

KAMALBAI SINKAR

v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 5344 of 2012)

JULY 20, 2012

[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM
KALIFULLA, JJ.]

Freedom Fighters' Pension - Application seeking freedom fighters' pension - In the category of 'Underground Freedom Fighter' - Documents furnished as per the requirement under Government Resolution - Application rejected by State Government - High Court confirming the order of State - On appeal, held: The applicant made out a case for grant of Freedom Fighters' Pension under the category 'Underground Freedom Fighter' - Since the applicant is no more, direction to grant the pension to his wife-appellant.

Husband of the appellant forwarded his application claiming freedom fighters pension under the category 'Underground Freedom Fighter'. He enclosed certain documents in support of his claim as required by the Government Resolution dated 4.7.1995. The State Government communicated the Collector that there was no concrete evidence to prove the participation in the freedom fight movement by the applicant and hence his application was rejected. Writ Petition was filed challenging the order of the State. High Court dismissed the petition confirming the order of the State. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The appellant's husband made a genuine effort to collect all those credentials in his support as

A required under the Resolution of the State Government dated 04.07.1995, and forwarded them to the State Government along with his application. When the Collector forwarded his letter and reiterated his recommendation in his subsequent communications,
B there was no reason for the State Government to simply reject the application without assigning any reason. A perusal of the documents enclosed by the appellant's husband along with his application disclose that the appellant's husband made out a case for grant of
C Freedom Fighters' Pension under the category "Underground Freedom Fighter". There was nothing more for the State to examine to honour the claim of the appellant's husband for grant of Freedom Fighters' Pension. The claim of the appellant's husband cannot be
D held to be a fraudulent one or without any supporting material. The High Court ought to have examined the grievance of the appellant before confirming the order of rejection of the respondent State. [Paras 8 and 9] [1017-A-E]

E *Gurdial Singh v. Union of India and Ors.* 2001 (8) SCC 8: 2001 (3) Suppl. SCR 323 - relied on.

F 2. The respondent State is directed to grant Freedom Fighters' Pension in favour of the appellant's husband and since he is no more, grant the same with all arrears to the appellant. [Para 9] [1017-F]

Case Law Reference:

2001 (3) Suppl. SCR 323 Relied on Para 8

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5344 of 2012.

H From the Judgment & Order dated 6.3.2009 of the High Court of Judicature of Bombay, Bench at Nagpur in Writ Petition No. 506 of 2009.

Satyajit A. Desai, Anagha S. Desai, Somanatha Padhan
for the Appellant. A

Mike P. Desai, Sanjay Kharde, Asha Gopalan Nair for the
Respondents.

The Judgment of the Court was delivered by B

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave
granted.

2. This appeal arises out of the order passed by the High
Court in the Writ Petition in which the claim of the appellant's
husband for grant of Freedom Fighters' Pension came to be
rejected. Today the original applicant is not available and his
wife is pursuing this litigation. By a Government Resolution
dated 04.07.1995, after making references to various other
earlier resolutions of the Government of Maharashtra relating
to grant of Freedom Fighters' Pension, the criteria for grant of
Freedom Fighters' Pension was specified under two different
categories, namely, one under "Prisoners Freedom Fighter"
and the other under the category of "Underground Freedom
Fighter". The claim of the appellant's husband was under the
second category, namely, "Underground Freedom Fighter". C
D
E

3. For grant of pension under the said category following
requisites were stipulated:

"E) Underground Freedom Fighter:- F

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

(1) Required to quit house and stay outside.

(2) Required to leave education or removed from
Educational Institutions.

(3) Was so beaten by the police that caused disability. H

A (2) 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 certificates, the Proclamation of conviction or absconding or supporting affidavit of
B person issuing such certificate alongwith the orders of Government.

(4) The certified copy, if any, Government document of that time is available regarding the underground.

C (5) If any information about the name published in newspapers, the original newspaper.

(6) At the time of remark, District Gaurao Committee shall submit their opinion."

D 4. The said Resolution was issued with the consent of the Finance Department bearing reference No. C.R-1183/94/VY-4 dated 10.11.1994. Pursuant to the said resolution dated 04.07.1995, the husband of the appellatant forwarded his application dated 05.08.1995 through the Collector of Amravati.

E Along with the said application, he also enclosed certain Annexures (viz) a certificate of renowned freedom fighter dated 24.04.1984 by name Shankar Pandurangji Choudhari, a certificate issued by Mr. Maganlal Bagdi, Ex-MP, Hoshangabad along with his own certificate, a certificate of Patwari Kasba,

F Warud Division, Taluk Warud dated 29.09.1981, a certificate dated 08.06.1981 of freedom fighter S.P.Choudhary of Warud Taluk, Amravati District, a certificate issued by the office of Naib Tehsildar, M.K. Puranik dated 05.08.1961 in favour of Shankar Pandurang Choudhary about the imprisonments suffered by him and a medical certificate dated 15.08.1981 issued by Dr. S.G.

