

(2000) 07 DEL CK 0051

In the Delhi High Court

Case No : CW. No. 448/97

Chintamni

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Citation : (2000) 86 DLT 547 : (2000) 56 DRJ 563

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. R.K. Kapoor, for the Appellant; Mr. M.K. Bhardwaj, for the Respondent

Judgement

Manmohan Sarin, J.—The petitioner, Chintamni, has filed the present writ petition seeking a writ of mandamus directing the respondent to grant Freedom Fighters Pension under Swatantrata Sainani Samman Pension Scheme w.e.f. 2.11.1981, the date of his application. The petitioner claims to have been sentenced to rigorous imprisonment for one year u/s 37 of the Hyderabad defense Act, when he participated in the Hyderabad Freedom Struggle. As per the petitioner on 18.1.1352 (Fasli) he was arrested and was admitted in the District Prison at Nanded on 27.1.1352 (Fasli). He is stated to have been transferred to the Aurangabad Central Prison on 13.8.1352 (Fasli) till he was released on 3.4.1952 (Fasli).

2. Respondent-Union of India rejected the petitioner's case for grant of pension on 7.8.1986, on the ground that he had not produced the jail certificate from Aurangabad Central Prison. Petitioner, in these circumstances, filed the writ petition on 31.1.1997. In the meanwhile, petitioner had expired and application for bringing the L.Rs on record was allowed on 10.1.2000. Rule was also issued on the said date.

3. I have heard the learned counsel for the petitioner, Mr. R.K. Kapoor, who has submitted that the petitioner was duly eligible for the grant of pension and the

rejection by the respondent on the ground that he had not produced the jail certificate from Aurangabad Central Prison was not correct. Petitioner had produced the said certificate dated 6.10.1992. In fact, the respondent-Union of India in the counter affidavit have themselves taken note of the certificate issued by the Aurangabad District Jail and filed along with the petition, commented that the said certificate does not show why the petitioner was released prior to the imprisonment term. Mr. Kapoor has tendered in Court a photocopy of the said certificate, which is taken on record. Learned counsel has also drawn my attention to the judgment of the Apex Court in Mukund Lal Bhandari and others Vs. Union of India and others, in support of his contention that if the sentence imposed is more than six months, then even if the petitioner is released without going through the full term of the imprisonment, the petitioner would be entitled to the pension subject to the condition that the release was not secured by tendering an apology. Respondent in the counter affidavit have vaguely averred that the copy of the imprisonment certificate issued by the Aurangabad Central Prison does not clearly show as to why petitioner was released so early. Learned counsel for the respondent submits that petitioner's case was rejected on account of failure to furnish the certificate of imprisonment issued by the Aurangabad Central Prison, which has since been filed by the petitioner along with the petition.

4. Considering the specific averment made by the petitioner that he did not seek any pardon and in the absence of a categorical case set up by the respondent to the contrary, the petitioner's version has to be accepted. Petitioner, in this view of the matter, is entitled to the grant of pension, as per the scheme. Let a direction, in the nature of mandamus, be issued to the respondent to grant pension to the petitioner i.e. legal representatives of the erstwhile petitioner on record, w.e.f. 2.11.1981, i.e., the date of application. Let this be done within a period of eight weeks.

The writ petition is allowed in the aforesaid terms.