

(2004) 05 CAL CK 0024
In the Calcutta High Court
Case No : Writ Petition No. 10591 (W) of 2001

Nityabala Das (Smt.)

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Citation : (2004) 1 ILR (Cal) 496

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Kanai Lal Samanta, for the Appellant; Jayanta Banerjee and Mintu Goswami and P.B. Chakraborti, for State, for the Respondent

Final Decision : Allowed

Judgement

Soumitra Pal, J.—The writ Petitioner stated that Late Jiban Das, husband of the Petitioner was a freedom fighter and went under ground for more than six months in order to work secretly for the Freedom Movement of India under the leadership of Rabindranath Giri, who suffered imprisonment for more than five years. The said act of the husband of the Petitioner of going under-ground was neither of his own accord nor for fear of police fortune but was exclusively for continuance of his service to the country under guidance of the said leader. After the declaration of Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as the said Scheme), the husband of the Petitioner made an application for grant of pension under the said Scheme enclosing a certificate of Rabindranath Giri who was eligible to issue certificate as per the provisions of the said Scheme. On September 21, 1989 after due approval by the District Level Advisory Committee, Midnapore, the application of the husband of the Petitioner was recommended and sent by the Deputy Secretary, Government of West Bengal, to the Secretary to the Government of India, Ministry of Home Affairs, Freedom Fighters Division, New Delhi. Thereafter, the Under-Secretary to the Government of India by letter being Annex. P-2 to the writ petition conveyed the sanction of the President to grant provisional pension @ Rs. 750/- per month

to the husband of the Petitioner. During 1990 the Audit Officer, Central, Calcutta forwarded the P.P.O. to the Treasury Officer issued in favour of the husband of the Petitioner. However, the husband of the Petitioner could not draw his pension as he expired on December 6, 1984.

2. In such circumstances, the Petitioner prayed for grant of family pension as per the Scheme and accordingly the Additional District Magistrate (Treasury) Midnapore by a Memo dated January 21, 1992 sent a verification of claim of the Petitioner to the Secretary, Government of India, Ministry of Home Affairs requesting payment of family pension as admissible to the Petitioner under the said Scheme. Thereafter, the District Magistrate forwarded the cases of family pension along with the case of the Petitioner to the Treasury Officer II, Midnapore for information and necessary action. As no pension was granted, the writ Petitioner on September 6, 1993 made a representation to the Secretary, Government of India, Ministry of Home Affairs with a request to sanction family pension in her favour. But as no reply was forthcoming, the writ Petitioner moved a writ petition being Company No. 11342 (W) of 1996 which was disposed of August 28, 1996 of by the following order-

The writ petition is disposed of by directing the Respondent authorities to dispose of the claim of the writ Petitioner within a period of four weeks from the date of service of a copy of the writ application together with a copy of this order upon him. In the event the Petitioner's claim is rejected same shall be done with a reasoned order. In the event it is allowed action shall be taken on the basis of the decision within a period of four weeks from the date of taking of such decision.

3. Thereafter, the Petitioner received a copy of the letter dated September 19, 1996 addressed by Under-Secretary, Government of India to the Pay and Accounts Officer (Pension and. Misc.), Ministry of Home Affairs, New Delhi intimating that in compliance with the High Court directions the President had sanctioned provisional family pension with effect from November 30, 1989 subject to review on the basis of revised verification report based on official records from the State Government. It was further stated that the pension was liable to cancellation, modification without any notice if it was found that the sanction was on mistaken ground and false information. The Petitioner, thereafter, complied with all formalities and accordingly a P.P.O. no bearing M.H.A.F.F. 9605128 was allotted in favour of the Petitioner. By letter dated November 19, 1996 the Pay and Accounts Officer directed the Pay and Accounts Office to make arrangement for payment of pension in favour of the Petitioner and the Petitioner started drawing such pension with effect from November 30, 1989.

4. However, all on a sudden by letter dated May 8, 2001 the Under-Secretary of Government of India intimated the Petitioner that the pension of the Petitioner shall be discontinued from June 1, 2001 on the basis of the revised report of the State Government. Subsequently the Petitioner received a letter dated June 11, 2001 of the Senior Accounts Officer whereby the Manager, State Bank of India,

Tamluk Branch was directed not make any further payment of pension to the Petitioner.

5. Being aggrieved by such action the Petitioner has moved the instant writ application. Mr. Kanailal Samanta, learned advocate for the Petitioner has stated that the said letter dated May 8, 2001 issued by the Under-Secretary Government of India being Annex, p-11 to the writ petition and letter dated June 11, 2001 issued by the Senior Accounts Officer being Annex. P-13 to the writ petition are unjust and illegal as the Union of India has no power to review an order granting pension under the said Scheme. It was submitted that on being satisfied with the credentials and in compliance with the order of the Court such pension was sanctioned by the President. It was also submitted that there was no misrepresentation or fraud on the part of the Petitioner in making such application. Mr. Samanta relied on a number of unreported judgments delivered by the High Court, Reliance was made on unreported decisions being *Hriday Nath Jana (Sri) v. Union of India* W.P. No. 3595 (W) of 2001 (unreported), *Biraj Bala Mondal v. Union of India and Ors.* W.P. No. 18658 (W) of 2000 (unreported), *Pulin Bihari Samanta v. Union of India and Ors.* W.P. No. 2767 (W) of 2000 (unreported), *Sasadhar Barman v. Union of India and Ors.* W.P. No. 18915 (W) of 2000 (unreported).

6. Reliance was also placed on a judgment of the Supreme Court in *Gurdial Singh Vs. Union of India and Others*, reported in. It was contended by the Respondents therein that as discrepancies and contradictions were found in the claim of the Appellant (*Gurdial Singh*), the order granting pension was cancelled. The Apex Court while allowing the appeal observed as follows:

We have noticed with disgust that the Respondent authorities have adopted a hypertechnical approach while dealing with the case of a freedom fighter and ignored the basic 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, completely ignoring the verdict of this Court in *Mukund Lal Bhandari* case. We further feel that after granting the pension to the Appellant, the Respondents were not justified in rejecting 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.

7. Mr. Mintu Goswami led by Mr. Jayanta Kr. Banerjee appearing on behalf of Respondent Nos. 1 and 2 reiterated the statements made in the affidavit in opposition filed by the Union of India.

8. I find that after being aware of the order dated August 28, 1996 the Respondents sanctioned the pension to the Petitioner. The Petitioner was called

upon the comply with certain formalities which she did. The Petitioner drew pension from November 1996 with effect from November 30, 1989. Now, on the basis of the revised verification report the pension was discontinued.

9. On perusal of the Scheme and in view of the settled position of law, I hold that as the Scheme does not provide for any provision where pension once sanctioned can be reviewed, the action of the Respondent authorities in issuing the letter dated May 8, 2001 discontinuing the pension to the Petitioner is not permissible in law. Moreover, the Respondent have also not complained of any fraud or misrepresentation on the part of the Petitioner justifying a review. In such circumstances the impugned letter dated May 8, 2001 is unjust and illegal.

10. Thus, the writ petition is allowed. The impugned order dated May 8, 2001 being Annex. P-11 and the order dated June 11, 2001 being Annex. P-13 to the writ petition are quashed. The Respondent authorities are directed to restore the pension which was sanctioned within one month and the arrears of pension since June 1, 2001 should be made available to the Petitioner within a period of two months from the date of communication of the order.

11. Urgent xerox certified copy of the judgment be supplied to the appearing parties, if applied for, on priority basis.