
(2002) 10 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 2849 of 1994

Yamunabai Mali

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Citation : (2002) 10 BOM CK 0078

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : Uday S. Malte, for the Appellant; P.G. Godhamgaonkar, Standing Counsel, For respondent No. 1, Mrs. M.N. Deshpande, A.G.P., for the Respondent

Judgement

B.H. Marlapalle, J.—The petitioner is a widow of late Shri Deochand Mali, a resident of Hadgaon, Taluka : Erandol in Jalgaon district. She has contended that her husband participated in the Indian Freedom struggle in the year 1942-43 and was arrested by the police under Rules 56(4) and 38(5) of the Defence of India Rules. He was convicted by the Magistrate, First Class, Erandol on 2nd September, 1942 and was sentenced to suffer six months R.I. and a fine of Rs. 200/-, in default thereof two months imprisonment. She also states that her late husband was taken in jail on 3rd September, 1942 and was released unconditionally on 12th January, 1943. He died on 2nd May, 1964.

2. The Government of India announced a pension scheme for the freedom fighters and their family/widows with effect from 15th August, 1972. In response to the same the petitioner submitted her application in 1982 and the same was rejected. Simultaneously, she had also applied to the Government of Maharashtra for grant of pension under the State Government Pension Scheme for freedom fighters and the Government of Maharashtra awarded her pension. The petitioner submitted a fresh representation on 15th December, 1992 to reconsider her case on the basis of the view taken by this Court in Writ Petition No. 1414 of 1991 which came to be decided on 23rd February, 1992. She did not hear anything further from the respondent No. 1 and hence this petition.

3. On behalf of respondent No. 1 affidavit as well as supplementary affidavit in reply have been filed. It is admitted that initially the Government of India had announced Freedom Fighters Pension Scheme, 1972 and under the same scheme a person who had suffered six months imprisonment/externment/ internment, abscondence against an executive order was eligible to get pension. This scheme was revised and liberalised by renaming it as the Swatantrata Sainik Summons Pension Scheme, 1980 which came into force from 1st August, 1980. Under this revised scheme, participation and sufferings in several movements/activities in the context of the freedom struggle were recognised for pension. The last date for receipt of application under the revised scheme was 31st March, 1982. Pursuant to the view taken by the Apex Court the respondent No. 1 made the 1980 scheme applicable to the participants of Arya Samaj Movement as well with the same terms and conditions and such participants were granted pension from 1st August, 1980. It is contended that even if the petitioner's case is considered favourably she would be entitled for pension only from the date the pension scheme was modified i.e. 1st August, 1980 and not from 1972. The additional affidavit submitted states that on verification of jail certificate submitted by the petitioner the Superintendent of Jail, Dhule was called upon to submit verification record and by letter dated 6th February, 1995 he informed that according to the records available with the jail the name of the petitioner's husband did not figure in the record. The respondent No. 1, therefore, presumed that the petitioner is not entitled for the pension.

4. As directed by us the learned counsel for the petitioner has submitted copy of the original certificate dated 8th of September, 1964 signed by the Superintendent of Jail, Dhule district prison and the said certificate reads, as under:

"This is to certify that Shri Deochand Abaji Mali, Aged : 15-16 years, of Adgaon, Taluka : Erandol, District E.K., was admitted to Dhulia District Prison, Dhulia on 3-9-1942.

He was sentenced to six (6) months R.I. and to pay Fine of Rs. 200/- i/d two (2) months under Rules 56(4) and 38(5) of the Defence of India Rules by the Magistrate, First Class, Erandol on 2nd September, 1942 and Fine Rs. 150/- recovered as per fine intimation Cri. No. 441 dated 25-9-1942 and Fine Rs. 150/- recovered as per fine intimation Cri. No. 441 dated 4-10-1942 from the J.M.F.C, Erandol.

He was subsequently released from this Jail on 12-1-1943 (unconditionally) as per G.L.H.D. No. 6528/4 (21156) dated 9-1-1943.

Sd/- Superintendent, Dated : 5-9-1964 Dhulia District: Prison

This certificate shows that the petitioner's late husband was sentenced to six months R.I. and in addition to fine of Rs. 200/- in default thereof two months additional R.I., under Rule 56(4) and 38(5) of Defence of India Rules. He was also in jail consequent to this conviction order and was released from the jail on

12th January, 1943 consequent to the order dated 9th January, 1943.

5. Swatantrata Sainik Samman Pension Scheme, 1980 states that for the purpose of grant of Samman Pension family includes, if the freedom fighter is not alive, mother, father, widower/widow if he/she has not since remarried, unmarried daughters. Not more than one eligible dependent can be granted pension and in the event of availability of more than one dependent, the sequence of eligibility will be widow/widower, unmarried daughters, mother and father. Clause 4 of the said scheme states that for the purpose of grant of Samman pension under the scheme a freedom fighter is a person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. Sub-clause (3) of clause (4) states that in the case of a trial ending in conviction, under trial period will be counted towards actual imprisonment suffered and as per sub-clause (4) broken period of imprisonment will be totalled up for computing the qualifying period. Referring to these provisions of the Scheme of 1980 Shri Godhamgaonkar, the learned additional standing counsel for the Union of India submitted that the petitioner's late husband did not fulfil the conditions prescribed and, therefore, the petitioner is not eligible for pension under the said Scheme.

6. We have noted that the petitioner's late husband was sentenced to six months R.I. and the petitioner's contention that he was confined in jail in Dhule district prison on 3rd September, 1942 and was released on 12th January, 1943 unconditionally has not been disputed. It is also clear from the certificate dated 8th September, 1964 that the petitioner's late husband was released from jail on 12th January, 1943 unconditionally as per the order dated 9th January, 1943. It is possible that the Government of India then took a policy decision to release all the prisoners or some of them who were undergoing imprisonment on account of their conviction or pending trials by way of general amnesty by order dated 9th January, 1943. The petitioner, therefore, gets the benefit of the view taken by the Apex Court in the case of Duli Chand and others Vs. Union of India and others, which was referred to in the decision in the case of Mukund Lal Bhandari and others Vs. Union of India and others, inasmuch as if the Government of India had released the prisoners before completion of six months R.I., the freedom fighter would be deemed to have undergone six months sentence as was originally awarded to him.

7. The return filed by respondent No. 1 also states that the Superintendent of Dhule District Prison had informed in writing that the record regarding the actual period of the petitioner's husband being in jail could not be verified as the record was not traceable. This cannot be the reason in isolation to deny the petitioner's claim and specially when the certificate dated 8th September, 1964, issued by the Superintendent, Dhule District Prison, is placed before us.

8. We, therefore, hold that the petitioner's late husband meet the eligibility conditions, as set out in clause 4 of the 1980 Scheme and the petitioner is entitled for the benefit of the same scheme under clause 3 therein. We direct the

respondent No. 1 to consider the petitioner's claim afresh on the basis of the certificate dated 8th September, 1964 and by treating that the petitioner's late husband fulfil the conditions in clause 4 of the 1980 scheme and pass the final order as expeditiously as possible and in any case within period of two months from today. The arrears in payment of pensionary benefits to the petitioner shall be payable from the date the application was submitted and the amount shall be disbursed to her within a period of six months.

9. Rule is made absolute in terms of the above directions with no orders as to costs.

10. Writ to go forthwith.