G Choudhari in favour of the applicant about his participation in Satyagraha Morcha on 13.08.1942, the injuries suffered by him in the Lathi Charge and the treatment given to him between 13.08.1942 to 15.08.1942.

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5. Based on an earlier order passed by the Nagpur Bench of the High Court in Writ Petition No.424 of 2007, the Collector of Amravati in his letter dated 29.10.2009 informed the appellant that her husband's claim for grant of Freedom Fighters' Pension was submitted to the Government along with recommendation of the Gaurav Samiti dated 20.12.1996. The appellant was advised to contact the Government. However, in the order of the State Government dated 22.01.2008 communicated to the Collector of Amravati, it was stated that there was no concrete evidence in proof of the participation of the freedom fight movement by the husband of the appellant and his claim for grant of Freedom Fighters' Pension was, therefore, rejected. The Collector was directed to communicate the same to the appellant.

6. Having perused the above materials on record, at the very outset, we wish to refer to the observations made by this Court in regard to the grant of Freedom Fighter's Pension in the decision reported in *Gurdial Singh v. Union of India & Ors.* [2001 (8) SCC 8]. In paragraph 7 of the judgment, this Court has highlighted the manner in which such claims are to be considered for grant of Freedom Fighters' Pension. It will be worthwhile to make a reference to the said passage before expressing our conclusion with regard to the claim of the appellant's husband in the case on hand. Paragraph 7 reads as under:

"7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about

A half-a-century back and had not expected to be rewarded
 for the imprisonment suffered by them. Once the country
 has decided to honour such freedom fighters, the
 bureaucrats entrusted with the job of examining the cases
 of such freedom fighters are expected to keep in mind the
 B purpose and object of the Scheme. The case of the
 claimants under this Scheme is required to be determined
 on the basis of the probabilities and not on the touchstone
 of the test of "beyond reasonable doubt". Once on the
 C basis of the evidence it is probalised that the claimant
 had suffered imprisonment for the cause of the country and
 during the freedom struggle, a presumption is required to
 be drawn in his favour unless the same is rebutted by
 cogent, reasonable and reliable evidence."

[emphasis added]

D 7. Keeping the above broad principles in mind, when we
 analyse the claim of the appellant's husband, we find that the
 appellant's husband had filed along with his application dated
 05.08.1995, a host of documents in support of his claim. They
 E were shown as Annexures to his application and the details of
 which have been referred to by us in the earlier part of this order.
 • In fact after the order of the Nagpur Bench passed in WP
 No.424 of 2007, the Government in its communication dated
 23.11.2007 addressed to the Collector of Amravati stated that
 F the claim of the appellant's husband was not traceable and,
 therefore, all related documents were once again required to
 be collected and submitted to the Government including
 recommendations of Gaurav Samiti as well as the Collector's
 comments. Apparently, pursuant to the said communication, the
 G Collector in his letter dated 29.10.2009 informed the appellant
 that the case submitted by her husband for getting pension as
 Underground Freedom Fighter was submitted to the
 Government along with office letter bearing No.KL/SS/PP/KV/
 3216 dated 20.12.1996 and the recommendations of Gaurav
 Samiti.

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8. In the said circumstances, we only state that the appellant's husband made a genuine effort to collect all those credentials in his support as required under the Resolution of the State Government dated 04.07.1995, and forwarded them to the State Government along with his application dated 05.08.1995. When the Collector, Amrawati forwarded his letter dated 20.12.1996 and reiterated his recommendation in his subsequent communications dated 14.10.2007 and 30.11.2007 there was no reason for the State Government to simply reject the application without assigning any reason. A perusal of the documents enclosed by the appellant's husband along with his application disclose that the appellant's husband made out a case for grant of Freedom Fighters' Pension under the category "Underground Freedom Fighter". Applying the broad principles laid down in the decision of this Court in Gurdial Singh (supra), it will have to be held that there was nothing more for the State to examine to honour the claim of the appellant's husband for grant of Freedom Fighters' Pension. The claim of the appellant's husband cannot be held to be a fraudulent one or without any supporting material.

9. In our considered view, the High Court ought to have examined the grievance of the appellant before confirming the order of rejection of the respondent State. In the circumstances, the appeal deserves to be allowed. The impugned orders are set aside. The respondent State is directed to grant Freedom Fighters' Pension in favour of the appellant's husband and since he is no more, grant the same with all arrears to the appellant by passing appropriate orders expeditiously preferably within four weeks from the date of communication of copy of this order. We hope and trust that the State Government will not indulge in any further delay in the matter of grant of pension so as to enable the appellant to avail the benefits at least during her life time. The appeal stands allowed with the above directions to the respondent State. No costs.

K.K.T.

Appeal allowed.