

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

WRIT PETITION NO. 11864 OF 2019

Laxmibai wd/o. Bhaurao Mane,
Age 85 years, Occ. Nil.,
r/o. Madansuri, Tq. Nilanga,
District : Latur.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
2. The Chairman,
High Power Committee,
New Administrative Building,
Mantralaya, Mumbai-32.
3. The District Collector,
Latur, Dist. Latur.

.. Respondents.

Mr. V.S. Panpatte, Advocate for the petitioner
Mr. S.G. Sangle, AGP for respondent Nos. 1 to 3.

**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 13.03.2023
PRONOUNCED ON : 23.03.2023**

JUDGMENT [PER S.G. CHAPALGAONKAR, J]

1. The petitioner has approached this Court under Article 226 of the Constitution of India, for the following reliefs :-

(B) By issuing appropriate writ, order or direction, it may please be held and declared that the Govt. Resolution dated 30.07.2016 at Exhibit 'T' is not applicable to the case of the petitioner for getting freedom fighter's pension under the Freedom Fighters Pension Scheme and the same may please be quashed and set aside to the extent of the petitioner.

(C) By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent no.1 – State Government may please be directed to sanction freedom fighter's pension to the petitioner from the date of original application of her deceased husband i.e. 02.08.2004 by modifying the order/G.R. dated 5th August, 2019 at Exhibit 'U' and accordingly, release the arrears of pension to the petitioner within eight weeks.

2. The contention of the petitioner is that her husband late Shri Bhaurao Gangaram Mane had actively participated in Hyderabad Liberation Movement. He was imprisoned in Central Prison, Gulbarga during the period from 23.12.1256 Fasli to 24.7.1357 Fasli in pursuance of the conviction under Satyagrahi 58 Tahfuz.

3. Late Bhaurao Mane had applied on 2.8.2004 with respondent no.3 District Collector for grant of Freedom Fighter's Pension as per the scheme introduced by the State of Maharashtra. Unfortunately, said application was not considered, probably, for want of sufficient material to the satisfaction of the respondents. Late Bhaurao Mane expired on 24.4.2010. The petitioner being widow of Late Bhaurao made an application dated 16.7.2011 for release of pension from widow category. During pendency of the said application, the petitioner could get Jail Certificate dated 18.10.2012 containing details of conviction of late Bhaurao and period of his imprisonment in connection with the freedom movement. The Jail certificate was verified by the competent Committee and claim for grant of pension was forwarded to the

respondent No.3 alongwith Verification Report dated 1.6.2013. The respondent no.3 made attempt verify the authenticity of the Jail Certificate. However, for want of availability of old record the same could not be verified. Respondent No.3 – Collector, vide his communication dated 23.7.2014 directed the petitioner to submit a copy of the order of conviction dated 23.12.1356 Fasli.

4. The petitioner was, therefore, compelled to approach this Court by filing W.P. No. 8754 of 2014 seeking directions against the respondents to forward her proposal to the respondent No.1. The writ petition was allowed vide order dated 18.11.2014. Although respondent no.3 forwarded the proposal of the petitioner to the Government along with minutes of the meeting of the Zilla Gaurav Samiti, further decision was delayed. Meanwhile, the petitioner procured Verified Jail Certificate from Superintendent of Central Prison, Gulbarga along with communication dated 22.1.2016 forwarded by the Additional Director General of Police and Inspector General of Prisons, Bangalore. Even after receipt of the necessary documents evidencing participation of the husband of the petitioner in the freedom movement, alongwith jail certificate authenticated by the competent authority, the claim of the petitioner was kept pending. Again petitioner was, compelled to file Contempt Petition No. 544 of 2015 before this Court. The respondent No.1 sought two months' time to take final decision on the proposal of the petitioner citing the reason that the CID Inquiry is pending in relation to the Jail Certificate. Ultimately, vide order dated 5.4.2015, the respondent No.1 rejected the claim of the petitioner for want of verification off jail certificate. The petitioner was again required to knock the doors of this Court by filing W.P. No. 4923 of 2016. This Court

vide judgment and order dated 28.4.2018 again issued directions to consider and decide the claim of the petitioner. Finally, respondent No.1 issue Government Resolution dated 5.8.2019, thereby sanctioning the claim of the petitioner for release of freedom fighter's pension with effect from the date of order i.e. 5.8.2019.

