
(2013) 12 AP CK 0060

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9883 of 2005

Kesireddy Ramachandra Reddy and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-12-2013

Acts Referred:

Citation : (2014) 3 ALD 129 : (2014) 2 ALT 150

Hon'ble Judges : A.V. Sesha Sai, J

Bench : Single Bench

Advocate : K. Ananda Rao, for the Appellant; K. Mani Deepika, for the Respondent

Judgement

A.V. Sesha Sai, J.—This Writ Petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

To issue an appropriate writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of the Respondent in not granting pension to the petitioners from the date of receipt of their applications under Swatantra Sainik Samman Pension Scheme, as arbitrary, illegal, for extraneous consideration and in violation of Article 14 of the Constitution of India and to issue a consequential direction to the Respondent to grant pension to the petitioners with effect from the date of receipt of applications forthwith under Swatantra Sainik Samman Pension Scheme.

Briefly stated, the case of the petitioners, as per the pleadings in the affidavit filed in support of the Writ Petition, is as under:

2. Petitioners are the freedom fighters participated in anti-Nizam movement for the merger of Hyderabad State into Indian Union and they were in various border camps under the leadership of various well known freedom fighters. The then Nizam Government issued warrants of arrest against the petitioners 1 and 2 and to evade the same, they went underground for more than six months. As per Swatantra Sainik Samman Pension Scheme, 1980, petitioners 1 and 2 submitted

applications to the respondent in the year 1992 and the 3rd petitioner submitted his application in the year 1997. The Hyderabad Special Screening Committee, constituted under the leadership of Sri Ch. Rajeshwar Rao, verified and recommended the cases of the petitioners in the year 1997 for the grant of freedom fighters' pension. In spite of the recommendations of the State Government, when there was inaction on the part of the respondent in considering the applications filed by the petitioners 1 and 2, they filed Writ Petitions earlier before this Court and in pursuance of the directions issued in the said Writ Petitions, respondent herein granted pension to the petitioners 1 & 2 herein with effect from 3.9.2004 and 6.6.2000 respectively. 3rd petitioner was granted with effect from 20.1.2004.

3. Contending that the grant of pension prospectively instead of retrospectively as illegal, arbitrary and contrary to the law laid down by the Hon'ble Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others, , the present Writ Petition is filed.

4. A counter affidavit, resisting the averments in the affidavit filed in support of Writ Petition, is filed on behalf of the respondent-Union of India, contending principally that the petitioners are entitled for freedom fighters pension only prospectively, but not retrospectively. It is further contended in the counter that since the pension was given on the basis of benefit of doubt, petitioners are entitled for the same prospectively only. It is further stated that the petitioners have been granted pension in relaxation of the provisions of the Swatantra Sainik Samman Pension Scheme, 1980 by giving benefit of doubt on the basis of secondary evidence.

5. Heard Sri Rajendra Prasad, learned counsel for petitioners and Smt. K. Mani Deepika, representing the Union of India.

6. It is contended by the learned counsel for petitioners that as per the decision rendered by the Hon'ble Apex Court in Mukund Lal Bhandari v. Union of India (1 supra), petitioners are entitled for pension from the date of the applications. It is further contended by the learned counsel that the action of the respondent in declining to grant pension to the petitioners from the date of their applications is arbitrary and illegal and having dragged the matter years together without there being any valid reason, the respondent is not justified in granting pension prospectively. It is further contended by the learned counsel that in the absence of any deficiency on the part of petitioners, there is absolutely no justification on the part of the respondent in granting pension prospectively by branding the grant made in favour of petitioners as one under benefit of doubt. It is further contended by the learned counsel that the Government of Andhra Pradesh after due verification of the claims of the petitioners recommended their cases for grant of freedom fighters pension, as such the action of the respondent is illegal and arbitrary.

7. Per contra, it is vehemently contended by the learned Additional Standing

Counsel for the Union of India that the respondent granted pension in favour of petitioners herein basing on secondary evidence, as such they are entitled for the pension only prospectively. The learned counsel for respondent places reliance on the judgments of the Apex Court in *Government of India represented by the Secretary Vs. K.V. Swaminathan, Union of India v. Ganesh Chandra Dolai and Others* : (1997) 10 SCC 289 *Union of India (UOI) and Another Vs. Kaushalaya Devi*, , and also the orders of this Court in W.P. No. 30769/11, 34587/11 and 4213/12 dated 27.4.2012.

8. For the purpose of adjudication of the issue involved in the present Writ Petition i.e. whether the petitioners herein are entitled for the grant of freedom fighters pension from the date of their applications, it would be appropriate to refer to the relevant provisions set out in the said scheme of 1980. Clauses 2.1 to 2, 2.2 and 2.3 of the scheme read as under:

2.1 Eligible dependents of martyrs: A martyr is a person who died or who was killed in action or in detention or was awarded capital punishment due to participation in the freedom struggle of India. Relevant documents from official records and newspapers of the relevant time are considered as evidences in such cases.

2.2 Imprisonment: A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the certifier happens to be a sitting or Ex. M.P./M.L.A., only one certificate in place of the two is required.

