
(2009) 08 DEL CK 0133

In the Delhi High Court

Case No : Writ Petition (C) No. 22697 of 2005

Inderjeet Pathak

APPELLANT

Vs

Under Secretary (Freedom Fighters Division) and Others

RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Citation : (2009) 08 DEL CK 0133

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : K.B. Rohatagi, Aparna Rohtagi and Mahesh Kasana, for the Appellant; Anurag Kumar, Shilpa Singh and Chandra Shekhar, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—This is second round of litigation for the petitioner- Inderjeet Pathak, who claims to be wife of a freedom fighter and the relief sought by the petitioner in this petition is pension under the "Swatantra Sainik Samman Pension Scheme, 1980" (hereinafter referred to as the "Pension Scheme"), Annexure- E. Petitioner was denied pension vide order of 26th September, 2001, which she had challenged in W.P. (C) No. 437 of 2002, which was decided on 22nd November, 2004, while holding as under:

It is not necessary for the purpose of disposal of this writ petition to decide the above pleas on merits. For the purpose of this petition, it is sufficient to notice that the impugned order is liable to be set aside on the short ground that the show cause notice issued to the petitioner questioned the validity of her marriage while the impugned order is based on the ground that the petitioner is ineligible for grant of pension on account of not satisfying the eligibility condition, having independent income and not being dependent upon the pensioner. Petitioner was not afforded any opportunity of showing cause against this ground. Following the dictum in Motilal Lal Chand Shah (Supra) the impugned order is not sustainable and is hereby set aside. The quashing of the above would not come in the way of respondents issuing a fresh show cause notice on the grounds on which they

seek to deny pension to the petitioner and after giving an opportunity to the petitioner to urge its claim in support of its entitlement to pension and passing an order in accordance with law.

The writ petition stands allowed in the above terms.

2. In the face of the aforesaid order, the respondents have passed a fresh order, Annexure-B, denying pension to the petitioner, by observing as under:

It is evident that you were married to the late freedom fighter in the year 1967 when his first wife Smt. Sushila Pathak was alive. As such, your marriage is ab-initio-void and illegal. Besides, you have also admitted the fact of your employment with the State Bank of India. As such, the charges cited against you in the show cause notice stand established. Therefore, the family pension transferred in your name and subsequently suspended vide letter dated 4.10.1996 deserves to be cancelled.

Accordingly the competent authority has decided to cancel your dependent family pension from the date it was sanctioned and to effect the recovery of pension already illegally drawn as revenue realization.

3. The aforesaid impugned order, Annexure-B, is questioned in this writ petition on the ground that the financial dependency is not the criteria for grant of pension and that the petitioner had been receiving the pension because she is the legally wedded wife of late Sh. Shailendra Kumar Pathak.

4. According to the petitioner, she is the nominee of her late husband and, therefore, she is entitled to the pension in question and denial of the same, vide impugned order, is bad in law.

5. In the counter affidavit, it has not been denied by the official respondents that the petitioner was the nominee in the application form for the pension made by late Sh. Shailendra Kumar Pathak. However, it is stated that on the complaint of respondent No. 3, in the Enquiry it was revealed that the petitioner could not establish that she was the legally wedded wife of late Sh. Shailendra Kumar Pathak, whereas, respondent No. 3 could prove it. According to the respondents, the twin conditions for eligibility to the grant of pension in question, is (i) relationship and (ii) should not have any independent means of livelihood. Respondents assert that the petitioner is an employee of a nationalised bank and is not dependent of the late freedom fighter and is not entitled to the pension.

6. After having heard learned Counsel for the parties and upon perusal of the material on record, I find that the Pension Scheme, Annexure -E, needs to be first looked into. Clause-3 of the "Swatantra Sainik Samman Pension Scheme, 1980" read as under:

3. WHO ARE ELIGIBLE DEPENDENTS

For the purpose of grant of Samman pension, family includes (if the freedom fighter is not alive) mother, father, widower/ widow if he/she has not since

remarried, unmarried daughters. Not more than one eligible dependent can be granted pension and in the event of availability of more than one dependent the sequence of eligibility will be widow/widower, unmarried daughters, mother and father.

7. It is evident from the Pension Scheme, Annexure- E, that financial independence is not the criteria for grant of this pension, which is an honour conferred upon the freedom fighters or their dependents. This aspect stands clarified from the Pension Scheme, Annexure-E, itself. Introductory part of this Scheme clearly states that the earlier Scheme was for the benefit of the freedom fighters or their dependents who were in need of financial assistance, whereas, under this Scheme, benefit of pension has been extended to all freedom fighters as a token of "Samman" to them. In this background, the petitioner had to establish that she was the legally wedded wife of late Sh. Shailendra Kumar Pathak. It deserves notice that in the counter affidavit filed by the respondent, it has been stated that an enquiry was conducted and in that enquiry, respondent No. 3 was able to establish that she was the legally wedded wife of late Sh. Shailendra Kumar Pathak. In the rejoinder/replication, the petitioner has not averred that the enquiry conducted by the official - respondent was suffering from any material or procedural defect. Since respondent No. 3 has been found to be the legally wedded wife of late Sh. Shailendra Kumar Pathak, therefore, nomination in the favour of the petitioner by itself is not sufficient to dislodge the impugned order.

8. This petition is without any merit and is accordingly dismissed.

9. No costs.