
(2009) 10 AHC CK 0002
In the Allahabad High Court
Case No : Writ Petition No. 9464 of 2009 (M/B)

Chandrawati Gupta @ Sanehlata

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Citation : (2009) 10 AHC CK 0002

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

Pradeep Kant and R.R. Awasthi, JJ.—Heard the Counsel for the petitioner, Dr. Ashok Nigam, learned Senior Advocate, assisted by Sri Raj Kumar Singh for respondents No. 1 and 2, and Sri Anuj Kudesia for respondent No. 3.

2. The petitioner had applied for grant of freedom fighter's pension as his dependant before the Central Government. She is already getting pension as dependant of freedom fighter from the State Government.

3. The claim of the petitioner has been rejected by the Central Government vide order dated 24.7.2009, Annexure1 to the writ petition.

4. Sri Ramesh Panaey appearing for the petitioner vehemently urged that the ground of rejection of the grant of dependant of freedom fighter pension by the Central Government is per se illegal and that the order suffers from manifest error and arbitrariness.

5. It is the case of the petitioner that her husband late Ram Swaroop Gupta participated in freedom struggle, when he was imprisoned/jailed for a period commencing from 15.11.1945 to 22.7.1946 in district jail Saharanpur and some time at Faizabad.

6. The State Government on the application being moved by the petitioner has made a recommendation on 30.6.2009 to the Central Government after observing that in view of the report of the District Magistrate, Saharanpur dated

2.9.2008 and the report of Senior Superintendent, District Jail Saharanpur dated 11.7.2008, late Ram Swaroop had undergone sentence w.e.f. 15.11. 1945 in District Jail, Saharanpur and that Special MagistrateI sentenced him for one year imprisonment and imposed a fine of Rs. 1000/, failing which he was to undergo six month further rigorous imprisonment and that late Ram Swaroop suffered imprisonment in District Jail Saharanpur for a period of 8 months and 8 days.

7. The recommendations of the District Magistrate dated 2.9.2008 and the report sent by the Senior Superintendent, District Jail, Saharanpur, dated 11.7.2008 have also been brought on record.

8. In the so called recommendations sent by the State Government, there is no mention at all about the nature of detention and the reason for which late Ram Swaroop was confined in jail for the aforesaid period.

9. Likewise, in the report of the District Magistrate also no details or reason have been given for detention in jail for such a long period. However, in the report submitted by the Senior Superintendent, District Jail, Saharanpur dated 11.7.2008 there is a specific mention that late Ram Swaroop was convicted in a case under section 408, I.P.C. by the Special MagistrateI, Saharanpur and he was sentenced for one year imprisonment with a fine of Rs. 1000/ and on failure of the fine, he was to undergo rigorous imprisonment of six months more.

10. The aforesaid fact regarding late Ram Swaroop being convicted under section 408, I.P.C. and the award of sentence of rigorous imprisonment is not being disputed by the petitioner.

11. The Central Government has rejected the claim, of the petitioner for grant of dependant of freedom fighter pension after observing that late Ram Swaroop having been convicted for misappropriation of funds of sugar mill, for which he was prosecuted under section 408, I.P.C., his detention in jail cannot be treated as a conviction because of participation in any recognized freedom movement.

12. Sri Ramesh Pandey while assailing the aforesaid order has drawn the attention of the Court to the Freedom Fighter Pension Scheme, saying that the only consideration or eligibility for the grant of pension of dependant of freedom fighter is that a person who had suffered a minimum imprisonment of six months in the mainland jails before independence, would be sufficient to grant the pension of dependant of freedom fighter.

13. Para 4 of the aforesaid Scheme is being quoted below:

"4. WHO IS ELIGIBLE?

For the purpose of grant of Samman pension under the scheme, a freedom fighter is:

(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before independence. However, ExINA personnnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

(b) The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1.8.1980."

