
(2005) 03 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6103 of 2000

Dharam Singh Gill

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Citation : (2005) 140 PLR 669

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : Baljinder Singh, for the Appellant; Rita Kohli, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—This is an unfortunate and pitiable case. The petitioner is an old man of 85 years, a political sufferer and almost blind. He has been denied a freedom fighter pension as he has not been able to prove his circumstances to the satisfaction of the respondent authorities.

2. During the Silver Jubilee Celebration in the year 1972 for the Independence of India, a pension scheme for freedom fighters known as the "Freedom Fighters Pension Scheme, 1972" was introduced. This scheme provided for the grant of pension to specified freedom fighters or to their families. The scheme was subsequently re-named as the "Swantantarta Sainik Samman Pension Scheme, 1980" and was made applicable to certain other categories of freedom fighters, who had been left out of the 1972 scheme. The 1972 scheme laid down the conditions for the grant of pension. The petitioner claiming himself to be a freedom fighter accordingly applied for pension under that scheme enclosing therewith all the documents in his possession including the award of a scholarship to the petitioner's son as a son of a political sufferer and also the issuance of a fire arms licence to the petitioner on account of his status as a freedom fighter and the award of a Tamar Patar on 5.8.1973, which was handed over to him by the then Chief Minister Punjab, Giani Zail Singh. However, though

the petitioner was honoured on several occasions, no pension was released to him despite his approach to several authorities in this behalf. The petitioner was ultimately successful in securing a freedom fighter's pension from the Punjab Government w.e.f. 30.5.1988 vide order dated 30.7.1999, Annexure P-13. Respondent No. 4, i.e., the under Secretary, Government of Punjab thereafter made a recommendation to the Central Government for the payment of the Central Government's share of the pension. It appears that the Central Government also made some enquiries with regard to the claim of the petitioner and having observed some contradictions in his claim, informed him vide Annexure P-15 dated 12.1.2000 that his claim had not been established and his prayer for the grant of central pension had been rejected. It appears that the Central Government also conveyed this information to the State Government with the result that the pension granted by the State Government, which was being disbursed to the petitioner regularly, was also discontinued under Orders dated 31.3.2000, Annexure P-16, with the petition. This petition has accordingly been filed challenging the orders Annexures P-15 and P-16.

3. At the very outset, it has been urged by Mrs. Daya Chaudhary, the learned Assistant Solicitor General of India representing the Union of India and Ms. Rita Kohli, the learned Deputy Advocate General, Punjab that as the Central Government and the State Government had vide the impugned orders rejected the petitioner's claim on an appreciation of facts, a writ petition was not a proper remedy for the petitioner and that, if so advised, he could go in for a civil suit to prove his claim.

4. I have considered this contention.

5. It is true that disputed questions of fact are undoubtedly involved in this petition and that this Court would ordinarily interfere with some hesitation, but I find that the observations made by the Division Bench at the time of the motion hearing of the case on 27.11.2001 are extremely pertinent. These are reproduced below:-

"The petitioner is present in Court. We have heard him. Despite certain contradictions in the information supplied by the petitioner, we are satisfied that his claim for the grant of Freedom Fighter's pension deserves consideration by this Court. The man is old. We are informed that he is about 85 years of age. His eye-sight has gone weak. His wife has to go alongwith him everywhere despite the fact that she herself appears to be aged.

Admitted.

Operation of the order dated March 31, 2000, a copy of which has been produced as Annexure P-16 shall remain stayed. The arrears for the period after the passing of the impugned order shall be released to the petitioner within two months,"

6. The petitioner has also appeared today in Court in person. He is clearly in

distress and is accompanied by an equally frail lady who is said to be his wife. To my mind from the observations quoted above and what I have seen today in Court, to relegate the petitioner to a civil suit, would in effect deny him his claim for all times to come. When this after came up for hearing before the learned Single Bench on 15.12.2004, the petitioner's counsel had stated at the Bar that he would confine his prayer only to the grant of pension from the State Government and would forgo his claim against the Central Government. In this view of the matter, the only limited question that now remains for decision is as to whether the order, Annexure P-16 can be sustained.

7. Mr. Baljinder Singh, the learned counsel for the petitioner, has submitted that the State Government had, in the course of the last two decades, honoured the petitioner as a freedom fighter and awarded him a Tamar Patar and granted him various facilities as a freedom fighter and also granted him a pension keeping that status in view. He has urged that in the very nature of things and the fact that the memory of the petitioner had dimmed with age, it was not possible for him to recollect his exact career and in the light of the fact that the State Government had, at the initial stage, granted him a pension, the presumption was that he was a freedom fighter. He has accordingly urged that Annexure P-16, the impugned order, which had been made without notice to the petitioner be quashed on this very short ground.

8. Ms. Rita Kohli, the learned State counsel, has, however, argued that the order, Annexure P-16, was made on the basis of the order, Annexure P-15 and as the petitioner had been called to give some details with regard to his career and the matter had been considered by the Central Government and the order, Annexure P-15, made against the, petitioner, based on certain facts, which the petitioner had not been able to explain, no interference was called for.

9. I have heard the learned counsel for the parties and have gone through the record.

10. It is true that in the order, Annexure P-15, certain contradictions in the claim raised by the petitioner have been spelt out. I, however, find that before the order, Annexure P-15, was made, no notice was given to the petitioner to explain the contradictions and the Central Government had rejected the claim by observing that, there were certain contradictions in his claim. Likewise, Annexure P-16 appears to have been made exclusively on the observations of the Central Government in Annexure P-15, It is also the conceded position that the State Government and the Central Government had themselves, at various stages, over the last two decades, granted several facilities to the petitioner as a freedom fighter. A notice to the petitioner in these circumstances ought to have been given to him. I am, however, of the opinion that as the petitioner has given up his claim for the grant of central pension on his counsel's statement on 15.12.2004, no relief can be grafted to the petitioner with respect to the order, Annexure P-15.

11. In the light of the aforesaid statement, however, the order, Annexure P-16, is quashed. The writ petition is accordingly allowed. There will be no order as to costs.