

(2021) 08 DEL CK 0047

In the Delhi High Court

Case No : Civil Writ Petition No. 7343 Of 2020

Kolli Indira Kumari

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

Citation : (2021) 08 DEL CK 0047

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Mahesh Kumar Tiwari, Chetan Sharma, Sandeep Tyagi, Vinay Yadav, Akshay Gadeock, Sahaj Garg

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

1. This petition has been filed by the petitioner with the following prayers:-

â??In view of the above, it is, therefore, humbly and respectfully prayed that in the facts and circumstances, placed before this Honâ??ble

Court, this Honâ??ble Court may kindly be pleased to:

a) Issue a writ in the nature of mandamus or any other appropriate writ or direction to the respondent to transfer of Freedom Fighter

Pension granted under the scheme namely â??SWATANTRATA SAINIK SAMMAN PENSION SCHEMENâ? to the late Sh. K. Appa Rao PPO

No. MHAF9801528 of Visakhapatnam, in the name of sole dependent widow daughter Smt. Kolli Indira Kumari who is petitioner in the

present case, with all arrears, in the interest of justice;

b) Quash / set aside the impugned order dated 12.02.2020 communicated to the petitioner by the Government of India, Ministry of Home

affairs vide its letter no. F.No.119/Gen/AP/07/2020-FF(SZ) dated 12.02.2020;

c) Pass any other further order/s as this Honâ??ble Court may deem fit and proper under the facts and circumstances of the case in the interest of justice.â??

2. It is the case of the petitioner and so contended by Mr. Mahesh Kumar Tiwari, her counsel that in the year 1972 the respondent No.1-Government of India had, during 25th Anniversary of the Independence framed a central scheme for grant of pension to freedom fighters and their families from central revenue. The Scheme commenced from August 15, 1972 and provided for grant of pension to living freedom fighters and their families and if they are no more alive, to the families of martyrs. The benefit of the said Scheme was extended with effect from August 01, 1980 to all the freedom fighters as a token of â??SAMMANâ?? to them under the scheme namely â??SWATANTRATA SAINIK SAMMAN PENSION SCHEMEâ? (â??Pension Schemeâ??, for short).

3. The father of the petitioner was granted the benefits of the said Scheme. He died on November 01, 2019 leaving behind his widowed daughter, the petitioner herein, who is physically handicapped and mentally challenged and unemployed and also bed ridden. It is the case of the petitioner that the husband of the petitioner late Sh. Kolli Lakshmana Rao working in private sector had also died on October 26, 2000 and after her husbandâ??s demise, the petitioner was fully dependent upon her late father Sh.K.Appa Rao. It is contended by Mr. Tiwari that the petitioner being the daughter of K.Appa Rao, was given the benefit of CGHS.

4. After the death of her father, the petitioner filed an application on November 11, 2019 with all necessary documents for disbursal of pension to her, in Bank of Baroda Visakhapatnam. On receipt of the application, the Bank of Baroda vide its letter dated December 17, 2019 has requested the respondent No.1 to transfer the freedom fighter pension to the petitioner. On February 12, 2020, the respondent No.1 sent a communication to the petitioner rejecting the request of the petitioner in terms of para 5.2.5 of the revised policy guidelines which states that widowed / divorced daughter is not eligible for Pension.

5. According to Mr. Tiwari, the only ground for the respondent No.1 to deny the petitioner the benefit of the Pension Scheme is that being the

widowed daughter of the freedom fighter, she is not entitled to the same, is contrary to the settled position of law inasmuch as para 5.2.5 of the

Pension Scheme has been interpreted to include widowed / divorced daughters also. In this regard, he has relied upon the judgment of the Division

Bench of the Punjab & Haryana High Court in the case of Khazani Devi vs. Union of India and Ors. LPA No. 1721/2015 decided on July 29, 2016.

According to him, the said judgment was taken in appeal before the Supreme Court and the Supreme Court has dismissed the SLP as well as the

Review Petition on September 27, 2019 and January 19, 2021 respectively. He also relied upon the judgment of the learned Single Judge of the Punjab

& Haryana High Court in the case of Smt. Kamlesh v. Union of India and Anr. CWP 8008/2017 decided on May 02, 2019 wherein the learned Single

Judge relying upon the judgment of the Division Bench in Khazani Devi (supra) has also granted the benefit in favour of the petitioner therein, who

was the widowed daughter of the freedom fighter.

6. Mr. Tiwari has also relied upon the judgment of the Calcutta High Court in the case of Sonali Hatua Giri v. Union of India and Ors. W.P.A.

13806/2019 wherein the Court has read, in para 5.2.5 of the Pension Scheme, the expression "unmarried" to include widowed / divorced

daughters. Hence, for all purposes, para 5.2.5 of the Pension Scheme includes a widowed daughter and the fact that there is no dispute that the

petitioner is a widowed daughter of Sh. K. Appa Rao, there is no impediment for the respondents to grant the benefit of the Pension Scheme and

disburse the same in favour of the petitioner.

