Fasli and had undergone sentence for two years under Sections 58, 48 and 31 Tahafuz. He was released on 22.09.1959 Fasli from Central Prison, Gulbarga.

4 The petitioner had applied to Respondent No.1-State for grant of freedom fighter's pension on 17.10.1995. However, his claim was not considered for many years and lastly, the General Administration Department of Respondent No.1-State granted him freedom fighter's pension from the date of sanction i.e. from 08.11.2019.

5 Being aggrieved by the said decision of Respondent

No.1-State, the petitioner is before this Court for the reliefs mentioned above.

6 The learned Counsel for the petitioner submits that though the Respondents granted him freedom fighter's pension from 08.11.2019. However, according to the various judgments of the Hon'ble Apex Court as well as this Court, the petitioner is entitled for getting such pension from the date of his first application, which was initially rejected. The learned Counsel for the petitioner, therefore, vehemently submits that the petitioner is entitled to the reliefs claimed in the petition.

7 The Respondents strongly opposed the petition vide reply dated 16.03.2022. The learned AGP submits that under the subsequent Government Resolution dated 30.07.2016, Respondent No.1-State has taken a policy decision that henceforth the grant of freedom fighter's pension should be from the date of its sanction and not from any other earlier date in order to avoid increase in further financial burden. The learned AGP has, therefore, strongly resisted the claim of the petitioner.

8 We have gone through the entire material on record with the assistance of the learned Counsel for respective parties. The learned Counsel for the petitioner, in support of his

submissions, has placed reliance on the following judgments:

(1) **Mukund Lal Bhandari Vs. Union of India**, 1993 AIR (SC) 2127;

(2) **Union of India & others Vs. Kaushalaya Devi**; 2007 AIR (SCW) 4108;

(3) **Kishansinha s/o Tukaramsinha Chandel Vs. The State of Maharashtra**; (Writ Petition No. 2831 of 2000, decided on 26.07.2010).

9 On the contrary, the learned AGP, while opposing the claim of the petitioner, has placed reliance upon the following judgment of the Hon'ble Apex Court

(1) **The State of Maharashtra Vsl. Bhagwan & others**; (2022) 4 SCC 193.

10 It is not in dispute that the petitioner had applied to Respondent No.1-State for grant of freedom fighter's pension, firstly on 17.10.1995. It is the case of the petitioner that since the Government did not decide his application dated 17.10.1995, he had approached this Court seeking direction to the

Respondents to decide his application for grant of freedom fighter's pension, by way of Writ Petition No. 864 of 2002. Further, the order dated 07.01.2003, passed in the said writ petition, indicates that Respondent No.1 was directed to decide the aforesaid application of the petitioner within two months. However, the Respondent No.1 rejected claim of the petitioner on 18.12.2003 on the ground that petitioner did not comply with the conditions mentioned in the Government Resolution dated 04.07.1995.

11 It further reveals that the petitioner subsequently received the Jail Certificate in respect of his sentence in connection with Hyderabad Mukti Sangram movement in Gulbarga Central Prison on 11.07.2012 and therefore, second application was filed by him on 23.07.2012 to the Secretary and President of Freedom Fighters High Power Committee, requesting to reconsider his claim. After verification of the said certificate through the Superintendent of Central Prison, Gulbarga and on the basis of the report dated 14.08.2012 to that effect, the Respondent No.2, on 23.11.2012, informed the petitioner that his claim would be considered at Government level and the decision would be informed to him as soon as it is taken. Ultimately, Respondent No.1 has granted freedom fighter's pension to the petitioner along with other freedom fighters with effect from 08.11.2019.

12 The only question involved in this matter is, whether the petitioner, in view of the judgment of the Hon'ble Apex Court in **Mukund Lal Bhandari** (*supra*), and decision by this Court in the case of **Kishansinha s/o Tukaramsinha Chandel** (*supra*), in the bunch of writ petitions, is entitled for freedom fighter's pension from the date of his first application i.e. from 17.10.1995. On the contrary, Respondents are claiming that the petitioner is entitled for freedom fighter's pension only from 08.11.2019, the date of issuance of relevant Government Resolution, as per the policy decision of the Respondent-State.

13 On going through the judgments relied upon by the learned Counsel for the petitioner, it is evident that in the judgment in the case of **Mukund Lal Bhandari** (*supra*), the Hon'ble Supreme Court has held as follows:

“Application for freedom fighters pension must be accepted when such application is made and it is immaterial whether the application was made before the prescribed date or it was not accompanied by requisite data. Refusal by the Government to grant pension on the ground that applications were filed after expiry of prescribed date, was not justified.”

