

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

WRIT PETITION NO.6929 OF 2023

Somitrabai @ Somabai Bhagwan Ajbe,
Age: 86 years, Occ. Nil,
R/o. Chinchala, Tq. Wadwani,
Dist. Beed.

... **PETITIONER**

V/s.

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
Pay and Account Officer,
Central Pension Accounting Office,
Trikoote-II, Bhikaji Kama Place,
New Delhi-110 000.
2. The State of Maharashtra,
Through its Secretary,
General Administration Department,
(Freedom Fighter Division)
19th Floor, Madam Kama Road,
Hutatma Rajguru Chowk, Mantralaya,
Mumbai-32.
3. District Collector,
Collectorate Office, Beed.
4. Residential Deputy Collector (RDC),
Collectorate Office, Beed.
5. District Treasury Officer,
Collector Office Premises, Beed.
6. State Bank of India,
Majalgaon Branch,
Tq. Majalgaon, District Beed.
Through its Branch Manager.

7. State Bank of India,
Centralized Pension Processing Center (CPPC)
5th Floor, Premises No. T-651 & T-751,
IT.C. Belapur, CBD Belapur,
Railway Station Complex,
Navi Mumbai-400614.

... **RESPONDENTS**

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Advocate for Petitioner : Mr. Nagargoje Ankush Nivrutti
AGP for Respondents/State : Mr. P.K. Lakhotiya
Advocate for R/1 : Mr. R.B. Bhosale
Advocate for R/6 : Mr. A.V. Rakh
Advocate for R/7 : Mr. R.R. Bangar

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 28th July, 2023

ORAL JUDGMENT (*Ravindra V Ghuge*):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. While issuing notice on 27.06.2023, we had passed the following order:

“1. It is undisputed that the petitioner's husband Bhagwan Sukdev Ajbe was a freedom fighter who was receiving freedom fighters pension, from the Government of India, as well as, the State Government. Till 2018, after the demise of the freedom fighter, the second wife Rukminbai @ Rakhmabai been paid the pension until she died on 17.06.2018. However, the petitioner was granted a judgment and order dated 22.01.2016 in R.C.S. No. 87 of

2012, by which she was declared to be the first legally wedded wife of the freedom fighter.

2. The District Collector has informed the State Bank of India to submit the original pension payment order (PPO). The bank has informed that the original PPO of the said freedom fighter is not with the bank and the same is with the Ministry of Home Affairs which was tendered vide letter dated 19.08.2020.

3. Issue notice to respondent Nos. 1 to 5, returnable on 11.07.2023. This matter would appear in the urgent admissions category.

4. The learned standing counsel for Union of India waives service of notice on behalf of the respondent No. 1. The learned A. G. P. waives service of notice on behalf of respondent Nos. 2 to 5.

5. On the next date, we would expect the Ministry of Home Affairs to produce the original PPO, which will have to be tendered to the District Collector for commencing the payment of freedom fighters pension to the petitioner from the date of demise of the second wife, who was earlier receiving the pension.”

3. It is undisputed that the husband of the present Petitioner namely Bhagwanrao Sukhdeo Ajbe was a Freedom Fighter. A Pension Payment Order (PPO) and a Pension Payment Booklet (PPB), have been issued. He was receiving the pension regularly from 07.09.1977 w.e.f. 04.05.1976, from the State Government. He was also receiving freedom fighter's pension from the Central Government vide order dated 04.08.1985 w.e.f. 01.08.1980. The late

Bhagwanro Ajbe (passed away on 12.06.1993), had nominated a lady by name Rukhminibai alias Rakhmabai, in the capacity of she being his wife, due to which Rukhminibai was receiving the freedom fighter's pension until her demise on 17.06.2018.

4. The Petitioner before us is Somitrabai alias Somabai who claims to be the first wife of Bhagwanrao. Before the demise of Rukminibai, Somitrabai preferred RCS No.87/2012 seeking a declaration from the Civil Court that she is the first wife. Rukhminibai was one of the defendants. By judgment dated 22.01.2016, the suit was decreed and it was declared that the present Petitioner is the first wife and as such, the legally wedded wife. Yet, Rukhminibai was receiving the pension until her death on 17.06.2018.

