
(2007) 06 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 4231 of 1998

Bimalendu Kaminikanto Sengupta

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-06-2007

Acts Referred:

Citation : (2007) 5 BomCR 175 : (2007) 5 MhLj 612

Hon'ble Judges : Patil Naresh H., J;Borde R.M., J

Bench : Division Bench

Advocate : R.G. Godbole, Umakant Patil, A.G.P, for the Appellant; Alok Sharma, for the Respondent

Judgement

Patil Naresh H., J.—The petitioner who was 76 years when he filed the petition, according to the learned Counsel for the petitioner, is of 85 years today. The petitioner is a freedom fighter who challenges the validity and legality of letter dt. 24-3-1998 whereby respondent No. 2. refused to accept the claim of the petitioner for grant of pension. By an order dt 15-11-1999, this Court directed respondent No. 3 the Government of West Bengal to co-operate and provide necessary information to the officer deputed by respondent No. 2. It was further directed that the deputed officer shall also visit the petitioner for collecting necessary information required for deciding the claim of the freedom fighter's pension.

2. Admittedly, after adopting appropriate procedure, the Under Secretary to the Government of India in a communication dt. 26-5-2004 addressed to the Pay and Accounts Office (Pension and Miscellaneous), Ministry of Affairs, New Delhi informed that the Hon'ble the President has accorded sanction to grant of provisional pension " Rs. 3000/-per month from 18-2-1998 onwards plus Dearness Relief at the rates admissible from time to time to the petitioner Bimalendu Sengupta. The said communication is placed on record.

3. The grievance of the petitioner now is that the petitioner had filed an

application for grant of pension on 24-11 -1986 wherein the petitioner states that the pension be granted effective from the date of application. The stand adopted by respondent No. 2 is that after completing necessary formalities, the petitioner's application reached the office of the respondent No. 2 on 18-2-1998 and from that day the pension was granted to the petitioner. Therefore, the controversy now is about what should be the effective date of grant of pension; whether it should be from the date of application or it should be from the date when the respondent No. 2 received report and papers of the petitioner.

4. Shri Godbole, learned Counsel for the petitioner places reliance on reported judgment in the case of Mukund Lal Bhandari and others Vs. Union of India and others, . We find it necessary to reproduce para No. 5 of the said judgment.

5. That leaves us with the question as to whether, notwithstanding the date on which the application itself is made, the claimant should be entitled to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with retrospective effect,, reliance is placed on the two cases cited earlier where the benefit is given with effect from 1st August, 1980. We have given our anxious view that for reasons more than one, the benefit should flow only from the date of the application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospective of the benefit was neither raised nor answered. We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such straight-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs. 5,000/-. It is only later, i.e., from 1st August, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be

forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now.

Hence we are of the view that the pension under the Scheme should be made payable only from the date on which the application is made whether the application is accompanied by the necessary proof of eligibility or not. The pension should, of course, be sanctioned only after the required proof is produced.

5. Learned Counsel Shri Godbole submitted that in the light of the said judgment and the facts of the case, the petitioner could not be said to be at fault for not getting pension from the date of application. According to the learned Counsel, it is due to the order of this Court that the petitioner's case was processed and thereafter the report could be filed to the Competent Authority. But that would not be a ground for respondent No. 2 to say that as the petitioner's complete file alongwith report was received by them in the year 1998-1999, the petitioner is entitled to receive pension from the year 1998.

6. Shri Sharma, learned Counsel for respondent No. 2 supported his contention by filing affidavit in reply. Reliance is placed on reported judgment in the case of Gurdial Singh Vs. Union of India and Others, . It is observed in para No. 9 of the said judgment as under:

9. We are satisfied that the order of the respondent authorities impugned before the High Court (Annexure P-14) dated 1-11-2000 is liable to be set aside and the appellant entitled to the grant of relief of pension. However, keeping in view the lapse of time and peculiar circumstances of the case, we are not inclined to grant him the pension with effect from 12-3-1973 as claimed and feel that the ends of justice would be met if the appellant is granted pension with effect from March 1996 when he was forced to file Writ Petition No. 12350 of 1996.

Learned Counsel Shri Sharma submitted that the petitioner's application was complete in form after it was received alongwith report and the necessary documents by the respondent No. 2 in the year 1998. Therefore, it was in accordance with the scheme that the petitioner was granted pension from 1998-1999.

7. After perusal of the order passed by this Court and the material placed on record, we are of the view that the petitioner filed application for seeking pension on 27-11-1986. The petitioner's case was processed only after intervention of this Court and due to the order passed by this Court on 15-11-1999. Considering

this aspect of the matter, we do not find that the petitioner was at fault in filing application at belated stage or there was some fault on the part of the petitioner in not complying with certain requirements which are necessary for claiming freedom fighter's pension.

8. The Apex Court in the case of Mukund Lal Bhandari observed that the spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation.

9. For the reasons stated above, we are of the view that the petitioner's prayer for grant of pension from the date of application i.e. 27-11-1986 deserves consideration and is required to be allowed.

10. Respondent No. 2 is directed to grant pension to the petitioner with effect from 27-11-1986. We further direct respondent No. 2 to pay arrears of pension to the petitioner within three months from the date of receipt of this order. Rule made absolute in above terms. No order as to costs.