

(2002) 05 GAU CK 0064

In the Gauhati High Court

Case No : Writ Petition (C) No. 295 (SH) of 2001

K. Kula Singh and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Army Act, 1950 — Section 106
Central Civil Services (Pension) Rules, 1972 — Rule 5(1)
Constitution of India, 1950 — Article 226

Citation : (2004) GLT 93 Supp

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : V.K. Jindal, L. Lyngdoh and N. Singhana, for the Appellant; S.C. Shyam, Addl. C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kar, J.—Petitioners before the Court are (1) Sri K. Kula Singh and his wife (2) Smt. Konjengben Radhamani Devi. The petition is against the Union of India, Director General and the Commandant of the Assam Rifles. The Petitioners intended to get pensionary benefits on the allegation that the same has been refused to the Petitioner No. 1 when he discontinued to be in service due to ailments.

2. The brief facts giving rise to the petition are as follows. The applicants claiming as citizens of India state that applicant No. 1 was enrolled on 25.1.1966 in the rank of RFN/Carpenter in the organisation of Assam Rifles as RFN No. 49007. That, he continued in service to the satisfaction of his superiors next before 27.7.1982 but was terminated arbitrarily and illegally with effect from 27.7.82 without any service benefit, although he completed more than 15 years of service and was entitled to get pensionary benefits as per related CCS (Pension) Rules.

3. That, while returning from training centre at Rourkee he suddenly developed

psychiatric problems and could not rejoin the duties. He underwent treatment with "meitei kabiraj" and thereafter was treated by Dr. L.S. Singh but unfortunately he could not inform his authority due to such illness although Petitioner No. 2 sent two/three applications under her signatures. That, in the year 1999 the Petitioners came to know that Respondent No. 3 held a Court of Inquiry and thereafter had struck off the name of the Petitioner No. 1 from the force with effect from 27.7.82 but the aforesaid order of termination dated 15.10.83 was not communicated either to the Petitioner No. 1 or to any of his family members.

4. That in January, 1999 further representation was sent through Petitioner No. 2 praying for pensionary benefits but she was informed, vide letter of the Respondent No. 2 referred as letter No. 4807/Discharge/NE-m/Misc dated 20.4.99 by Record Officer Chandan Ghosh that Petitioner No. 1 has been declared a deserter on the basis of Court of Inquiry and treated as SOS (struck off strength) with effect from 27.7.82.

5. It was contended by the Petitioners that striking off the name of the Petitioner No. 1 on the ground of desertion without service benefit irrespective of length of service is not at all sustainable under the CCS (Pension) Rules and is to be treated as absolutely arbitrary, malafide and violative of the provisions of the constitution etc. Thus, the Petitioners prayed for setting aside the decision of alleged court of Inquiry dated 15.10.83 and subsequent letter dated 20.4.99 (Annexure-6) issued by the Respondents and for an order for the payment of pensionary benefits to the Petitioner No. 1 alongwith other reliefs to which they may be entitled.

6. The Respondents, opposing the petition, filed affidavit-in-opposition through one of them, viz. Major Sandeep Kumar, Joint Assistant Director (Legal) in the Office of Headquarter DGAR, Assam Rifles, Shillong. The Respondents contended that the petition, besides being highly speculative, is demonstrative of suppression and misrepresentation of facts, and accordingly liable to be dismissed. That there was inexplicable and inordinate delay of more than two decades in presenting the writ petition before the Court. That in fact the Petitioner No. 1 was absent from service with effect from 27.7.82 without any intimation whatsoever to the department and consequent to his such absence Court of Inquiry was ordered and consequent to the findings thereof he was treated as a deserter for which he is not entitled to any pension as per the relevant Pension Rules. That he was removed from service as per the provisions of the relevant Army Act and Rules as a deserter and deserter is not entitled to pension irrespective of the length of service. That during inquiry it was found that on and from 27.7.02 at 7.30 P.M. he was absent from duty and his whereabouts could not be located inspite of search. Accordance with Section 106 of the Army Act, 1950 read with SRO 318 dated 6.12.62 of the Government of India, Ministry of Defence and under Rule 5 of Central Civil Services (Pension) Rules, it was submitted that Petitioner No. 1 was not entitled to any benefit. That retirement

benefit is available as per Rule 5(1) of CCS (Pension) Rules to a person if he retires, or is retired, or is discharged from service as per the provision of law. That length of service, by itself, does not entitle a Government servant to pension. That the Petitioner No. 1 being declared a deserter, he is guilty of "grievous offence" under the Army Act for which his claim for benefit of service is not entertainable in law. That there was absolutely no information from the Petitioner for long 10 years and it is only in the year 1999 a representation was received from the wife of the Petitioner No. 1 with medical certificates alleging mental derangement after lapse of a period of 16 years from the date of desertion. That it was nothing but a futile attempt to attract the sympathy of the court on false statement and misrepresentation of facts. That the petition is ill-conceived and filed after 20 years, that too with suppression and misrepresentation of facts, and accordingly, the Petitioners are not entitled to any relief, etc. etc.