14. Further argument is that confinement under section 408,1.P.C. in British judicial system will not defeat the right of the petitioner to claim pension under dependant of freedom fighter pension and lastly it has been argued that the order passed by the Central Government is stigmatic as it indicts the husband of the petitioner, who was a freedom fighter.

15. Dr. Ashok Nigam, learned Senior Advocate, responded to the aforesaid arguments, by asserting that the claim for grant of pension to the freedom fighters and to their dependants is a scheme for recognising the sacrifice given by the persons in freedom struggle and the benefit of pension has been extended to their dependants also just to give honour to the freedom fighters, though dependants might not have contributed anything in the freedom struggle. In substance the scheme aforesaid is for the benefit of the freedom fighters and their dependants, in recognition to the sacrifice done by the freedom fighters.

16. His further submission is that the claim of freedom fighters or their dependants for getting pension cannot be allowed to be misused for taking advantage by those, who have not taken part in freedom movement and/or who have been imprisoned not in connection with any freedom movement or struggle.

17. Rule 4 of the Scheme, which has been pressed into service by the learned Counsel for the petitioner does not say that for whatever offence and for whatever reason, a person detained in jail during the period when the country was being ruled by the Britishers, would be taken as detention in jail for participation in freedom struggle.

18. It cannot be ignored nor the Court can be oblivious of the fact that even in the British rule crimes and offences were being committed by the persons and they were being prosecuted under the law prevailing during British rule and were sentenced accordingly. All the persons who had been in jail in preindependence era cannot be taken as fighter for freedom nor they or their dependants can claim a right of pension accordingly.

19. If a person claims pension as freedom fighter or his/her dependant claims pension as dependant of freedom fighter, such a person has to establish before the concerned authority of the State Government or the Central Government, as the case may be, that he/she falls within the category and definition of freedom fighter and for that matter fulfils all the conditions mentioned therein. The requirement of detention in jail at least for the minimum prescribed period is one of such conditions but such detention must be in connection with freedom struggle and not for an offence, which has no connection with any freedom struggle or movement.

20. In the instant case, late Ram Swaroop was convicted for an offence of

misappropriation of funds in a sugar mill and was awarded rigorous imprisonment of six months and a fine of Rs. 1000/, failing which the term of imprisonment was to be extended for six months more.

21. There is nothing on record to indicate that this sentence related to any freedom struggle or any movement, which was ongoing at that time.

22. The argument of the petitioner that because late Ram Swaroop was convicted under British rule under the law prevailing at that time, it would not defeat the right of the petitioner for grant of dependant of freedom fighter pension, is an argument which does not carry the case of the petitioner any further.

23. If a person was convicted under the law, as it was prevalent at the relevant period, he cannot be treated to be a freedom fighter in case it is found that the detention was because of misappropriation of funds of a sugar mill and it would not be treated to be a detention because of participation in freedom movement. There is also no evidence to support the plea that the husband of the petitioner was involved in freedom movement or he was detained because of his participation in freedom movement.

24. The last argument that the order of the Central Government is stigmatic and indicts the petitioner, raises only an emotional plea, though the fact of the matter is that the order only reproduces what has happened to her husband and mentions the correct fact of his being sentenced in a criminal case under section 408, I.P.C. Since the petitioner has approached the Central Government for grant of dependant of freedom fighter pension, the Central Government was under a legal obligation to indicate the reasons, both for grant of such pension and also for refusing the grant of pension.

25. In case the Central Government was to refuse the pension, it was further obligatory upon the Central Government to indicate the reason as to why the petitioner is not entitled for the dependant of freedom fighter pension.

26. We, therefore, do not find that the order passed by the Central Government indicts the petitioner's husband as it only mentions a fact and happening occurred in the life of the petitioner's husband.

27. For the reasons aforesaid, we do not find any illegality in the impugned order passed by the Central Government.

28. The writ petition is dismissed.

Writ Petition Dismissed.