5. The grievance of the Petitioner arose after the death of Rukhminibai. The payment of the freedom fighter's pension was stopped by the State Government as well as the Central Government since it was informed that Rukhminibai has passed away. There is no dispute that the original PPO is required for sanctioning the Central Government as well as the State Government pension, even for replacing the deceased-Rukhminibai with the Petitioner-Somitrabai. The State Bank of India, Centralised Pension Processing Center (CPPC), Mumbai informed the State Bank of India, Branch Manager, Majalgaon vide communication dated 30.06.2022, that the CPPC does not have

the original PPO and the same was returned to the Ministry of Home Affairs vide communication dated 19.08.2020. The Majalgaon Branch, therefore, informed the Ministry of Home Affairs, Central Pension Accounting Office (CPAO) vide communication dated 11.08.2022, that they have not received the PPO and the original PPO be supplied. This was also brought to the notice of the CPPC vide communication dated 16.11.2022. Subsequently, the Branch Manager, Majalgaon informed the State Bank of India - CPPC by communication dated 26.12.2022, that either the original PPO be supplied or a 'Lost Certificate' be issued indicating that the PPO is lost.

6. The grandson of the deceased-Bhagwanrao, namely Ajay Ajbe addressed the Under Secretary, Freedom Fighter Rehabilitation Division (FFRD), New Delhi vide communication dated 09.11.2022 that the original PPO be released. In the interregnum, the CPAO addressed the Pay and Accounts Officer (PAO) vide communication dated 02.09.2022, stating that the Original Disburser Portion (ODB) has not been received and the same has already been forwarded to the PAO vide letter dated 07.09.2020 and that the PPB was not received from the State Bank of India -CPPC, Mumbai.

7. After continuous representation and correspondence between the grandson and the above referred authorities, the Petitioner has finally preferred this petition on 12.06.2023. After filing of this petition, the Under Secretary to

the Govt. of India, who is the affiant before us namely Lamkhomang s/o Late Shri Vungkhohen, informed the Petitioner vide communication dated 10.07.2023, contending that the Petitioner never informed the fact to the Ministry that she was the legally wedded wife. She was requested to apply for Freedom Fighter Dependent Family Pension (FFDFP) along with the documents set out at clauses - A to O. The said communication is marked as 'X-2' for identification. The same authority also addressed the Chief Manager, State Bank of India, CPPC dated July, 2023. Vide this communication the CPPC was directed to furnish three documents as under:

“A) The complete statement of family pension drawn by Smt. Rukhminibai @ Rakhmabai since 13.06.1993 till date.

B) The orders by which dependent family pension was started in the name of Smt Rukhminibai @Rakhmabai and relevant supporting documents on the basis of which the family pension was started.

C) PPO (Original) & Xerox, Supporting documents submitted by Smt. Rukhminibai @Rakhmabai such as Annexures VI & VII, Life Certificate etc. and all other relevant records available with the bank in connection with the pensioner.”

This communication is marked as 'X-3' for identification.

8. The District Collector has filed an affidavit in reply dated 27.07.2023 through Sambhaji Kishanrao Mande, Tahsildar, Wadwani in which it is contended that after the application from the Petitioner was received, the Collector's Office directed the Treasury Officer to take necessary action as

regards the pension payable to the Petitioner. However, the original PPO was not with the State Bank of India, Branch at Majalgaon. The Petitioner submitted the certified copy of the PPO order received from the Respondent No.7 - CPPC, State Bank of India, Mumbai and, therefore, Respondent No.4 (Resident Deputy Collector - RDC) directed the Majalgaon Branch to take further steps on the basis of the certified copy of the PPO. It is further mentioned in the affidavit that he called upon Respondent No.7 - CPPC, State Bank of India, Mumbai to supply the original PPO. It is also stated that in the absence of the original PPO, the freedom fighter's pension cannot be granted to the Petitioner.

