
(1984) 09 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 346 of 1984

Girdhari Lal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-09-1984

Acts Referred:

Mandi State Public Safety Ordinance, 2004 — Section 4

Citation : AIR 1986 HP 57 : (1984) 13 ILR HP 597

Hon'ble Judges : P.D. Desai, C.J.;H.S. Thakur, J

Bench : Division Bench

Advocate : Kedarishwar, for the Appellant; P.A. Sharma, Central Govt. Standing Counsel and L.S. Panta, Dy. A.G., for the Respondent

Judgement

P.D. Desai, C.J.—The petitioner was a subject of the former Princely State of Mandi which merged with the Union of India after independence and became a part of Himachal Pradesh on May 1, 1948. According to the petitioner, he was an active participant in the Praja Mandal Movement which aimed at securing the merger of the said Princely State with the Union of India after the country attained independence on Aug. 15, 1947 and he was, therefore, ordered to be detained for a period of six months u/s 4 of the Mandi State Public Safety Ordinance under the orders of the Home Minister of Mandi State. Consequently, the petitioner was detained on 8th of Asoj, 2004 (BK) corresponding to Sept. 24, 1947 and was released on 23rd Pausa, 2004 (BK) corresponding to Jan. 7, 1948. On the basis of the above mentioned facts, the petitioner claims that he is entitled to the benefit of grant of pension under the Freedom Fighters" Pension Scheme, 1972, (hereinafter referred to as "the Scheme"), as amended from time to time, which came into force on and with effect from Aug. 15, 1972.

2. The precise case of the petitioner is that his case is covered by Clause (g) of the Scheme which provides for pension being paid to the "Freedom Fighters who suffered imprisonment in movements for merger of erstwhile Princely States within the Indian Union after the 15th Aug. 1947, till the date of accession of the

State with the Indian Union". According to the petitioner, since the Princely State of Mandi merged with the Union of India on May 1, 1948, and he was detained for a period of about three and half months from Sept, 24, 1947 to Jan. 7, 1948, for having participated in the movement for the merger of the said State, he is entitled to pension under the aforesaid clause of the Scheme. The petitioner accordingly claims to have made an application to the competent authority on or about Feb. 15, 1977, but since no decision is stated to have been taken thereon, the petitioner made another application on April 13, 1981, and in due course submitted the necessary documents. However, the application was rejected on March 26, 1983, on the ground that his detention was for less than six months. The petitioner has, therefore, prayed that the respondent (s) be directed to grant to him the pension due under the Scheme.

3. On behalf of the first respondent, an affidavit-in-reply dt. Aug. 27, 1984, has been filed by the Under Secretary to the Government of India, Ministry of Home Affairs, (Freedom Fighters Division) reiterating the same stand which was adopted while rejecting the claim for pension advanced by the petitioner. Along with the affidavit-in-reply, the deponent has produced a copy of a communication dt. April 28, 1984, sent by the Deputy Secretary to the Government of India to the Chief Secretaries of all State Governments/Union Territories purporting to clarify the provisions contained in Clause (g) of the Scheme. The following extract from the said communication being relevant is quoted verbatim :

"xx xx xx 2. The underlying intention behind incorporation of the above clause into the eligibility criteria was that those who had taken part in the Movements for merger of the former Princely States in the Union of India will also be considered for the grant of Pension under the Scheme in case they had suffered the minimum imprisonment of six months.

3. In order to avoid any misunderstanding or misreading the provision, it is clarified that no relaxation has been given in the matter of minimum requirement in the duration of jail/underground suffering for eligibility to pension in respect of those persons who had suffered in connection with the merger of Princely States in the Union of India and all such persons will be considered for pension under the 1972 Scheme (or the liberalised Scheme of 1980) only if they fulfil the condition of 6 months jail suffering as required for other categories of freedom fighters as mentioned against the Clause (a) of the Freedom Fighters, Pension Scheme, 1972, and all such cases where the applications for Pension had been filed under the 1972 Scheme as Freedom Fighters" Pension are to be dealt with accordingly."

It is apparent that this communication, which purports to interpret and explain Clause (g), has been issued after the decision in Tej Singh Nidharak"s case was rendered by this Court on Jan. 9, 1984 (reported in Tej Singh Nidharak Vs. Union of India (UOI) and Another, The interpretation or explanation given by an executive authority cannot supersede judicial interpretation of Clause (g). Besides, such interpretation or explanation, which reads into Clause (g) words

and expressions not found therein, cannot be accepted. Under the circumstances, in our opinion, the communication has no force in the eye of law and no defence can be based thereon. The present case is fully covered by the decisions rendered by this Court in similar cases, namely, Tej Singh Nidharak v. Union of India (C. W.P. No. 224 of 1983) decided on Jan. 9, 1984 (reported in Tej Singh Nidharak Vs. Union of India (UOI) and Another, and Sumer Chand v. Union of India (C.W.P. No. 233 of 1984) decided on Aug. 7, 1984. In both those cases, this Court has held that for the applicability of Clause (g) of the Scheme, the requirement of minimum period of imprisonment for six months is neither expressly nor impliedly provided for and that a freedom fighter who was detained on account of his participation in the Praja Mandal Movement would be entitled to the benefit of pension under the said clause irrespective of the term of detention.

4. The State Government has produced the original record of the Mandi Jail for the period from Sept. 1947 to Mar. 1948 for the Court's inspection. The access to the record was also given to the Counsel for the petitioner and the Central Government. The record shows that the petitioner was ordered to be detained for six months u/s 4 of the Mandi State Public Safety Ordinance by an order of the Home Minister of Mandi State. The petitioner was consequently detained and admitted in the Mandi Jail on 8th Asoj, 2004 (BK) equivalent to Sept. 24, 1947 and he was released on 23rd Pausa, 2004(BK) equivalent to Jan. 7, 1948. The record thus shows that the petitioner had actually undergone imprisonment for a period of about 3 and half months. Having regard to the material furnished by the original record of the Mandi Jail, an extract whereof has been placed on the record of this case by the second respondent, the petitioner's claim as advanced in the petition stands virtually substantiated and his case is covered by the decisions rendered by this Court in Tej Singh Nidharak's case as well as in Sumer Chahd's case. Following the said decisions and for the reasons recorded therein, we are of the opinion that the petitioner is entitled to claim pension under Clause (g) of the Scheme.

5. For the foregoing reasons, writ is directed to issue to the first respondent to pay pension to the petitioner in accordance with the Scheme on and with effect from the date he became eligible thereto, which cannot be later than the date of his initial application for pension, that is, Feb. 15, 1977. The arrears of pension will be determined and paid to him within a period of three months from today and the monthly pension becoming due and payable on and from Oct. 1, 1984, shall be paid and continued to be paid to him as and when it accrues due.

6. Rule made absolute accordingly. The first respondent will pay the costs of this petition to the petitioner which are assessed at Rs. 250/-. The costs shall be paid with the arrears of pension.

7. Dasti copy on usual terms.