7. I have given patient hearing to both sides. Perused the annexures attached to the petition, the contents of it and the affidavit-in-opposition, carefully. My findings are as hereunder.

8. In have been referred to, by the learned Central Government Standing Counsel, the laws reported as follows:

- (i) Sita Ram Yadava Vs. Union of India, and;
- (ii) Union of India and Others Vs. Shri B. Dev,

9. Now, advertng to the merits of submissions made, here most of the facts are admitted. Disputed facts are (a) whether there was a valid Court of Inquiry before removal of the Petitioner No. 1 on the ground of desertion treating as "SOS" with effect from 27.7.82; (b) whether under the facts and circumstances, as narrated, the Petitioner No. 1, or his wife, is entitled to any pensionary benefits.

10. This is a petition under Article 226 of the Constitution. The general principles of this Article is that it empowers the High Court to issue writs/directions, or orders in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari etc., (a) for the enforcement of any of the rights conferred by Part III of the Constitution and (b) for any other purpose. By "any other purpose" it is an established principle to mean that writ may be issued on this count only after a finding that aggrieved party has a "legal right" which entitles it to any of the aforesaid writs and that such rights have been infringed. So, we are concerned in the present case to see whether there was any such right available to the Petitioners. It was also held that such relief under Article 226 cannot be granted to a person who, by his conduct is such that he does not deserve the discretionary remedy, i.e. he is guilty of laches or unreasonable delay or acquiescence, or that the applicant has misrepresented or suppressed material facts and had attempted to mislead the Court, etc. etc.

11. I would like to reproduce the basic materials upon which the reliefs are being claimed by the Petitioners. These are Annexures 1, 2 and 3, supposed to be medical certificates issued by a Doctor after a lapse of considerable period from the date of alleged mental derangement of patient. It was stated that such derangement was from that point of time when Petitioner No. 1 was returning after completion of his training at Rourkee (no specific date of the psychiatric attack has been given in the writ petition). He has also not filed any certificate to show when he was released from his training at Rourkee. However, the Respondents filed Annexure R-1 which states that the completion test was held on 27.2.82 when certificate of technical proficiency was granted to Petitioner K. Kula Singh. So, we can presume that even if there was any such psychiatric attack, it can only be after 27.2.82. But interestingly one of the certificates (Annexure-1, 2, 3) states that he was under treatment of the said doctor from 1.6.82 till 1.9.87; but all these certificates issued only in the year 1998 and 2001. These inconsistencies and omissions of facts create sufficient scope for a reasonable doubt to be maintained about the truth of the contentions/allegations in the petition that there was a mental derangement of the Petitioner No. 1.

12. Then again the contents of medical certificates will go a long way to convince any man of prudence that they hardly contain any truth or genuineness. I am tempted to reproduce them as hereunder:

To Whom It May Concern Date: 14.12.98

This is to certify that Sri Kongengbam Kulla Singh son of Late K. Angahal Singh of Heingang Mayai Leikai was suffering from Paranoid state and he received treatment under me from 1.6.1982 to 1987. During the above periods he was advised complete rest in order to restore his health.

Sd/- 14.12.98 Dr. L. Priyokumar Singh)

(Annexure-1)

To whom it may concern Date: 23.12.98 This is to certify that Sri Kongengbam Kulla Singh, S/o (Late) K Angahal Singh of Heingang Mayai Leikai was suffering from Paranoid state and he received treatment under me from 12.3.87 till now. He was advised complete rest during the period of treatment in order to restore his health.

He is not related to me. 15.1.95

Sd/- (Dr. L. Surchandra Singh)

(Annexure-2)

To whom it may concern Date: 17.7.2001 This is to certify that Sri Kongengbam Kulla Singh, S/o (Late) K Angahal Singh of Heingang Mayai Leikai was suffering from Chronic schizophrenia. He receive treatment under me from 12.3.87 till now.

He is physically and mentally incapacitated.

He is not related to me.

Sd/- 17.7.2001 (Dr. L. Surchandra Singh) Specialist (Psychiatry)

(Annexure-3)

Annexure-4 is the only document, which has been claimed to be the representation also does not contain any date on which it was addressed to the commandant of 4th Battalion, Assam Rifles. On Annexure-4 it was mentioned that the attack was in the month of May, 1982 and Petitioner No. 1 got unconscious and suffered paralysis. I quote from Annexure-4:

Unfortunately, in the month of May, 1982 while he return from Rourkee after completion of course his brain was not functioned as usual. So I brought him to many Meitei Kabiraj for his treatment. But he did not improved his nervous system Then, I consulted with Dr. L. Priyokumar Singh for further treatment of my said husband. Accordingly treatment carried out and found him as suffering from "PARANOID". He is still under treatment and no sign of improvement. Still he is unconscious as well as paralysis.