9. The Under Secretary, Govt. of India, Ministry of Home Affairs, FFRD submits in the affidavit in reply dated 28.07.2023, that this petition should be dismissed as it is premature. We are astonished by this attitude of the Under Secretary. The Petitioner is 86 years of age. It is only destiny which will decide her life span. Terming the present petition as a premature petition indicates insensitiveness on the part of such a high ranking officer. He has devoted 50% of the affidavit in reply in describing the Freedom Fighter's pension scheme. The documents before us indicate that the original PPO was forwarded to the FFRD, after the second wife of the freedom fighter passed away and it came to light that the Petitioner is the first wife and is legally

entitled for the pension. Respondent No.1 submits in the affidavit that a communication dated 12.01.2023 was addressed to the Senior Accountant General, Mumbai informing that the records in respect of sanction of pension to the late Bhagwanrao Ajbe, are not available in the Ministry of Home Affairs and it is further stated that it is imperative to verify the genuineness of the sanction of pension to Shri Bhagwanrao and actual details of his spouses. The signatory to the said communication is the affiant Under Secretary before us.

10. In the peculiar facts as recorded above, we are required to consider this petition for the reason that the scope of the Writ of Mandamus is to ensure that justice is done and the Writ of this Court reaches the door step of a litigant who has exhausted all the remedies as are possible / permissible and yet his / her grievance is not redressed. The purpose of the Writ of Mandamus would be frustrated if in such cases the Court does not consider the grievance in the light of the fact that, on the one hand, the Petitioner has a legal right and on the other hand, the Respondents are practically tiring out the Petitioner by making her suffer the rigours of tardy litigation.

11. The Petitioner is the first wife of the deceased-Bhagwanrao. The deceased second wife preferred RCA No.8/2016, to challenge the judgment in favour of the Petitioner, which was dismissed as abated on 30.08.2018. The Full Bench of this Court in **Kamalbhai Venkatrao Nipanikar V/s. The State of**

Maharashtra and Ors.; 2019 3 Mh.L.J. 921, has concluded that the first wife of a Hindu is the legally wedded wife and during the subsistence of the marriage as well as the life of the first wife, a second marriage is illegal and such a woman would never be termed as a legally wedded wife.

12. We are conscious of the fact that as Rukhminibai has already passed away, it would be impossible to issue any direction for recovery of the pension paid to her and more so on account of the fact that the judgment of the Civil Court was delivered on 22.01.2016 which was followed by an appeal filed by Rukhminibai which was finally dismissed as abated on 30.08.2022. So also, the learned advocate for the Petitioner fairly submits that the Petitioner is not interested in recovery of the amount of pension paid to the deceased-Rukhminibai. Her immediate worry is the commencement of the pension from the date on which Rukminibai passed away since, by that time, the Civil Court had already delivered it's judgment holding that the Petitioner is the legally wedded wife (first wife).

13. Respondent No.1 has contended before us that this petition is premature. Such a statement hardly needs to be taken cognizance of. The fact remains that the Petitioner is legally entitled for the freedom fighter's pension extended by the State as well as the Central Government. Her entitlement,

notwithstanding the peculiar facts of the case, would commence from the date of death of Rukhminibai which is 17.06.2018.

14. The State Bank of India has stated in the affidavit in reply that the certified copy of the PPO is received by the Bank. The Petitioner has tendered before us a compilation of documents (37 pages), which are collectively marked as 'X-4' for identification. These are those documents which are directed to be produced, by Respondent No.1 - FFRD vide communication dated 10.07.2023 marked as 'X-2'. The "life certificate" and "not perform second marriage" declaration are not available for the present since the application of the Petitioner is pending before the Tahsildar Majalgaon and the District Collector, Beed. The Petitioner submits that these two documents will also be added to the documents at 'X-4' and would be supplied to the State Bank of India, Majalgaon. We therefore direct the Tahsildar, Wadwani and the District Collector, Beed to ensure that the Petitioner is delivered these two certificates within 21 days from today.

