

(2004) 03 JH CK 0018
In the Jharkhand High Court
Case No : Writ Petition (C) No. 2057 of 2002

Manorama Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 BLJR 1348 : (2004) 3 JCR 70

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : A.K. Sinha, for the Appellant; P.K. Prasad, Sr. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The writ petitioner Kashi Nath Pandey who filed the present writ petition died during its pendency and then his widow has been substituted as petitioner in his place.

2. In order to test the legality and propriety of the order under challenge, contained in Annexure-13 dated 9.10.2000 by the respondent No. 3, it is relevant to notice some of the reported decisions with regard to the cases under Freedom Fighters Pension Scheme, 1972.

3. While dealing with the subject, the Apex Court in the case of Gurdial Singh v. Union of India, reported in 2002 (1) PLJR 230 , elaborately discussed several aspects on the subject and also the object of the scheme and on relaying the decision in the case of Mukund Lal Bhandari v. Union of India, held as follows in paragraphs 6 to 8, which is quoted herein below :

"6. The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant

time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the Scheme, the concerned authorities are required that in appreciating the scheme of the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukund Lal Bhandari's case (supra) observed ;

"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 suffering 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 of their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin, etc., are also the other benefits which have been made available to them for quite some time now.

The Court categorically mentioned that the pension under the Scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by Scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such

freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of beyond reasonable doubt. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

8. We have noticed with disgust that the respondent authorities have adopted a hyper-technical approach while dealing with the case of a freedom fighter and ignored the basis principles/objectives of the Scheme intended to give the benefit to the sufferers in the freedom movement. The contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the Scheme.

The impugned order also appears to have been passed with a biased and closed mind complicity ignoring the verdict of this Court in Mukund Lal Bhandari's case. We further feel that after granting the pension to the appellant, the respondents were not justified to reject his claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High Court has completely ignored its earlier judgments in CWP No. 3790 of 1994 entitled Mohan Singh v. Union of India, decided on 16.6.1995 and CWP 14442 of 1995 decided on 11.12.1995."

4. Following the decision of the Apex Court in the case of Gurdial Singh, a Division Bench of this Court in the case of Syed Muhammad Muztar v. Union of India, reported in 2002 (2) JLJR 232 also directed the respondents to extend the benefit of the Scheme to the writ petitioner.

5. Whereas Patna High Court in the case of Madhukant Jha v. Union of India, by its order dated 24.4.2000, in CWJC No. 2592 of 2000, after disapproving the practice of entertaining fresh claim on the basis of so called fresh materials held that once the claim is rejected by the Central Government then the Government on its own should not entertain fresh material unless so directed by the Court.

6. It appears to me that in view of the decisions of the Supreme Court it is not necessary to discuss the order of the learned Single Judge of Patna High Court in detail but I cannot refrain myself in observing this much that the aforesaid order of Patna High Court goes counter to the Scheme as well as the decision of the Supreme Court.

7. Now coining to facts of the present case. The order contained in Annexure 13 rejecting the claim of the petitioner speaks that it was rejected on the ground namely that :

(i) The documents submitted by the petitioner regarding his sufferings in jail issued by the Central Jail, Hazaribagh was not acceptable.

(ii) No evidence was produced by the petitioner in support of his confinement in Patna jail duly certified on the basis of Government Sources.

(iii) No such evidence based on Government sources was produced to establish the fact that he was a proclaimed offender that any prize was declared for his arrest/death etc.

8. It is not the case of the respondents that the documents, which have been annexed with the writ petition, were not produced by the petitioner in support of his claim for pension before them.

9. From perusal of Annexure I, i.e. the certificate issued by the Central Jail, Hazaribagh, it is apparent that the petitioner was put behind bars as under-trial prisoner under Defence of India Rules and he was convicted also and then he was transferred to Pant Camp Jail.

10. Further from Annexure 9 a letter by the Government of Bihar dated 7.12.1987 as well as from Annexure-11, another letter of the State Government dated 16.9.1988, it appears that the case of the petitioner was duly recommended for pension and his suffering in jail was certified after verification of the relevant jail/Court records.

11. According to the respondents, the claim of the petitioner was earlier rejected on 7.12.1987 vide Annexure R-I, Annexure R-II, dated 24.1.1990, Annexure -R-III and Annexure-R-IV of the Counter Affidavit and ultimately by Annexure 13 to the writ petition.

12. I have carefully gone through the orders of the Respondents contained in Annexures--R-I, R-II, R-III and R-IV and Annexure 13 to the writ petition and I find all the ground mentioned in those orders come directly under the teeth of the decision of the Supreme Court referred above in the earlier paragraphs.

13. I hold that the grounds mentioned in Annexure-13 to the writ petition, rejecting the claim of the petitioner was wholly based on hyper technical objections and therefore in view of the decision of Supreme Court in the case of Gurdial Singh v. Union of India, (supra) the said order is not sustainable.

14. The authorities were not justified in rejecting the claim on the basis of the material, which already existed justifying the ground of pension to the petitioner.

15. Accordingly, this writ application is allowed, the letter dated 9.10.20.00 issued by Respondent No. 3 contained in Annexure 13 to the writ petition is hereby quashed and the petitioner is held to be entitled the benefit of pension as per the Freedom, Fighters Pension Scheme, 1972, from the date of filing of the present writ application. The respondents are directed to calculate and pay the benefit of pension from March, 2002 to the present petitioner who is the widow of the original writ petitioner within a period of six weeks from today and if the

same is not paid within the period specified, the petitioner shall be entitled to interest over the said amount at the rate of 9% per annum till the date of payment.

16. In the facts and circumstances of the case, the petitioner who has been dragged into unnecessary litigation is also held to be entitled to cost also, which is assessed at Rs. 2500/- which shall be paid within the aforesaid specified time.