This brings further infirmity in the contention of the Petitioners about the nature and the date of either schizophrenic or any other mental attack as contended by them. Under the facts and cir- cumstances aforesaid, I find that the Petitioners cannot be believed.

13. Be that as it may, coming to the question of probability, it cannot be presumed that a defence personnel will be quite unaware of his obligations and the call of duty and would not inform his authority about his illness soon after he was attacked by illness. It is not difficult to arrange some relations/friends to send intimation to the concerned authority. But then, facts remains that there was absolutely no communication with the authority for about 16-18 years, not to speak asking for leave of absence. Thus, it will lead to a conclusion that there was concealment and misrepresentation of facts and a Court of Equity will be reluctant to grant any relief to a person who does not come with clean hands. Undoubtedly power of court under Article 226 is a discretionary one to be exercised with utmost care and circumspection

14. Coming to the second point for determination in this writ petition about entitlement of pensionary benefits on the ground of rendering service for more than 15 years, it will be seen that the Petitioners specifically admitted in para 3 of the petition that CCS (Pension) Rules is applicable in this case. I quote from the relevant portion of writ petition:

That the applicant No. 1 was enrolled on 25.1.1966 under Service No. 49007 in the trade and rank of Rfn/Carpenter in the Assam Rifles Organization and was posted at 4-Assam Rifles, C/o 99 APO, i.e. Respondent No. 3 in the instant application. Ever since the date of enrollment of the Applicant No. 1 on 25.1.1966, he served the Assam Rifles with full satisfaction of his superiors of the Unit and Battalion till 27.7.1982. In other words, the Applicant No. 1 even on

the alleged date on which he was struck off the strength from service w.e.f. 27.7.82 arbitrarily and illegally, had completed more than 15 years of active service from the date of enrolment on 25.1.1996 till 27.7.1982 which entitled him to get pensionary benefits as per the relates CCS (Pension) Rules.

Thus, the Respondents had agreed that CCS (Pension) Rules is applicable to the Petitioners. This admission is exactly the contents of the affidavit-in-opposition also. Thus, there cannot be any dispute about it. The contention of the Respondents is that Petitioner No. 1 being a deserter, he is not entitled to any service benefits as per relevant provisions in the CCS (Pension) Rules and the Army Act which is applicable to the Petitioner No. 1. In this context, learned lawyer appearing for the Respondents has referred me to citations of Hon'ble Supreme Court reproduced earlier and the relevant para of the citation states, that "if a person is guilty of grave misconduct, withholding of pension is proper" (Para 15 of the citation - Union of India and Others Vs. Shri B. Dev, The other law (cited case), i.e. Sita Ram Yadava Vs. Union of India, also speaks in similar language that "if a person is guilty of criminal offence, withholding of pension is proper". The relevant provision of the Army Act says that desertion is a "heinous offence" punishable with minimum 10 years of imprisonment. Annexure-R-3 contains the details of the Court of Inquiry that was held and the decision arrived at. I find there is nothing wrong in the findings whereupon it was held that Petitioner No. 1 was absenting himself from his service without any intimation whatsoever and accordingly was to be treated as deserter and SOS. The language used in the writ petition to challenge the proceedings in the Court of Inquiry is of technical nature and has no force before a Court of law. It will be worthwhile to quote Rule No. 17 of Assam Rifles Rules, 1985 which goes as hereunder:

Other conditions of service - The conditions of service of rifleman in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other employees of the Central Government of corresponding grade.

Therefore, there is no dispute that CCS (Pension) Rules is applicable to the Petitioner No. 1 and since he was guilty of desertion cannot claim any relief of service benefits. It requires no emphasis that pensionary benefits are given to a person who discharges his duties sincerely and honestly while in service without any aberration to the authority and without being guilty of any offence. There is no gainsaying that an employee is duty bound to inform within reasonable time the reason or reasons of his remaining absent from duty and an expiry of twenty years, under no stretch of imagination, can be regarded as such a reasonable time, that too on getting information of removal from service.

15. Concluding in concordance with facts given in affidavit-in-opposition by the Respondents, I would find that it is a futile exercise by the Petitioners, maybe out of greed and with intent to arouse the sympathy of Court, to invoke the extraordinary powers of this Court. But unfortunately for the Petitioners the Equity

Court will not react unless there is a just cause to vindicate and person seeking vindication is absolutely fair and deserving.

16. In the result, the petition stands dismissed. No costs.