6. The petitioner seeks to challenge aforesaid the decision of the Government to the extent of granting the freedom fighter's pension with effect from the date of Government Resolution instead of from the date of the original application submitted by her husband. The petitioner is also seeking declaration that the Government Resolution dated 13.7.2016 is not applicable to her case so far as it prohibits release of pension from the date of application.

7. In response to the notice issued by this Court, the respondent Nos. 1 and 3 filed their affidavit in reply. It is admitted that husband of the petitioner late Bhaurao Mane had filed application dated 2.8.2004 for grant of freedom fighter's pension. However, the same remained undecided for want of sufficient evidence in support of the claim. It is contended that the petitioner has filed present application on 16.7.2011. However, there was no reference regarding imprisonment suffered by late Bhaurao Mane. It is only after receipt of report dated 31.3.2017 from Additional Director General and State Crime Investigation Department, Pune regarding verification of the Prisoner Register showing name of late Bhaurao Mane, the claim could be processed. It is further contention of the respondents that the Government Resolution dated 4.7.1995 stipulates the list of requisite documents for processing the Freedom Fighters pension claim. The petitioner could not comply the requirement of documents. The delay in processing the claim cannot be attributed to

the respondents. It is further contended that the State of Maharashtra has taken a policy decision under Government Resolution dated 30.7.2016 to release the pension from the date of sanction order and not with retrospective effect i.e. from the date of submission of application.

8. Mr. V. S. Panpatte, learned advocate for the petitioner would submit that although the husband of the petitioner had devoted himself in freedom movement and he was imprisoned for his participation, he could not receive pension during his lifetime. He would submit that the application for grant of freedom fighter pension was made by late Bhaurao Mane on 2.8.2004. However, it was kept pending by respondent authorities on flimsy grounds. He would urge that it was the responsibility of the State Authorities to find out the record pertaining to conviction and consequential imprisonment of the freedom fighter and release pension, which is in the nature of Honour. He would submit that the petitioner was required to approach this court by filing two writ petitions and a contempt petition, to mobilize the respondents for processing the claim. Finally, after 14 years of submission of application by late Bhaurao Mane, the petitioner widow could get the pension under the scheme as per the Government decision dated 15th August, 2019. He would urge that there is direct evidence regarding participation of late Bhaurao Mane in the Hyderabad Liberation Movement alongwith order of his conviction and consequential imprisonment. In that view of the matter, the respondents ought to have granted pensionary benefits with effect from the date of application filed by late Bhaurao Mane and not from the date of sanction order dated 15th August, 2019.

9. Mr. Panpatte, learned advocate for the petitioner placed his reliance on the judgment of the Supreme Court of India in the matter

Mukundlal Bhandari and others vs. Union of India and others, reported in AIR 1993 SC 2127 and the order of this court in W.P. No. 5764 of 2013 in the matter of Ramrao Govindrao Shinde Vs. State of Maharashtra dated 10.8.2015. He would also rely upon reported judgment of the Supreme Court in the matter of "Union of India and others vs. Kausalya Devi reported in (2007) 9 SCC 525.

