

(1997) 07 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 1826 of 1997

Kashinath Trimbaksingh Pardeshi

APPELLANT

Vs

The State of Maharashtra and another

RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 BomCR 526

Hon'ble Judges : J.A. Patil, J;A.V. Savant, J

Bench : Division Bench

Advocate : S.S. Patwardhan, for the Appellant; V.S. Gokhale, for the Respondent

Judgement

A.V. Savant, J.—Perused our earlier order dated 13th June, 1997 and the two affidavits filed thereafter by the concerned Deputy Secretary Shri Shankar Vithalrao Nalavade. The first affidavit is dated 21st June, 1997 and the second affidavit is dated 16th July, 1997.

2. Rule. By consent, rule made returnable forthwith. Heard both the learned Counsel.

3. This petition presents the unfortunate plight of the persons who claim pension on the ground that they are freedom fighters. Unfortunately, in the 50th year of independence, we find that the treatment meted out to many persons like the present petitioner is far from happy. We have already indicated our displeasure at the response of the State Government to the orders passed by this Court from time to time commencing with the order dated 19th December, 1994 passed in Writ Petition No. 5242 of 1994 followed by the order dated 21st June, 1996 passed in Contempt Petition No. 27 of 1996.

4. As far as this petitioner is concerned, only two grounds are stated for the rejection of his claim. The two grounds are (i) there are no details in the petitioner's application and the recommendation of the two freedom fighters as to the petitioner's participation in the freedom struggle and (ii) as per the

guidelines applicable in December, 1994, the age of the petitioner ought to have been atleast 16 years at the time of participation in the freedom struggle.

5. In the first affidavit dated 23rd June, 1997 made by Shri Nalavade, paras 4 and 5 contain the averments which are wholly unsustainable and depict an attitude on the part of the State Government to some how find fault with the application, if not to harass the petitioner. We are constrained to say this and we had expressed our anguish to the learned Advocate General who, at one stage, appeared in the matter and expressed his inability to support the statements made in paras 4 and 5 of the affidavit dated 23rd June, 1997. We had intended to initiate contempt action against the concerned officers for disrespect shown to the orders of this Court in Writ Petition No. 5242 of 1994 and Contempt Petition No. 27 of 1996. However, Shri Nalavade has filed a fresh affidavit today wherein he has tendered unconditional apology for the mistakes committed by him in making the averments in paras 4 and 5 of his affidavit dated 23rd June, 1997. In para 4 of the affidavit dated 16th July, 1997, Shri Nalavade has stated as under :

"4. I tender my unconditional apology for the mistakes committed by me, in paras 4 and 5 of my affidavit in reply dated 23rd June, 1997. I may be permitted to place the file of the petitioner, before the High Power Committee for reconsideration of the decision."

In this view of the matter, we refrain from initiating any action for the contempt against the concerned officers.

6. Coming to the merits of the matter, in the light of the two affidavits of Shri Nalavade before us, it is clear to us that none of the two grounds stated in the impugned order dated 13th January, 1997 is sustainable in the facts of the present case. In fact, the learned Advocate General frankly stated on the last occasion that in view of the application made by the petitioner as also the certificates of (i) Ramchandra Krishnaji Hundekari (page 19); (ii) Digambar Maruti Bhosale (page 21); (iii) Pandurang Bhanudas Dingare (page 23) ; and (iv) Manik Govind Hundewar (page 24), the objection that there were no details of the petitioner's participation in the freedom struggle cannot be sustained. As far as the second ground is concerned, it needs to be reiterated that in the light of the decision of this Court in Bhalchandra Trimbakrao Vaidya v. Union of India and others, 1995 (3) B.C.R. 370 : 1994 M.L.J. 1876 the ground is unsustainable and, fortunately, the second affidavit of Shri Nalavade specifically says so.

7. In this view of the matter, despite the second affidavit suggesting that the matter should be remanded back to the State Government for reconsideration, we are of the view that the petitioner is entitled to succeed. No useful purpose will be served by sending the matter back to the State Government and leaving the petitioner at the mercy of the officers of the State Government. This is a third time that the petitioner has approached this Court for the freedom fighter's pension to which, on the facts as they transpire, he is entitled on merits.

8. Before parting with this petition, we may indicate that having regard to the

plight of the freedom fighters, most of whom are of very advanced age, the State Government would be well advised to evolve a scheme of insisting upon opening a bank account in the name of the concerned freedom fighter at a bank nearest to his place of residence and the State Government should itself ensure that the cheque representing the amount of pension is directly credited to the freedom fighter's account without the freedom fighter being required to visit the Collector's office and undergo the humiliation which is inevitable in such matters. We need not elaborate the experience that one has to suffer in such matters. We, therefore, direct the State Government to ensure that a scheme is promulgated within four weeks from today under which steps must be taken to ensure that every freedom fighter is required to open a bank account at a bank nearest to the place of his residence and the cheque representing the pension is directly credited to his account by the State Government under intimation to the concerned freedom fighter.

9. In view of the above, we pass the following order.

(i) Rule is made absolute in terms of prayers (a) and (b).

(ii) In view of the law laid down by the Supreme Court in *Mukund Lal Bhandari and others Vs. Union of India and others*, , the petitioner would be entitled to the freedom fighters' pension from the date of application.

(iii) The State Government is directed to take requisite steps in the light of the directions contained in para 8 above and report to this Court by Monday the 14th August, 1997.

10. As far as costs are concerned, it is brought to our notice that in *Ramchandra D. Erande Vs. Union of India and Another*, , in similar situation, this Court had awarded the costs of Rs. 5,000/- to be paid by the State Government. Having regard to the facts mentioned above, we direct the first respondent State to pay the costs of Rs. 5,000/- to the petitioner within four weeks from today.

11. Rule made absolute.