2.3 Underground: A person who on account of his participation in freedom struggle remained underground for more than six months provided he was;

A. a proclaimed offender; or

B. one on whom an award for arrest was announced;

C. One for whose detention, order was issued but not served.

9. In *Mukundalal Bhandari v. Union of India* (1 supra), the Hon"ble Apex Court at paragraphs 4 and 5 held as under:

4. As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly. As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependants and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit. Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents, would be readily in possession of the required documents. In the very nature of things, such documents have to be secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time-limit. What is necessary in matters of such claims is to ascertain the factum of the

eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished.

5. That leaves us with the question as to whether, notwithstanding the date on which the application itself is made, the claimant should be entitled to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with retrospective effect, reliance is placed on the two cases cited earlier where the benefit is given with effect from August 1, 1980. We have given our anxious consideration to the question and are of the view that for reasons more than one, the benefit should flow only from the date of the application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospectivity of the benefit was neither raised nor answered. We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such strait-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs. 5000. It is only later, i.e., from August 1, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision

making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now. Hence we are of the view that the pension under the Scheme should be made payable only from the date on which the application is made whether the application is accompanied by the necessary proof of eligibility or not. The pension should, of course, be sanctioned only after the required proof is produced.

10. In *Government of India v. K.V. Swaminathan* (2 supra), the Hon''ble Supreme Court at paragraph 3 held as follows:

In view of the above-settled legal position, though the respondent was not entitled to the pension as a freedom fighter, he was given the relief on the basis of benefit of doubt. Therefore, he is entitled to the pension only from the date of the order and not from the date of the application. We are informed that pursuant to the order of the High Court, the amount has been released. Under this circumstance, the appellant is directed to deduct the paid amount proportionately from the amount payable in every month, instead of asking him to refund the amount.

11. In *Union of India v. Ganesh Chandra Dolai* (3 supra), the Hon''ble Supreme Court at paragraphs 4 and 5 held as follows:

4. We have heard the learned counsel for the parties. We are of the view that the ratio in *Duli Chand and others Vs. Union of India and others*, is not applicable to the facts of the present case. In *Duli Chand v. Union of India*, 1990 Supp SCC 762] directed the Government of India to pay pension to the petitioners therein w.e.f. 1-8-1980. It was specifically mentioned in the order that all the 41 petitioners had produced the relevant documents supporting their claim and keeping in view the facts of these cases pension was directed to be given w.e.f. 1980. In this case the Government of India has categorically stated that the respondents were given benefit of doubt and as such the pension can only be given from the date of the order.

5. Keeping in view the documents produced by the respondents before the Government, the respondents have been rightly given pension by the Government of India from the date of the order. We allow this appeal, set aside the impugned order of the High Court and restore the order of the Government of India whereunder pension has been given to the respondents from the date of the order of the Government of India. No costs.

12. In *Union of India v. Kaushalaya Devi* (4 supra), the Hon''ble Supreme Court at paragraph 5 held as follows:

In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.

13. In W.P. No. 30769/11, 34587/11 and 4213/12 dated 27.4.2012, this Court upheld the prospective payment of pension in case of secondary evidence.

14. In the instant case, the petitioners 1 and 2 made applications in the year 1992, whereas the 3rd petitioner submitted his application for the grant of pension in the year 1997. As per the petitioners, their applications were processed and their claims were recommended by the screening committee as long back as in the year 1997. In the case of petitioners 1 and 2, warrants of arrest were issued and their claim is based on the primary evidence, as such the consideration of their cases by giving benefit of doubt is contrary to the very scheme by the Central Government. Petitioners 1 and 2 cannot be categorized as persons entitled under the benefit of doubt. It is the categoric case of the petitioners herein that arrest warrants were issued against them and they remained underground for more than six months. In the cases relied upon by the learned counsel for respondent the concerned persons produced only secondary evidence, but not the primary evidence. In *Kamalbai Sinkar Vs. State of Maharashtra and Others*, *Gurdial Singh Vs. Union of India and Others*, and *Bommakanti Venkavva Vs. Union of India, The Government of Andhra Pradesh, Department of Revenue and The District Collector*, , the Hon'ble Apex Court and this Court categorically held that the standard of proof applicable in the participation of freedom movement is on the basis of preponderance of probabilities, but not on the touchstone of test of probability beyond reasonable doubt. In W.P. No. 1193 of 2004, this court by virtue of an order dated 2.7.2010 categorically held that unless the veracity of the documents is doubted, there can be no rationale whatsoever in giving purported benefit of doubt to the petitioner and denying her pension for the period anterior to the date on which the pension is sanctioned. The freedom fighters who sacrificed their lives, wealth, health and valuable young age for the liberation of the country, are entitled for the pension as a matter of right and it is not a grace nor a charity for them and on the other hand it is a recognition for their sacrifices. For the aforesaid reasons and after giving thoughtful consideration to the issue involved in the present Writ Petition, this Court is of the considered opinion that in respect of petitioners 1 and 2 there is absolutely no justification on the part of the respondent in granting pension prospectively only. Therefore, the Writ Petition is allowed, directing the respondent herein to grant pension to the petitioners 1 and 2 from the date of receipt of their applications. The said exercise shall be completed within a period of three months from the date of receipt of this order. However, 3rd petitioner is not entitled to said benefit as his claim is based on secondary evidence, as such the Writ Petition is dismissed to the extent of 3rd petitioner. As a sequel, the

miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.