10. Mr. S.G. Sangle, learned AGP appearing for respondent Nos. 1 and 3 would submit that the claim of the petitioner could not be considered in view of the policy decision taken by the State Government under Govt. Resolution dated 30.7.2016 which specifically stipulates that freedom fighter pension would be admissible from the date of issuance of sanction order. He would submit that the nature of evidence, either direct or indirect regarding participation in the freedom movement is irrelevant. The petitioner is granted benefit from the date of sanction order. He would further urge that the petitioner could not justify her claim by producing requisite documents. He would submit that though late Bhaurao Mane had submitted application in the years 2004, till his death in the year 2010, compliance of the requisite documents was not made. Therefore, claim of the petitioner that Freedom Fighters Pension must be granted with effect from the date of application, cannot be entertained.

11. We heard the learned counsel appearing for the respective parties. With their assistance we have gone through the record of the case and the respective pleadings. We have also perused the judgments relied upon by the respective parties in support of their contentions.

12. The Government of Maharashtra introduced Freedom

Fighter's Pension Scheme with laud object to provide financial assistance to the freedom fighters, who actively participated in the Hyderabad Liberation Movement during the period from 1947 to 1948. Such freedom fighters were honoured under the Freedom Fighters Pension Scheme, 1972. Subsequently, by issuing Government Resolutions dated 28.5.1992 and 4.7.1995, instructions for processing the claim were elaborated and mechanism was prescribed. Late Bhaurao Mane had active participation in the Hyderabad Liberation Movement. The evidence on record establish that he was arrested at Osmanabad and on conviction he was imprisoned at Gulbarga (Kalburgi) during the period from 2.1.1957 Fasli to 24.7.1957 Fasli under the Sagyagrahi 58 Tahfuj during freedom movement. It is apparent that during his lifetime, he made application on 2.8.2004 seeking the benefit of Freedom Fighters Pension Scheme 1972. Unfortunately, he was not armed with the documents, demonstrating his conviction and imprisonment; probably, because he is inhabiting in remotest part of the rural areas. Many of such freedom fighters have not preferred to raise the claim of pension either for want of knowledge or because of the self-honour. Unfortunately, because of the precarious economic conditions post-independence, they decided to take benefit of the scheme. Late Bhaurao Mane could not effectively pursue his application during his lifetime. The petitioner/widow of late Bhaurao Mane made her application in the year 2011 for grant of pension. She persuaded said application. She has produced the best possible evidence in the form of Jail Certificate of late Bhaurao Mane. The respondent authorities did not respond to her application. She was therefore required to approach this court by filing two Writ Petitions and a Contempt Petition and finally in the year 2019, pension has been sanctioned to her. Such benefit is made available from the date of

sanction order passed on Government Resolution dated 30.7.2016. The Government Resolution dated 30.7.2016 stipulates that pensionary benefit can be granted prospectively i.e. from the date of sanction order and no arrears are admissible irrespective of the nature of evidence.

13. The Supreme Court of India in the matter of ***Mukundlal Bhajndari and others Vs. Union of India (supra)*** while dealing with a similar issue in Freedom Fighters Pension Scheme of 1972 observed that for reasons more than one, the benefit of pension of freedom fighters should flow only from the date of application and not from the date earlier. The object in making said claim was not to reward or compensate the sacrifices made by freedom fighters, but the object was to honour and where it was necessary to mitigate the sufferings of all those who had given their all for the country in the hour of its need. It is also observed that there are instances where many of the freedom fighters inspite of not having sufficient income refused the benefit of scheme since they considered it affront to the sense of patriotism with which they plunged in freedom struggle. The spirit of the scheme being both to assist and honour the need and acknowledge suitably sacrifices made, it would be contrary to its spirit to convert into some kind of premium of compensation.

14. The Supreme Court of India in yet another judgment in the case of ***Union of India Vs. Kausalyadevi*** directed that the pension should be granted from the date of application when the evidence regarding participation of freedom fighter is primary in nature. However, in case where the claim is allowed on the basis of secondary nature of evidence like statement of another detainee which needs to be established to the satisfaction of the competent authority, pension can be granted from the

date of sanction order. The view taken above finds support from another judgment of the Supreme Court of India in the matter of Government of India represented by the *Secretary Vs. K.V. Saminathan reported in (1997) 10 SCC 190*.