7. On the other hand, Mr. Chetan Sharma, learned ASG assisted by Mr. Sandeep Tyagi would justify the impugned action of denial of the benefit of

pension to the widowed daughter in view of para 5.2.5 of the Pension Scheme. Reliance has been placed on the judgment of the Supreme Court in the

case of State of H.P and Anr vs Smt. Jafli Devi 1997(5) SCC 301, in which it is held that in the context of the beneficial scheme for compassionate

appointment, the policy laid down by the Government should not be departed from, merely on account of sympathetic considerations and hardship.

According to Mr. Sharma, the father of the petitioner was sanctioned freedom fighter pension w.e.f. December 15, 1997 by relaxing the provisions of

the Scheme. Initially his claim was rejected vide letter dated January 05, 1996

because his claim of underground suffering during 1941-42 was not found acceptable as he had failed to submit any evidence in support of his suffering. On re-examination of his case, he was sanctioned Central Freedom Fighter pension as a special case by relaxing the provisions of the Scheme. After his demise, the petitioner had requested for grant of dependent family pension to her on behalf of her late father. Accordingly, her claim was examined under the provisions of Pension Scheme and the same was rejected vide letter dated February 12, 2020 as widowed / divorced daughters are not eligible for Samman Pension in terms of para 5.2.5 of Pension Scheme. In substance, it is his plea as the petitioner did not meet the requirement under the Pension Scheme, she is not entitled.

8. Having heard the learned counsel for the petitioner, the only issue which arises for consideration is, whether in view of para 5.2.5 of the Pension

Scheme, the petitioner a widowed daughter of a freedom fighter is not entitled to the benefit of the Pension Scheme as a dependent of the freedom

fighter. This Court is of the view, the issue is no more res-integra in view of the conclusion of the Punjab & Haryana High Court in the case of

Khazani Devi (supra), wherein the petitioner who was a divorcee and had also sought grant of the pension under the Pension Scheme through her late

father and the same was denied to her as she was ineligible for grant of the same under the said Scheme. The Division Bench was of the view that

the underlying object in the clause of the Scheme listing eligible dependents is that only one be granted the pension. Therefore, the authorities have to

construe the admissibility of benefit from that angle. It is not the case, that the daughters are excluded altogether. An unmarried daughter finds

mention in the list of eligible dependents. It would, thus, be a travesty to exclude a divorced daughter. There would be no rationality to the reason that

the unmarried daughter can be included in the list of eligible dependents and a divorced daughter would stand excluded, particularly when she is the

sole eligible dependent and thus, qualifies for the benefit, which is concededly made admissible only to one dependent. The Division Bench was of the

opinion that a beneficial Scheme such as the one in hand should not be fettered or constructed by a rigorous interpretation which tends to deprive the

claimants of the benefit to result in virtual frustration or negation of the laudable motive of the Scheme itself. The Division Bench also noticed that the

Ministry of Defence has issued instructions dated December 14, 2012 which included a divorced daughter in the category of eligible dependents for grant of liberalized/special family pension beyond 25 years. The same was extracted as under:-

2. The above matter is considered by the Government and it has been decided in consultation with Department of P&PW that unmarried/widowed/divorced daughter shall also be eligible for grant of liberalised/special family pension beyond 25 years of age subject to fulfilment of other prescribed conditions as hitherto fore.

The Division Bench was of the view that both the liberalized/special family pension and Swatantarta Sainik Samman Pension Scheme are intended to honour the valour of the uniformed people who laid down their lives or suffered for the cause of the country and thus, would not place any demeaning interpretation on the Scheme to deprive the unsung heroes of the country of benefits meant to ensure a life of dignity to their dependents. The Division Bench accepted the appeal and directed that the benefit of Swatantarta Sainik Samman Pension Scheme shall be admissible to the divorced daughter as well.

9. The said judgment has attained finality inasmuch as the Supreme Court has rejected the SLP filed by Union of India and also the review petition vide orders dated September 27, 2019 and January 19, 2021.

10. Even the learned Single Judge of the Punjab & Haryana High Court, by relying upon Khazani Devi (supra) has allowed the writ petition being CWP 8008/2017 Smt. Kamlesh (supra) and directed the respondents to release family pension to the petitioner, who was the widowed daughter of the freedom fighter. Similarly, the Calcutta High Court also vide detailed judgment, has read into para 5.2.5 the expression "unmarried" to include widowed / divorced daughters, provided they satisfy the other test having no independent source of income. The relevant para thereof is reproduced as under:-

However, as far as daughters having no independent source of income are concerned, widowed/divorced daughters stand on an equal footing with a spinster daughter as heirs of the deceased freedom fighter. The marital status of all of them is "unmarried". Thus, the criterion of exclusion of widowed/divorced daughters, as sought to be projected

by respondent no. 1, is untenable in the eye of law. As

such, Clause 5.2.5 is patently violative of Article 14 of the Constitution of India, which ensures equality among people standing on the same

footing, in the absence of reasonable classification or intelligible differentia.â??