14 Thus, the judgment in the case of **Mukund Lal Bhandari** (*supra*), indicates that freedom fighter's pension needs to be granted from the date of first application made by the concerned.

15 However, the Hon'ble Supreme Court, made departure from its earlier view, taken in the case of **Union of India & others Vs. Kaushalaya Devi**; (*supra*), wherein it was observed in paragraph 5, as follows:

“5 In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.

 It is also observed in para no.7 of the said judgment, as follows:

“7 In our opinion that decision is distinguishable as it has been stated therein that the pension cannot be granted from any date prior to the application. In our opinion this does not

mean that it cannot be granted from a date subsequent to the application.”

Thus, it appears that the Hon’ble Supreme Court, in the aforesaid case, granted freedom fighter’ pension to the petitioner therein from the date of the order since his claim was earlier allowed on the basis of secondary nature of evidence and not on the basis of jail certificate.

16 This Court, in the bunch of writ petitions i.e. Writ Petition No. 2831 of 2000 and others, has held that the petitioners were entitled to freedom fighter’s pension under the scheme framed by the State of Maharashtra from the date of their first applications. Thus, it appears that this Court, in this judgment, has taken a view similar to the view taken by the Hon’ble Supreme Court in the case of **Mukund Lal Bhandari** (*supra*).

17 However, the learned AGP heavily relied upon the judgment of the Hon’ble Apex Court in the case of **The State of Maharashtra Vs. Bhagwan & others** (*supra*), wherein the Hon’ble Supreme Court, in para 10.7, has made following observations:

“10.7 In any case, it is ultimately for the State Government and the Society (WALMI) to

take their own policy decision whether to extend the pensionary benefits to its employees or not. The interference by the Judiciary, in such a policy decision having financial implications and/or having a cascading effect is not at all warranted and justified.”

Thus, the learned AGP submits that if the petitioner is granted freedom fighter’s pension from the date of his first application i.e. 17.10.1995, then it will definitely increase financial burden on the State since many of the freedom fighters would start claiming such benefit from the first date of their applications.

18 Admittedly, in the instant case, the petitioner is granted freedom fighter’s pension with effect from 08.11.2019 though he had initially applied for the same on 17.10.1995. It appears that since there was no reliable evidence available with the petitioner at the time of claiming freedom fighter’s pension under the first application dated 17.10.1995, his claim was then rejected. In the case of **Union of India & others Vs. Kausalaya Devi** (*supra*), the Hon’ble Apex Court has observed that the grant of freedom fighter’s pension must be from the date of the order, which is passed on the basis of reliable evidence i.e. on production of jail certificate.

19 In the instant case, it is not in dispute that the

petitioner had in fact received such jail certificate from Central Prison Gulbarga on 11.07.2012 and thereafter made his second application for grant of such pension on 23.07.2012. The Respondent No.1-State has relied upon the said jail certificate dated 11.07.2012 while granting freedom fighter's pension to the petitioner. Under such circumstances, we find that the petitioner, under his second application dated 23.07.2012, submitted reliable piece of evidence in respect of his involvement in Hyderabad Mukti Sangram movement. Admittedly, the Hon'ble Apex Court in the case of **The State of Maharashtra Vs. Bhagwan & others;** (*supra*), has already cautioned the Judiciary not to make any interference in the policy decision of the State Government having financial implications or having cascading effect on the financial position of the State.

20 Therefore, after considering all the judgments of this Court and the Hon'ble Supreme Court, relied upon by the rival parties, we deem it fit to grant freedom fighter's pension to the petitioner from the date of his second application i.e. 23.07.2012 when he produced reliable piece of evidence about his involvement in the Hyderabad Mukti Sangram movement under jail certificate dated 11.07.2012.

21 We wish to make it clear that the decision for granting

freedom fighter's pension to the petitioner from 23.07.2012 has been taken in the light of peculiar facts of the present case only and it should not be treated as a binding precedent.

22 In the result, we pass the following order:

- (i) Writ Petition is partly allowed.
- (ii) Impugned Government Resolution dated 08.11.2019 stands modified to the extent of petitioner herein and Respondent No.1-State is directed to grant freedom fighter's pension to the petitioner herein with effect from 23.07.2012.
- (iii) The Respondents are also directed to calculate the arrears of pension from 23.07.2012 and pay the same to the petitioner within six months from the date of this order.
- (iv) Rule is made absolute in the aforesaid terms. No costs.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.

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