

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

WRIT PETITION NO. 2663 OF 2016

SMT. BHAGIRATHIBAI WD/. MADHAVRAO PATIL
VERSUS
THE UNION OF INDIA AND OTHERS.

...
Mr. Sachin S. Deshmukh h/f. Mr. V.S. Panpatte, Advocate for petitioner
Mr. S.B. Pulkundwar, AGP for respondent Nos. 2 to 4
Mr. Bhushan Kulkarni, Advocate for respondent No.3.
Mr. Amol N. Patale, Standing Counsel for R-1 Union of India.

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

**RESERVED ON : 17TH APRIL, 2023
PRONOUNCED ON : 3rd MAY 2023.**

ORDER [PER S.G. CHAPALGAONKAR, J.:-

The petitioner has approached this Court under Article 226 of the Constitution of India, thereby challenging the order passed by the Respondent No.2/ Secretary, General Administration Department, thereby rejecting her claim for grant of underground Freedom Fighters Sanman Pension towards participation of her husband in liberation movement. The petitioner further seeks issuance of writ of Mandamus against the respondents to release Freedom Fighters Pension.

2. The contention of the petitioner is that, her husband, namely, Madhav Tukaram Patil had participated in the Hyderabad Liberation movement and worked as underground volunteer. During the year 1947-49, he participated in the Hyderabad Liberation Movement under the leadership of veteran freedom fighters namely, Yashwantrao Saigaonkar, Gajananrao Attarde etc. In the year 1986, he applied for grant of freedom fighters pension to the Government of India alongwith supporting evidence but it was not considered. In the year 1995, her

husband has made an application to respondent No.4 - Collector for grant of pension under the State Government Freedom Fighters Pension scheme, in terms of Govt. Resolution dated 4.7.1995. Unfortunately, the said claim was rejected by respondent No.4/Collector vide communication dated 12.11.1999.

3. It is further contention of the petitioner that after death of her husband, she submitted her application for getting freedom fighters pension with respondent No.4 Collector. However, on 16.7.2009, her claim was rejected for want of requisite documents. The petitioner approached this Court vide W.P. No. 793 of 2010 thereby challenging the communication dated 16.7.2009. This Court summarily dismissed her writ petition vide order dated 3.3.2010, however, granted liberty to the petitioner to apply afresh in terms of the Government Resolution dated 4.7.1995. In tune with the directions given by this Court, the petitioner filed fresh application before respondent No.4 alongwith supporting documents. On 20.5.2010 and 31.5.2010, she received communication from the respondent No.4 to submit evidence as regards to the hardship suffered by her husband on account of his participation in the freedom movement. The petitioner filed her representation dated 5.6.2010 and 13.9.2010, with requisite documents and orders passed by this Court in similar set of facts. The petitioner submitted affidavits of one Mr. Hambirrao Chavan dated 22.7.2011 and affidavit dated 10.8.2011 by Yashwantrao Saigaonkar in support of her claim. Thus, she complied with the eligibility criteria prescribed under Govt. Resolution dated 4.7.1995. However, her claim was not taken to its logical end. Therefore, she approached this Court vide W.P. No. 2309 of 2013 which was disposed of with direction to forward her claim to the State Government for grant of Samman Pension. Thereafter petitioner was called upon to appear before the respondent No.4. She appeared in the office of respondent No.4 alongwith Shri Yashwantrao Saigaonkar, veteran freedom fighter,

however, she received communication dated 7.8.,2015 by which her claim has been rejected giving reason that she failed to establish her claim in terms of the eligibility criteria mentioned in the Government Resolution dated 4.7.1995.

4. In response to the notice of this writ petition, respondent Nos. 2 and 4 filed their affidavits in reply stating that in pursuance of the orders passed by this Court in W.P. No. 793 of 2010 and 2309 of 2013, the claim of the petitioner has been duly considered in terms of Govt. Resolution dated 4.7.1995 which was found to be non-compliant with the eligibility criteria and as such, it was rightly rejected for the reasons recorded in the impugned order dated 7.8.2015.

5. We have heard learned advocates appearing for respective parties, perused the record with their assistance. Mr. Sachin Deshmukh, holding for Mr. V.S. Panpatte advocate for the petitioner would submit that in terms of the requirement of Govt. Resolution dated 4.7.1995, the petitioner has submitted affidavits of veteran freedom fighters who have detailed the role of late Madhavrao Patil in the liberation movement as an underground freedom fighter. He would submit that the communication dated 7.8.2015 records perverse reasons. Although the petitioner has filed original affidavits of veteran freedom fighters the impugned communication records that photo copies are tendered into service. He would further submit that the petitioner has given requisite information regarding participation of her husband in the liberation movement before the District Honour Committee during meeting dated 1.4.2015, however, it has been wrongly recorded that she could not furnish such information. He would submit that the impugned communication is liable to be quashed and set aside and directions are necessary to be issued to the respondents for freedom fighter's pension in favour of the petitioner.

