

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2021

R

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 7498 OF 2021 (GM-RES)

BETWEEN:

GUNDURAO DESAI,
AGED ABOUT 94 YEARS,
S/O VENKOBORAO DESAI,
R/AT NO.242, 4TH WARD,
NEAR RAMA TEMPLE,
DESAI ONI, VENKATAPURA,
KAMALAPURA, BELLARY - 583 221.

... PETITIONER

(BY SRI.C.M.NAGABHUSHANA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
DEPARTMENT OF HOME,
DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.
REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY.
2. DEPUTY COMMISSIONER,
BELLARY DISTRICT,
BELLARY - 583 101.
3. ASSISTANT COMMISSIONER,
HOSAPETE, BELLARY DISTRICT,
BELLARY - 583 201.
4. THE TAHSILDAR,
HOSAPATE TALUK,
TALUK OFFICE BUILDING,
HOSAPETE, BELLARY DISTRICT,
BELLARY - 583 201.

... RESPONDENTS

(BY MR. SHRIDHAR HEGDE,HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-3 TO CONSIDER THE ORIGINAL LETTER DATED 27.12.1995 VIDE ANNEX-P SUBMITTED BY THE PETITIONER TO CONSIDER FOR FREEDOM FIGHTER PENSION.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner claiming to be a freedom fighter is knocking at the doors of writ Court grieving against the endorsement dated 20.07.2019, a copy whereof is at Annexure-P which has the following text:

“ಮಾನ್ಯರೇ,

ವಿಷಯ: ಶ್ರೀ ದೇಸಾಯಿ ಗುಂಡುರಾವ್, ಮಾಜಿ ಅಧ್ಯಕ್ಷರು, ಟೌನ್ ಪಂಚಾಯತಿ ಹಾಗೂ ಸ್ವಾತಂತ್ರ್ಯ ಹೋರಾಟಗಾರರು ಕಮಲಾಪುರ, ಹೊಸಪೇಟೆ ತಾಲ್ಲೂಕು, ಇವರಿಗೆ ಸ್ವಾತಂತ್ರ್ಯ ಹೋರಾಟಗಾರರ ಪಿಂಚಣಿಯನ್ನು ಮಂಜೂರು ಮಾಡುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ತಮ್ಮ ಮನವಿ ದಿನಾಂಕ:26.06.2019.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ದಿನಾಂಕ:26.05.2019ರ ತಮ್ಮ ಪತ್ರದಲ್ಲಿ ಇನ್ನೊಬ್ಬ ಸಹಬಂಧಿ ಬಗ್ಗೆ ಮಹಿತಿ ಒದಗಿಸಲು ಪ್ರಸ್ತುತ ಸಾಧ್ಯವಿಲ್ಲವೆಂದು ತಿಳಿಸಿರುತ್ತೀರಿ. ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ:ಡಿಪಿಎಆರ್ 89 ಪಿಎಸ್ಪಿ 1994, ದಿನಾಂಕ:27.12.1995ರನ್ವಯ ಸ್ವಾತಂತ್ರ್ಯ ಹೋರಾಟಗಾರರಿಗೆ ರಾಜ್ಯ/ಕೇಂದ್ರ ಗೌರವಧನ ಮಂಜೂರು ಮಾಡಲು ಅಗತ್ಯವಿರುವ ದಾಖಲೆಗಳಲ್ಲಿ ಒಂದು ಮರ್ಷ ಜೈಲು ಶಿಕ್ಷೆ ಅನುಭವಿಸಿರುವ ಇಬ್ಬರು ಸ್ವಾತಂತ್ರ್ಯ ಯೋಧರಿಂದ ಪಡೆದಿರುವ ಮೂಲ ಸಹಬಂಧಿ ಪ್ರಮಾಣ ಪತ್ರಗಳನ್ನು ಒದಗಿಸಬೇಕಾಗಿರುತ್ತದೆ. ಆದರೆ, ನೀವು ಒಬ್ಬರ ಸಹಬಂಧಿ ಪತ್ರವನ್ನು ಮಾತ್ರ ಒದಗಿಸಿರುತ್ತೀರಿ. ಆದ್ದರಿಂದ, ನಿಮಗೆ ರಾಜ್ಯ/ಕೇಂದ್ರ ಗೌರವಧನ ಮಂಜೂರು ಮಾಡಲು ಸರ್ಕಾರದ ನಿಯಮಗಳಲ್ಲಿ ಅವಕಾಶವಿರುವುದಿಲ್ಲವೆಂದು ತಿಳಿಸಲು ನಾನು ನಿರ್ದೇಶಿಸಲ್ಪಟ್ಟಿದ್ದೇನೆ.”

2. The net effect of the above Endorsement is the rejection of petitioner's claim for Freedom Fighters Pension on the ground that he has not produced the affidavit of two persons who were detained with him because of their participation in the struggle for Independence of the country, those days; petitioner had made the claim for pension on 19.03.1998 itself; except that the file moved from this office table to that, nothing has happened though more than two decades have slipped away; at least, as a concession to the shortness of human life, things could have been accomplished in a few years, even if they were moved with snail speed; that did not happen, reveal the records; be that as it may.

3. After service of notice, the official respondents have entered appearance through the learned AGA who vehemently opposes the writ petition contending that the requirement of producing certain documents is a matter of State Policy that regulates grant of Freedom Fighters Pension and therefore the impugned endorsement which is structured on this requirement cannot be faltered; he hastens to add that an argument to the contrary has abundant abuse

potential inasmuch as even unscrupulous claims may be sustained and therefore no concession in matters of the kind can be shown as to requirement of producing the necessary documents; so contending he seeks dismissal of the writ petition.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

(a) During the Freedom Struggle, several nationals sacrificed their lives, limbs & liberty and obviously their families too got affected; all this happened unseen & unsung; others who survived the struggle and lived after the Dawn of Freedom, needed to be protected, presumably they being incapable of paddling their life boats; therefore both the Central Government and the State Governments have promulgated Freedom Fighters Pension Schemes; the fulfillment of requirement of such Schemes should not be insisted upon mindlessly and impossibly, as rightly argued by learned counsel for the petitioner Prof. C.M.Nagabhushana; he is more than justified in adding that

ritualistic adherence to the conditions of State Policy regardless of some of them being impossible of performance, is not the way a Welfare State is constitutionally expected to function; the Apex Court in *E.P.ROYAPPA vs. STATE OF TAMIL NADU*, **AIR 1974 SC 555** has observed that all actions of the State be legislative or executive, should be animated by reason & justness; it is more so when the cause of Freedom Fighters who are in the late evening of their lives, is involved; the impugned Endorsement does not reflect this approach to the matter, more particularly when the Freedom Fighters are a vanishing class, majority of them having already closed their eyes, statistically speaking.

(b) There is no much dispute as to petitioner being a nonagenarian; he having attained age of 94 years is in the late evening of the life; the approach of State and its officials has to be very gentle & humane while considering the claim of such persons; the Apex Court time & again has observed that, just claims of the citizens cannot be rejected on flimsy grounds; if the petitioner has crossed the age of 94 years, it sounds unjust & arbitrary, to say the least, to expect the co-detenués elder to him to be alive and much less available for

swearing to an affidavit expected under the conditions of State Policy; petitioner has specifically stated in so many words in his letter dated 20.01.2021, a copy whereof is at Annexure-Q that only one of the co-detenues is alive and others are dead & gone; that being the position asking him to produce the affidavits of two co-detenues, virtually amounts to compelling him to retrieve the dead from their grave, infuse soul into their body and ask them to swear to the affidavit; this is an impossibility, at least with all the progress the medical science has till now achieved.

(c) In all civilized jurisdictions where conditions prescribed by the statutes are or become impossible of performance, they are treated either as having been complied or their compliance being dispensed with, subject to all just exceptions into which argued case of the petitioner does not fit; **“Maxwell on The Interpretation of Statutes”** Twelfth Edition, LexisNexis – Butterworths Wadhwa at page 326 treats the subject as under:

“3. IMPOSSIBILITY OF COMPLIANCE.

Enactments which impose duties upon conditions are, when these are not construed as conditions precedent to the exercise of a jurisdiction, subject to the maxim, lex non cogit ad impossibilia. They are

understood as dispensing with the performance of what is prescribed when performance of it is impossible.

Thus, where an Act provided that an appellant should send notice to the respondent of his having entered into a recognisance, in default of which the appeal should not be allowed, it was held that the death of the respondent was not fatal to the appeal, but dispensed with the service.”

(d) The approach of the statutory authorities to the compassionate policies of the State such as Freedom Fighters Pension Schemes should not hijack justice in the ritualistic adherence to the black letter of law and in a gross disregard to its spirit; otherwise, (to borrow the words of **Justice Benjamin N. Cardozo**) they may be likened to surgeons who would rather have their patients dead in accordance with the principles of surgery than live contrary to; that is not a happy thing to happen in an arguably sane world; it is not the case of respondents that the petitioner is guilty of fraud, fabrication or the like; the Apex Court in **KAMALA BAI SINKAR vs. STATE OF MAHARASHTRA, (2012) 11 SCC 754** has observed that where the claim of an pension aspirant is probablized, the same cannot be negatived; in the absence of derogatory factors; in fact the Apex Court directed payment of Freedom Fighters Pension with all the arrears; there is no

reason for not granting relief to the petitioner on the similar lines, there being no contra material warranting its denial.

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned Endorsement; respondents 1, 2 & 3 are mandamus to sanction Freedom Fighters Pension to the petitioner with retrospective effect from 19.03.1998 and settle all the arrears within a period of six weeks, failing which they shall personally & collectively pay him Rs.1,000/- for the delay of each day brooked; the said amount after payment may be recovered from the erring officials in accordance with law.

It is open to the answering respondents to solicit any document/information from the side of petitioner, as are required for accomplishing the mandated task, however subject to the rider that in the guise of such solicitation no delay shall be brooked.

Now, no costs.

**Sd/-
JUDGE**

Snb/