11. I may state here, the Calcutta High Court has also considered the aspect that a similar issue is pending before the Supreme Court in the case of

Tulsi Devi (supra), wherein the order of the Himachal Pradesh High Court is under challenge, wherein the petitioner was denied the similar benefit.

The Supreme Court has issued notice. It is the case of the petitioner before the Supreme Court that the Himachal Pradesh High court has not

considered the judgment of the Division Bench of the Punjab & Haryana High Court in Khazani Devi (supra). The learned Single Judge of the

Calcutta High Court has dealt with the issue in the following manner:-

â??By placing reliance on an unreported Order dated July 29, 2016 passed by the Punjab and Haryana High Court in Letters Patent

Appeal No.171 of 2015 (Khajani Devi Vs. Union of India and others), learned counsel submits that the benefit of the Scheme is admissible

to a divorced daughter. A two-Judge Bench of the Supreme Court, by an Order dated September 27, 2019 passed in SLP (C) No. 02353 of

2019 (Union of India and others Vs. Khajani Devi) was pleased not to interfere with the same on the view that the order adopts a

progressive and socialist constructive approach.

However, the Himachal Pradesh High Court had taken a contrary view in an Order dated July 18, 2019 passed in CWP No.1504 of 2019

(Tulsi Devi Vs. Union of India and another). A three-Judge Bench of the Supreme Court, by an Order dated May 28, 2020 passed in an SLP

arising out of Diary No.7497 of 2020 (Tulsi Devi Vs. Union of India and another) was pleased to issue a notice in the matter. Such issue is,

thus, pending adjudication before the Supreme Court and it is argued that judicial decorum warrants that since the Supreme Court is in

seisin of the mater, this Court should not take any view at this stage.

Learned counsel for the petitioner contends in reply that in Tulsi Devi (supra), the Himachal Pradesh High Court did not consider the

judgment of Khajani Devi (supra) rendered by the Punjab and Haryana High Court, which was upheld by the Supreme Court in a Special

Petition, bearing No.17706 of 2017. Thus, it is submitted that the law, as it stands at present, is that divorced daughters are also entitled to the benefit of the scheme.

As regards the contention of respondent no.1 that judicial decorum ought to constrain the hands of this Court due to pendency of a similar

issue before the Supreme court, such contention is not acceptable, at least in the present case, since mere pendency of challenge in a

different case cannot have any direct bearing on the adjudication at hand. That apart, in view of the implicit urgency involved, since the

petitioner has no income to sustain herself and her minor son without any income, the matter pertains to her livelihood and cannot be stalled

indefinitely for the adjudication of the matter pending before the Supreme Court.

Although the dismissal of a Special Leave Petition by the Supreme Court does not tantamount to affirmance of an order on merits, which

would lend binding force to such order as the law of the land is declared by the Supreme Court, the Punjab and Haryana High Court had

taken a clear view that divorced daughters are also entitled to benefit under the Scheme-in-question.

The view taken by the Himachal Pradesh High Court did not lay down any ratio on the vires of Clause 5.2.5 and/or decide the question

which has fallen for consideration before this Court. In the said case, being *Tulsi Devi (supra)*, the Himachal Pradesh High Court held that

the "Swantrata Sainik Samman Yojana" has been launched as a mark of respect to the freedom fighters whereas in the case of armed

force personnel or the Central/State Government pensionaries/employees, the pension is not a "bounty", but a property. Thus, a line

of distinction was drawn between such pensions and the pension payable to freedom fighters and their heirs.

With utmost respect, even without going into the question of parity with other pension schemes, the view of the Punjab and Haryana High

Court is more applicable in the present case. In the said judgment, it was held that it would be a travesty to exclude a divorced daughter

when an unmarried daughter finds mention in the list of eligible dependents. It was further held that there would be no rationality to the

reason for such distinction, particularly when the divorced daughter is the sole

eligible dependent and qualifies for the benefit. It was held that a beneficial scheme such as the one in hand should not be construed on a strict interpretation, which tends to disapprove the claims of the benefit, to result in virtual frustration or negation of the laudable motive of the scheme itself.

In my view, the ratio laid down by the Punjab and Haryana High Court in *Khajani Devi* (supra) is also applicable in the present context

and appeals to the judicial conscience on a higher footing than the Himachal Pradesh report.â??

12. I concur with the view taken by Punjab & Haryana High Court as well as Calcutta High Court, more particularly when the very same clause

under which the benefit is sought to be denied by the respondents to the petitioner, was considered for granting the relief to widowed daughters.

Accordingly, the present writ petition is allowed. The impugned order dated February 12, 2020 is set aside. The respondents shall consider the case of

the petitioner for grant of dependent pension under the Pension Scheme to the petitioner, if she satisfies the other conditions as contemplated under the

Scheme. This consideration shall be undertaken within eight weeks from today.

13. Writ petition is disposed of. No costs.