6. Mr. S.B. Pulkundwar, learned AGP appearing for respondent Nos. 2 and 4 would submit that during the lifetime of late Madhavrao Patil he had applied for Freedom Fighter's pension in terms of the scheme formulated under Govt. Resolution dated 4.7.1995. He could not establish his claim and suffered rejection under order dated 12.11.1999. He would further submit that the petitioner submitted her claim in the year 2007. It was rejected after due consideration. The petitioner filed writ petition assailing the said order. Said writ petition was also dismissed; but the petitioner was granted liberty to make fresh application in terms of Govt. Resolution dated 4.7.1995. The application tendered by the petitioner was re-considered. She was given sufficient opportunity to establish her claim. She was interviewed before the District Honour Committee. However, she could not substantiate the contentions made in her application and demonstrate the instances depicting participation of her husband as underground freedom fighter. Her claim put forth in application was found to be non-compliant with the requirements under the scheme. Accordingly, he justified the impugned communication rejecting the claim of the petitioner.

7. Before considering the rival submissions canvassed before us, it would be appropriate to refer to the case of ***"Kamalbai Sinkar Vs. State of Maharashtra, Civil Appeal No. 5344 of 2012 (SLP (Civil) No. 8899 of 2010, decided by the Apex Court on 20.7.2012,*** wherein, the Apex Court, in para.3 considered the Govt. Resolution dated 4.7.1995 and has observed that the criteria for grant of freedom fighters' pension was specified under two different categories, namely, one under prisoners' freedom fighters and other under the category of underground freedom fighter. In para.3, it was observed that, for grant of pension under the second category, namely, underground freedom fighters, following requisites were stipulated :-

“E) Underground Freedom Fighter :-

Those freedom fighters who were underground and doing a work in a movement of Quit India 1942-44 and Hyderabad Mukti Sangram 1947-48. They submit the following necessary certificates :-

- 1) Required to quit house and stay outside,
- 2) Required to leave education and removed from Educational Institutions
- 3) Was so beaten by the police that caused disability,
- 4) The Certificates of two Freedom Fighters who were convicted for minimum two years or who were declared absconding or who remained absconded for at least two years and along with such certificate, the Proclamation of conviction or absconding or supporting affidavit of person issuing such certificate alongwith the orders of Government.
- 5) The certified copy, if any, Government document of that time is available regarding the underground.
- 6) If any information about the name published in newspapers, the original newspaper.
- 7) At the time of remark, District Gaurao Committee shall submit their opinion.”

8. Pertinently, the husband of the petitioner, namely, late Madhavrao Patil had submitted his claim for grant of freedom fighter's pension in the year 1986 alongwith supporting affidavits of veteran freedom fighters namely, Yashwantrao Saigaokar, Gangaram Kapale and certificate of Shri Ramchanderrao Venkatrao Kapse. After due consideration of the claim, his claim was rejected vide communication dated 12.11.1999 issued by the respondent No.4 District Collector Latur. The said order was never challenged and has attained finality. It appears

that the petitioner submitted her claim after death of her husband in the year 2007. The said application/claim was also rejected vide order dated 16.7.2009. The petitioner approached this Court by filing W.P. No. 793 of 2010 which was summarily rejected. Perusal of the said order would show that this Court has specifically observed in para.2 that the Zilla Gaurav Samiti did not favourably recommend the proposal of the petitioner's husband for grant of pension. However, the petitioner was granted liberty to pursue her claim in terms of Govt. Resolution dated 4.7.1995.

9. The petitioner submitted her claim on 13.4.2010 before the District Collector alongwith affidavits of veteran freedom fighters namely, Yashwantrao Saigaonkar, Gangaram Sangramappa Kapale and Ramchandra Venkatrao Kapse. The petitioner was personally interviewed in the office of the District Collector. However, she could not state about the role of her husband in the liberation movement as underground freedom fighter.

10. We have considered the contents of the applications submitted by the petitioner alongwith supporting affidavits of veteran freedom fighters. After close scrutiny of the material, we find that the inconsistent story has been put forth regarding participation of late Madhavrao Patil in the liberation movement. Initially, claim was made that he was jailed; but no such evidence is brought on record. Thereafter claim is raised that he was required to stay away from home but the particulars and period is missing. The supporting affidavits of veteran freedom fighters are also projecting inconsistent story which donot inspire confidence regarding role and participation of late Madhavrao Patil in the freedom movement. In this background, we find it difficult to reconcile the material on record that would support claim of the petitioner for grant of freedom fighter's pension in terms of the eligibility

criteria laid down under Govt. Resolution dated 4.7.1995. The findings recorded by respondent while rejecting claim are consistent with record on material particulars.

11. In that view of the matter, we are not inclined to entertain the petition under writ jurisdiction and same is hereby dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-