
(2004) 11 DEL CK 0013
In the Delhi High Court
Case No : WP (C) No. 437 of 2002

Inderjit Singh Pathak

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:

Citation : (2004) 115 DLT 375 : (2005) 79 DRJ 33

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Arun Bhardwaj, for the Appellant; Kalyan Dutt, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Petitioner Mrs.Inderjit Singh Pathak seeks writ of certiorari for quashing order dated 26.9.2001. By the said order petitioner was notified of the provisional decision cancelling the SSS pension granted to the petitioner. Further the amount drawn by her as SSS Pension was to be recovered and she was asked to deposit the same, failing which the Government of India would initiate steps for recovery of the same.

2. Petitioner seeks a writ of mandamus directing respondents to grant pension to her as envisaged under the Swatantra Sainik Samman (SSS) Pension Scheme, 1980 and as provisionally paid with arrears of pension, with interest at the rate of 18% p.a.

3. The impugned order dated 26.9.2001, was the culmination of the claims put up by the petitioner Smt.Inderjit Singh Pathak claiming to be the lawfully wedded wife of late Shri Shailendra Kumar Pathak (hereinafter referred to as the 'pensioner'), and the rival claim of Smt.Sushila Pathak, as the lawfully wedded wife of the pensioner, being married to him on 19.6.1956 and having two daughters namely Nilima Pathak and Subra Pathak from the wedlock.

4. Before dealing with rival contentions and the legal questions arising, the facts

in brief leading to the filing of the present petition may be noted.

(i) Late Shri Shailendra Kumar Pathak, pensioner, applied for grant of SSS Pension in December, 1980 claiming jail suffering during the period 1941 to 1943. SSS Pension was sanctioned at the rate of Rs.300/- per month w.e.f. 1.8.1980. He expired on 17.7.1991. He had indicated the name of the petitioner as his wife, while applying for pension. Petitioner upon the death of pensioner represented for transfer of the family pension in her favor. Upon completion of formalities and furnishing of relevant documents, family pension at the rate of 750/- per month was sanctioned w.e.f. 18.7.1991 to the petitioner. The amount of pension was increased in August, 1992 to Rs.1000/- and thereafter in October, 1994 to Rs.1,500/- per month.

(ii) In March, 1992, Smt. Sushila Pathak claiming to be the widow of the pensioner represented for grant of pension. Her claim of being duly wedded wife and legal heir of late Shri Shailendra Kumar Pathak was confirmed on the basis of report of District Magistrate of Aligarh. Smt. Sushila Pathak was informed on 27.1.1993, that pension had already been transferred in favor of the petitioner. She represented in March, 1996 against the same and requested for cancellation of the pension in favor of the petitioner who was not the legally wedded wife of the pensioner. In October, 1996, family pension in favor of the petitioner was suspended and a show cause notice was issued. In November, 1996 sanction order of family pension in favor of Smt. Sushila Pathak was issued.

5. As noted, the pension granted to the petitioner was suspended in 1996. The petitioner as well as Smt. Sushila Pathak have led evidence with regard to their marriage with the pensioner. Reports from the respective District Magistrates have been furnished in support of their claims. The pensioner himself had indicated the name of the petitioner as his wife entitled to pension disregarding Smt. Sushila Pathak and the off-spring. Smt. Sushila Pathak claims to be married to the petitioner in 1956 i.e. much before the marriage of the pensioner with the petitioner. The respondents in these circumstances passed the impugned order dated 26.9.2001, whereby they confirmed the suspension and cancellation of the pension in favor of the petitioner.

6. In passing the impugned order the respondents have proceeded on the basis that the petitioner being an employee of the SBI was not dependent upon the pensioner and as such under the provisions of the SSS Pension Scheme was not eligible for grant of dependent family pension as dependency of the wife on her husband is the basic criteria for grant of family pension to her after the death of her husband.

7. In the show cause notice dated 4.10.1996, the ground taken was that the pensioner had not divorced Smt. Sushila Pathak to whom he had married and from whom he had two daughters before entering into the second marriage with the petitioner which was illegal and thus the petitioner was not entitled to pension. The impugned order as noted above has proceeded not on the above

ground of petitioner's marriage being illegal, but on the ground that petitioner being a former employee of SBI, having independent income, was not eligible for pension under the provisions of the Scheme.

8. Learned counsel for the petitioner has assailed the impugned order on the ground that while the show cause notice was issued on one ground i.e. the marriage of the petitioner not being legal, while the ground taken in the impugned order is that the petitioner being retiree from the SBI had independent income and was not eligible. Reliance is placed on *Motilal Lalchand Shah Vs. L.M. Kaul and Another*, to urge that where the show cause notice was issued on one ground and the order is passed on another ground. It causes prejudice to a party in defending itself against the new ground. Petitioner claims denial of opportunity of showing cause against the impugned ground on which order is based.

9. Counsel for respondents while relying on the provisions of the Freedom Fighters Pension Scheme, 1972 and the SSS Pension Scheme, 1980 urged that the criteria stood changed from financial assistance to honouring the freedom fighters and as such denial of pension to the petitioner on the ground that she had independent income was not sustainable. Reliance on Annexure R-1/18 of the SSS Pension Scheme, 1980 for denial of pension was also urged as being misconceived.

10. 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 order 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.