15. We have noticed that the Respondents have been searching for the original PPO though, *prima facie*, we have formed a view that the original PPO is with Respondent No.1 who now takes a stand that even the record pertaining to the deceased - Bhagwanrao / freedom fighter are not available and the papers pertaining to grant of pension to him are also not found. We cannot

expect this Authority, which is the Ministry of Home Affairs, Govt. of India to spend any further time in searching for these documents. All the Respondents shall, therefore, act upon the certified copy of the PPO which is available with the State Bank of India, Majalgaon and we direct State Bank of India, Majalgaon to submit this certified PPO with a covering letter, by preparing certified copies at its end to the District Collector as well as to the CPPC and the FFRD, within 21 days from today.

16. The Petitioner relies upon an order passed by this Court dated 21.09.2020 in Writ Petition No.1265/2018 filed by **Smt. Kasabai W/o Shamrao Shingare V/s. The Union of India and others**, to contend that the Petitioner should be granted the benefits of pension, with retrospective effect. It was contended in Kasabai (supra) that, as the pensioner in the said case died on 03.05.2016 and after his death, an application was given by his son on 26.07.2016 which was followed by an application in proper format dated 06.07.2017, that this Court directed the payment of family pension for the period from 03.05.2016 till 27.09.2017.

17. In **Smt. Kasabai W/o Shamrao Shingare** (supra), it has been held in paragraph nos.5 to 8 as under:

“5. Placing clause 5.2 and 5.2.2 in juxtaposition, it appears that both are not compatible with each other. Clause 5.2.2 does not give any discretion to the authority to grant pension from the date of

death of the pensioner and it shall be paid only from the date of application. Clause 5.2 gives discretion to the Ministry and the Ministry can also take the decision on payment of arrears even if the application is received after six months from the date of death of pensioner. The guidelines for disbursement of Central Samman Pension Scheme are to be followed. The Central Samman Pension Scheme is benevolent scheme meant to ameliorate the conditions of the freedom fighters who had made sacrifice for the country. Due to the sacrifice made, they had to either give up education or suspend their avocation. The welfare schemes and benevolent schemes will have to be given liberal interpretation. The scheme gives discretion to the Ministry to consider the payment of arrears even if the application is received after the six months after the death of the pensioner.

6. *In the present case, the pensioner had died on 03.05.2016 and after the death of the pensioner, the application was given by the son of the deceased on 26.07.2016, intimating the Bank to pay the family pension to the present petitioner. The said intimation was given within three months. Subsequent applications were given from time to time in large numbers for payment of family pension. For the first time on 26.07.2016, the application was given by the petitioner for family pension. It appears that the application in proper format was made on 06.07.2017.*

7. *The petitioner before us is old aged lady residing in rural village and illiterate. She cannot sign. She can put only her thumb impression. Only because the application was not given in the proper format and the simple application was given, the authority adopted technical approach to deny the family pension. The family pension is the only source of livelihood of the petitioner. The*

scheme will have to be interpreted in the manner so as not to render the scheme superfluous.

8. Considering the aforesaid aspect of the matter and further that the application was given by the petitioner well within a period of six months though may not be in the proper format, we direct the respondent No.1 to pay the arrears of family pension to the petitioner on account of death of her husband for a period from 03.05.2016 to 27.09.2017. The same shall be paid within three months from today.”

18. The facts and circumstances in the case before us are quite peculiar. The Petitioner is 86 years of age today and though she is a legally wedded wife, she received no pension after the demise of her husband on 12.06.1993 till 17.06.2018 (25 years), only because the second wife- Rukhminibai was paid the pension after the demise of Bhagwanrao. Now it is just a matter of continuation of the pension to the present Petitioner. Documents have been misplaced by various authorities as discussed above. We are, therefore, of the view that this is a fit case for directing the payment of pension from 17.06.2018 onwards.

19. **This petition is, therefore, allowed.** In the light of the above, we direct Respondent No.1 and Respondent No.2 to ensure that the arrears of pension payable to the Petitioner from the date of demise of Rukhminibai, in continuation as the nominee of the late Bhagwanrao, till 31.08.2023, shall be

paid within a period of 90 days. We similarly direct both these Respondents to ensure that the regular monthly pension shall be paid to the Petitioner from the month of September-2023 onwards on the normal date of depositing the pension amount in the Bank account of the Petitioner.

20. Rule is made absolute in the above terms.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]