15. Learned counsel for the petitioner invited out attention to the some orders passed by this court, particularly, in W.P. No. 5764 of 2013 in the matter of *Ramrao Govindrao Shinde vs. State of Maharashtra and order in W.P. No. 6766 of 2014 in the matter of Smt. Suman Kabra Vs. State in W.P. 22.4.2019*, wherein, the respondents are directed to release pension from the date of application.

16. In the light of aforesaid observations of the Honourable Supreme Court in the matter of Mukundlal Vs. Union of India and others, if the restrictions imposed under the impugned Govt. Resolution dated 30.7.2016 are considered, we have no hesitation to hold that the decision to grant freedom fighters from the date of sanction order, instead of the date of application would be contrary to the spirit and object of releasing pension. Particularly, in the facts of the present case, the first application was made by late Bhaurao Mane in the year 2004 for grant of pension, which was kept pending without any decision till 2010. On his death in 2010, the petitioner widow was required to file her application. She was required to collect the documents to the satisfaction of the respondent authorities. However, under the pretext of verification of those documents, the claim was kept pending for years together. The petitioner was required to approach this court by way of filing writ petitions, to move the respondent authorities to consider her claim and take appropriate decision. In spite of orders of this Court, her claim was kept in abeyance giving reason that the Jail Certificate submitted by her is

under verification from the State CID. Finally, the claim has been sanctioned in the year 2019.

17. So far as Government Resolution dated 30.7.2016 is concerned, it restricts the benefit of pension from the date of the sanction order. The reason given for laying down such policy is, the financial burden on public exchequer. Except such reason, no other stipulation finds place in the Government Resolution. As observed above, the scheme for Freedom Fighters Pension has been introduced to bestow financial aid to the freedom fighters or his family member. The Supreme Court of India, in the matters of *Mukundlal Bhandari and others vs. Union of India and Union of India Vs. Kausalyadevi*, as well as subsequent judgments held that where there is unimpeachable evidence to demonstrate participation of freedom fighter in the liberation movement, the pension must be granted from the date of application. As has been observed in this case, though late Bhaurao made his application in 2004, he could not receive pension during his lifetime. His widow/petitioner was required to file her application for grant of pension on 16.7.2011 and to run from pillar to post and approach this court on three occasions to mobilize the State machinery. Pertinently, in this case, there is direct evidence to show participation of late Bhaurao Mane in the Hyderabad Liberation Movement coupled with his conviction and consequential imprisonment. In such a scenario, withholding the benefit of pension for more than 8 years itself is great plight suffered by the petitioner. In such cases, the policy decision taken by the Government under the resolution dated 30th July, 2016 would add to the misery of the freedom fighter or his family members. The decision under the Government Resolution dated 30th July, 2016 runs contrary to the basic object of the scheme. In that view of the matter, the Government

Resolution dated 30th July, 2016 does not stand to the scrutiny of reasonableness embodied under Article 14 of the Constitution of India. Hence, it is liable to be quashed and set aside to the extent of its applicability to cases where unimpeachable evidence of participation of freedom fighter, like jail certificate, conviction order is available.

18. In that view of the matter, in the facts of the present case, we hold and declare that the petitioner is entitled for release of pension from the date of her application i.e. 16th July, 2011. We hold and declare that the order dated 5.8.2019 to that extent is unjust and illegal. We accordingly allow the writ petition and pass the following order :-

ORDER

[I] Writ petition is partly allowed.

[II] We hold and declare that the Government Resolution dated 30th July, 2016 is invalid so far it is made applicable to cases where unimpeachable evidence regarding participation of the freedom fighters is available on record and it is not required to establish claim on the basis of allied material.

[III] The respondents are directed to release the Freedom Fighters Pension to the petitioner w.e.f. 16th July, 2011 and release all consequential benefits within a period of 3 months from the date of this order.

[IV] There shall be no orders as to costs.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE