

(1993) 06 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 484 of 1984

Balak Ram Mahajan now deceased through his L.Rs. Virender Kumar Gupta and Others and Smt. Drumpti Devi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-06-1993

Acts Referred:

Mandi State Public Safety Ordinance, 2004 — Section 4, 4(1)
Penal Code, 1860 (IPC) — Section 149, 225, 302, 307, 395

Citation : (1994) 1 ShimLC 36

Hon'ble Judges : Devinder Gupta, J;D.P. Sood, J

Bench : Division Bench

Advocate : Vijay Thakur, in C.W.P. No. 484 of 1984 and M.L. Sharma, in C.W.P. No. 163 of 1986, for the Appellant; P.A. Sharma, Sr. Central Govt. S.C. in C.W.P. Nos. 484 of 1984 and C.W.P. No. 163 of 1986, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—By this judgment, we propose to decide C.W.P. No. 484 of 1984 and C.W.P. No. 163 of 1986, since the primary question of consideration arising for determination is same and similar. Before considering the question arising for determination, facts of the two petitions are being given separately.

2. Petitioner Balak Ram Mahajan (now deceased) in C.W.P. No. 484 of 1984 sought direction against the Respondents for grant of payment to him of freedom fighter's pension, in accordance with the Freedom Fighters' Pension Scheme, 1972 (hereinafter referred to as the 1972 Scheme) w.e.f. 15th August, 1972 and for declaring Clause 4 of the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as the 1980 Scheme) as unconstitutional and as a consequence to quash orders Annexures R-1 and R-2 passed by Respondent No. 1 declining to grant pension to him. Balak Ram Mahajan alleged that he was a resident of village Baggi in the erstwhile princely State of Mandi. Praja Mandal Movement gained movement in Mandi State, whose main aim was to liberate the

princely State of Mandi and to get it merged with Union of India after independence of country w.e.f. 15th August, 1947. The Ruler tried his best to stifle the movement. About the period of independence of the country, the movement was at its peak and the Petitioner also participated actively in this movement and accordingly earned displeasure of the Mandi Darbar. In order to suppress the movement, the State Administration of Mandi passed orders, under which the Petitioner and other participants were detained for six months u/s 4 of the Mandi State Public Safety Ordinance, which Ordinance had been promulgated by the ruler of Mandi. Still not being satisfied with the detention, false cases were coined against all the participants including the Petitioner for offences punishable under Sections 302/307, 395/149 and 225 of the Penal Code.

3. The Petitioner was committed for trial before the Judge of Appeal Court on 24th Bhadon 2004 BK corresponding to 6th September, 1947. Cases against all participants including the Petitioner were ultimately withdrawn by the orders issued by the Ruler on 13 Magh 2004 BK corresponding to 26th-January, 1948. In support of this submission, the Petitioner has placed reliance upon an extract of the entries in Jail register Annexure-A. The Petitioner's case has been that in order to recognise the services rendered by the Freedom fighters towards the independence of the country and merger of princely State, 1972 Scheme was promulgated by Respondent No. 1 w.e.f. 15th August, 1972. Persons falling in various categories defined in Clauses (a) to (g) were entitled to receive pension under 1972 Scheme and his case squarely falls under Clause (g). The last date of receipt of application was notified as 31st March, 1974, which was subsequently extended upto 31st July, 1975 and ultimately upto 1981 and it was on 26th February, 1981 that the Petitioner submitted an application with his covering letter Annexure-PC for grant of pension. Papers were forwarded by Respondent No. 2 on 25th March, 1981 to the Deputy Commissioner, Mandi and even the Under Secretary of Union of India asked the Petitioner to correspond with Respondent No. 2. No reply was received by the Petitioner from Respondent No. 2 despite various reminders and representations. It was on 12th April, 1984 that the Deputy Secretary to the Government of Himachal Pradesh wrote to Deputy Commissioner, Mandi to verify the facts of the Petitioner's case alongwith others, but nothing was heard thereafter and no decision was conveyed. The Petitioner accordingly was constrained to approach this Court by filing the aforementioned C.W.P. No. 484 of 1984.

4. During the pendency of the petition, a direction was made by this Court on 24th June, 1985 calling upon the Respondents to re-consider the Petitioner's case in the light of decisions rendered in *Tej Singh Nidharak v. Union of India* C.W.P. No. 224 of 1983, decided on 9th January, 1984 (ILR 1984 HP 593) and *Keshav Chander v. Union of India* and Anr. C.W.P. No. 413 of 1984, decided on 11th December, 1984. After the case of the Petitioner had been recommended by the State Government through its communication dated 2nd November, 1985, the Court on 10th December, 1985 again asked Respondent No. 1 to take a decision in the Petitioner's case for grant of pension. On 25th February, 1986,

decision was conveyed by Respondent No. 1 that on review, his case is not covered by the provisions of the Scheme and no pension can be awarded since the Petitioner's suffering in jail was for less than six months. It is this action of Respondent No. 1, which has been challenged by the Petitioner in the instant writ petition by seeking amendment to the original pension. Grounds on which the Petitioner challenged the Respondent's action will be noticed, while noticing the submissions made by the learned Counsel for the Petitioner.

5. C.W.P. No. 163 of 1986 has been preferred by Smt. Drumpti Devi praying that her husband late Minka Ram be declared as an eligible person for grant of freedom fighter's pension under 1972 and 1980 Schemes, consequently entitling the Petitioner to receive family pension as widow of the freedom fighter and directing Respondents to pay to her the family pension w.e.f. 19th February, 1981, the date of her original application.

6. It is alleged in the petition that late Minka Ram was an active participant in the Praja Mandal Movement in the erstwhile princely State of Mandi for the merger of the State with the Indian Union. He was falsely implicated in concocted cases for offence under Sections 302, 307, 395, 149 and 225 of the Indian Penal Code and was arrested and detained w.e.f. 24th Bhadon 2004 BK corresponding to 6th September, 1947 (wrongly shown as 26th Bhadon corresponding to 11th October, 1947. We have given the period of detention as per the Jail Register), and was ultimately released from jail unconditionally after he had suffered imprisonment till 13 Magh 2004 BK corresponding to 26th January, 1948 (wrongly shown as 24th February, 1948). Thus, he suffered imprisonment for a period of 4 months and 20 days after independence of the country in Mandi jail. Petitioner's husband's case squarely fell under Clause (g) of 1972 Scheme, which was later on renamed by Swatantrata Sainik Samman Pension Scheme, 1980. Being the widow of a freedom fighter, the Petitioner was entitled to family pension under the Schemes. Firstly, she applied on 19th February, 1981 directly to Respondent No. 1 with a copy to Respondent No. 2. She was assured through letter dated 30th March, 1981 that her case was under consideration and the State Government had been asked to verify the Petitioner's claim and send its report.

7. It is the Petitioner's case that she was later on asked by the Deputy Commissioner, who had received communication from Respondent No. 2, to move a fresh application under 1980 Scheme of which the Petitioner sent reply stating that her case may be considered in the light of the application dated 19th February, 1981. The Petitioner was asked to submit an affidavit, which requirement was also complied with by her, but ultimately through letter dated 12th March, 1982, the Petitioner was informed by Respondent No. 1 that her case does not fall under the Scheme for grant of pension to freedom fighters and their family, since the suffering of imprisonment of her late husband was less than six months. After receipt of this communication, Petitioner learnt about a few decisions of this Court rendered in Tej Singh Nidharak's and Keshav Chandra's

case (supra) and prayed that her case be re-considered in the light of the decisions rendered by this Court. But no action has been taken by Respondent No. 1 on her representation and pension has not been granted to her to which she is entitled. By filing this petition, prayer is made for making the aforementioned directions including the payment of arrears of pension.

8. Both these petitions have been contested by Respondent No. 1. Mr. K.N. Singh, Under Secretary, Ministry of Home Affairs has filed affidavits in support of the reply of Respondent No. 1. Similar objection has been taken in both the cases that the Petitioner's cases for claiming pension under 1972 Scheme, which was re-named later on as 1980 Scheme do not fall within the ambit of the provisions of the Scheme. The Petitioner in C.W.P. No. 484 of 1984 and the husband of the Petitioner in C.W.P. No. 163 of 1986 did not suffer imprisonment for a period of six months or more. Since the suffering was less than six months, eligibility is lacking. Moreover, it is contended that imprisonment suffered has no relation to the National Freedom Movement Offences under which detention orders were passed related to heinous charges like murder etc. which in no way related to National Freedom Movement or participation in the Praja Mandal Movement of the erstwhile princely State of Mandi. Sufferings were not u/s 4(1) of the Public Safety Ordinance Act, which was promulgated against the freedom fighters of District Mandi. Consequently, the case of Balak Ram Mahajan and that of Smt. Drumpti Devi for grant of freedom fighters pension and family pension was rightly rejected by Respondent No. 1.

9. We have heard the learned Counsel for the parties and gone through the record. During the pendency of the writ petition, Balak Ram Mahajan expired on 17th May, 1991 and his legal representatives were brought on record. Similar arguments have been addressed by the Counsel for the parties

10. It is contended that movement for merger of the erstwhile princely States within the Indian Union after 13th August, 1947 has been treated as a part of National Freedom struggle for the purpose of grant of pension. In all cases where participants of Praja Mandal Movement were detained in the princely State of Mandi. false cases were coined under the provisions of Sections 302, 307, 395, 149 and 225 of the Indian Penal Code and by a single order of the ruler passed on 13 Magh 2004 BK corresponding to 26th January, 1948, they were released from detention, before the expiry of actual period of detention As per the initial order, the period of detention was six months, but Balak Ram Mahajm as also Minka Ram remained under detention for a period of 4 months and 20 days.

11. The mere fact that in the extract of Jail record, no reference has been made about the Mandi Public Safety Ordinance, it cannot be inferred that they were not the freedom fighters or were involved in heinous cases of murder, since it is not shown by Respondent No. 1 that they were actually tried or committed for these alleged heinous offences. Learned Counsel for the Petitioners have relied upon Tej Singh Nidharak's case and other similar cases decided by this Court pertaining to freedom fighters of Mandi State in support of their submission that

in all cases, offences alleged were same and similar. Reference has also been made to a communication dated 2nd November, 1985 from the Under Secretary (GAD), Government of Himachal Pradesh to the Under Secretary, Government of India, Ministry of Home Affairs, Freedom Fighters Cell, copy of which has been placed on record of C.W.P. No. 484 of 1984 at page 64, that the detention of the persons, who were released by a general order dated 13-11-2004 BK of the Ruler of Mandi has for all intents and purposes been considered by the State Government as detention in connection with the freedom movement.

12. Another submission made by the learned Counsel for the Petitioners is that when for participating in the same freedom struggle for the merger of princely State of Mandi, namely, Praja Mandal Movement other persons, who have also suffered actual detention for a period of less than four months, Freedom Fighters" pension has been granted either by Respondent No. 1 of its own or as per directions of this Court, there is no reason why the Petitioners be considered differently and deprived of the benefit of pension. This act will amount to discrimination. Liberal interpretation deserves to be given to such beneficial provisions made in the Scheme. Since the detention was to continue for a period of six months, the fact that before expiry of the period order of release was passed on 26th January, 1948 by the detaining authority, it is not the actual period of detention, which has to be taken as period of detention, but it is the period of six months, which should be taken as the period of detention.

13. Learned Counsel for the Respondents has contended that provisions of the Scheme have to be strictly construed and unless the criteria of eligibility as Laid down in the Schemes is fulfilled, the Petitioners cannot be held eligible for grant of pension. It is contended that there is material on record that the detention in these two cases was in connection with Freedom struggle or that the period of actual detention was six months or more. Since no application was made under 1972 Scheme and applications were made when 1980 Scheme had come into operation, the eligibility has to be seen as per the provisions of the 1980 Scheme, under which the requirement of the period of imprisonment is six months and not less than that. The cases decided by this Court, allowing pension to freedom fighters, wherein imprisonment was for a period of less than six months and more than four months, were decided in view of the concession given on behalf of the Union of India, which will not entitle the Petitioners to claim similar treatment, since there is no similarity in those cases as compared to the cases of the Petitioners.

14. The first objection taken by the learned Counsel for Respondent No. 1 that the detention of Balak Ram Mahajan and Minka Ram was not in connection with the freedom struggle deserves out-right rejection in view of the communication dated 2nd November, 1985 addressed by the Under Secretary (GAD) to the Government of Himachal Pradesh, referred to above, which makes it clear that detention of the persons in connection with the offences under Sections 302, 307, 395, 149 and 225 of the Indian Penal Code by an order passed by Lala Tej

Singh, Judge, Appeal Court Mandi for a period of six months, who were later on released by a General order of his Highness Raja Sahib Bahadur of Mandi dated 13 Magh 2004 BK was, for all intents and purposes, considered as "detention in connection with the freedom struggle", including for the purposes of grant of pension under the 1972 and 1980 Schemes. In both the cases, extracts from the Jail register has been produced. The date of detention in both the cases is the same, namely, 24 Bhadon 2004 BK and date of release is also same, namely, 13 Magh 2004 BK. Order of detention in both the cases is under similar provisions of law passed by Lala Tej Singh, Judge, Appeal Court. In both the cases, affidavits of late Pt. Gauri Prashad, the then President of Praja Mandal Movement of Mandi, who later on remained also as P.W.D. Minister in Himachal Pradesh and admittedly a freedom fighter have been placed on record. It has been certified that both these persons were detained for a period of six months in the State Jail in connection with the Praja Mandal Movement. In case reference is also made to the case of Tej Singh Nidharak, it will be noticed that not only the period of detention and release is the same, but also offences alleged are same, which offences in Tej Singh Nidharak's case, have also been considered by this Court to be detention, in connection with the merger movement of princely State of Mandi.

15. No material has been placed on record by Respondent No. 1 to refute the allegations made by the Petitioners. Petitioner Balak Ram Mahajan stated that in order to suppress the Praja Mandal Movement, the State Administration of the Mandi had detained them for six months u/s 4 of the Mandi State Public Safety Ordinance by an order of his majesty, the Ruler of Mandi. The State Administration was still not satisfied with such detention and false cases were coined for offences punishable under Sections 302, 307, 395, 149 and 225 of the Indian Penal Code. The order of committal was passed by the Judge, Appeal Court and before the expiry of the period, the detainees were released by a general order of his Highness the Ruler of Mandi on 13 Magh 2004 BK corresponding to 26th January, 1948. The stand of Respondent No. 1 noticed above is that the detention was not in connection with the freedom movement but in connection with some heinous criminal offences and they were in fact convicted for heinous offences. There is no rebuttal to the evidence adduced by the Petitioner. Annexure PL is the certificate of Superintendent, Sub-Jail, Mandi that Balak Ram Mahajan as per entries in Jail Register was not convicted for any offence for which he was confined in the Jail Register in fact is of convicted persons. There is a long list of convicted persons from register No. 2 of Mandi State Jail, annexed as Annexure PM, supplied by the Superintendent, Sub-Jail Mandi. Neither Balak Ram Mahajan nor Minka Ram are shown to be persons convicted.

16. On record is the affidavit of Balak Ram Mahajan that he along-with 105 persons were detained by the Ruler of Mandi. This detention was due to the active participation in freedom struggle. The arrest and the detention in connection with the Praja Mandal Movement though made u/s 4 of the Mandi State Public Safety Ordinance was camouflaged by terming it to be under various

criminal offences. Names of 11 persons have been quoted in the affidavit, who were also detained alongwith the Petitioner and Minka Ram and are now receiving freedom fighters" pension. Out of 11 persons, certificates of 5 persons have been placed on the record in support of the claim for pension, which evidence adduced by the Petitioners has remained unrebutted. There is also no evidence or material placed on record by the Respondent that the detention of Balak Ram Mahajan and Minka Ram initially was not for a period of six months or that before the expiry of the 6 months period, by the general order of the Ruler, they were actually released on 26th January, 1948, after having suffered detention for 4 months 20 days.

17. The Petitioners cannot be expected, after a lapse of more than 40 years to produce any documentary evidence in support of their version except by producing some corroboratory evidence that they in fact were ordered to be detained for a period of 6 months but, in fact, were released before expiry of the said period without claiming any remission after having actually suffered detention for 4 months and 20 days. In similar situation, almost a similar stand taken by Respondent No. 1 in declining to grant freedom fighters pension to one R. Narayanan, for want of documentary evidence in support of his claim, the Supreme Court in R. Narayanan Vs. Union of India and another, observed that there is neither justice nor grace in the Respondent's putting forth such objections. No one can really expect official records to have been preserved for a period of 40 years to prove the treatment given to the Petitioners for the injuries sustained by them during the freedom struggle.

18. In Surja and Ors. v. Union of India and Anr. (1991) 4 SCC 366 55 persons both men and women claimed the benefit of 1980 Scheme alleging that they had joined Arya Samaj Movement in the late 1930s within the erstwhile Nizam's State of Hyderabad and each one of them had been convicted under different provisions of the criminal law, then prevailing, within the Nizam's State and sentenced to various terms of imprisonment. Arya Samaj Movement had been equated with the freedom struggle and the benefit of pension was admissible but they were denied the benefit of the claim. For claiming benefit of the pension Scheme Surja and others placed reliance upon the decision of the apex Court in Duli Chand v. Union of India 1950 (Supp) SCC 762. The Court noticed that the claimants/Petitioners had, in fact, been sentenced to imprisonment for terms exceeding six months, but while they were undergoing sentence, without their praying for a remission, a general amnesty was declared by the then Nizam on his birthday and the sentence was reduced and the Petitioners were set free. The Petitioners were held to have satisfied the condition in earning the benefit of pension.

19. Applying the ratio of Surja's case (supra), we may also notice that the detention in the instant cases was also for a period of 6 months, but in fact, after having actually suffered detention for a period of 4 months 20 days, Balak Ram Mahajan and Minka Ram were released from detention on 26th January, 1948 by

a general order passed by the Ruler of Mandi, which date is also the date on which all other persons similarly situated were released from detention without praying for remission, which will be evident in case reference is made to the facts of the case of Tej Singh Nidharak (supra) and Girdhari Lal v. Union of India C.W.P. No. 34 of 1984 decided on 5th July, 1990.

In view of the above, the action of Respondent No. 1 in having declined to grant pension to the Petitioners cannot be sustained. There is yet another reason for granting the reliefs prayed for by the Petitioners. Both the Petitioners contended that for taking part in the Praja Mandal Movement, persons like Tej Singh Nidharak, Keshav Chander and others who had also been detained along with Balak Ram Mahajan and Minka Ram have already been given the benefit of pension. The Petitioners also founded their claim, in view of the decision of this Court in Tej Singh Nidharak's case (supra). There is no reason why the same benefit be not given in the instant cases, otherwise it might amount to a discrimination.

20. This Court in Girdhari Lal's case (supra) noticed the background in which 1972 Scheme was framed, which later on was liberalised and modified by 1980 Scheme. Existence of Clause (g) in the two letters dated 5th August, 1972 and 25th August, 1972, addressed to the Chief Secretaries of all State Governments and Union Territories, first by the Joint Secretary to the Government of India and the second by the Deputy Secretary to the Government of India was also noticed, on the basis of which, several petitions claiming relief for grant of pension came to be instituted in this Court. It was also noticed that relief was granted to those Petitioners on the basis of the decision in Tej Singh Nidharak's case (supra). To them the pension was accorded since they had also claimed to be entitled to the grant of pension under Clause (g). In Tej Singh Nidharak's case in para 8 of its judgment the Court had observed:

...It would not be out of place to mention that the minimum period of imprisonment has advisedly not been prescribed in Clause (g). The movement for the merger of native States after India attained Independence did not in all cases last for six months or more. It is for that reason, apparently, that the Scheme did not prescribe any minimum period of imprisonment while dealing with cases covered by Clause (g). Be that as it may, Clause (g) on its apparent tenor does not prescribe any minimum period of imprisonment and to read such a requirement into that clause is to bring in an extraneous factor which is wholly irrelevant.

21. In Girdhari Lal's case (supra), the Court further noticed the circumstances, which led to the filing of the various review petitions as also the Court's suggestion and the concession given on behalf of Respondent No. 1 that it had no objection to pay pension also to those, out of 23 pending cases, in which case period of suffering was more than 4 months, without prejudice to the provisions of the Pension Schemes, Clauses (a) and (g), regarding the actual suffering of six months. 13 cases were thereafter identified in which pension was allowed, where

suffering was for less than 6 months but more than 4 months. Cases of three Petitioners were dealt with subsequently while disposing of writ petition in Girdhari Lal's case {supra}, where suffering was less than 4 months, and ultimately relief was also granted in those cases by this Court by observing as follows:

The clear intendment of the eligibility clause, in relation to Freedom Fighters who had participated in the merger movements, as contained in the clarification put forward by functionaries of the Union Government in the two letters dated August 5 and August 25, 1972 was that there was no minimum term of imprisonment contemplated in the case of such applicants after August 15, 1947, till the date of accession of the State to the Union of India. Such was the representation held out to the prospective applicants. The three Petitioners, on the basis of the representation in that regard, considered themselves to be eligible for the grant of pension and applied therefor.

* * * * * The real question, however, which arises for consideration is about the effect of the representation, which remained unrepudiated till the filing of the affidavit in support of the prayer for review in the year 1986, contained in the letters dated August 5, 1972 and August 25, 1972 sent by the Joint Secretary and the Deputy Secretary to the Government of India to the Chief Secretaries of the various States and Union Territories.

22. The Court considered the effect of representation made in the two letters dated 5th August, 1972 and 25th August, 1972 and held that the principle that the Government would not be bound by representation made by an officer, which he was not authorised to make, will not be attracted where no repudiation was made until after the lapse of several years and that only when the review petitions came to be filed in 1986. The representation made in the two letters was thus held to be binding, on the basis of which three persons were found to have made their claim for pension. Another aspect which was noticed was that it would be inequitable to deny pension to persons like the three claimants, who had undergone imprisonment for more than three months, more especially when the Union of India, on the suggestion made by this Court had chosen not to press review petition in those cases where imprisonment in similar situation was for a period of 4 months or above and further in view of the fact that in 1980 Scheme the minimum period of actual imprisonment for eligibility of pension in cases of women and Scheduled Castes/Scheduled Tribes freedom fighters has been reduced to three months only.

23. In *Budhi Sagar Nautiyal v. Union of India and Anr.* (C.W.P. No. 760 of 1984 decided on 16th July, 1992), this Court held that the purpose of introducing the Schemes was to extend benefit of pension, as a token of respect, to those persons, who had either taken part in the struggle of independence of the country or taken part in the merger movement of the erstwhile Princely States in the Indian Union. It being a piece of beneficent scheme, meant for the benefit of the persons, having taken part in the freedom movement and suffered therein,

therefore, the provisions of the Scheme are required to be construed in such a manner so as to favour the freedom fighters. Reliance was placed in holding so in *Buckingham and Carnatic Co. Ltd v. Venkatiah and Anr.* AIR 1964 SC 127 ; *Chitan J. Vaswani and Another Vs. State of West Bengal and Another*, and *Gurucharan Singh Vs. Kamla Singh and Others*,

24. Applying the ratio of the judgment in *Girdhari Lal's* case (supra) to the facts and circumstances of the case, we have no hesitation in holding that on this ground also the Petitioners would be entitled to grant pension and the stand of Respondent No. 1 cannot be sustained.

25. In view of the above, we allow both the Writ Petitions and hold the Petitioners to be entitled to the pension In case of Balak Ram Mahajan, we hold him to be entitled to pension on or from 26th February, 1981, the date of filing of application till the date of his death, namely, 17th May, 1991. Arrears of pension thus becoming due and payable will be worked out and paid to the Petitioners in C.W.P. No. 484 of 1984 within a period of four months from today, and in case of Drumpti Devi, we hold her entitled to the grant of family pension w.e.f. 19th February, 1981, date of her application till her life time. Arrears of pension in her case also, will be worked out and paid to her within a period of four months and she will be continued to be paid pension in accordance with 1980 Scheme till her life time

The parties are left to bear their own costs.