
(2017) 03 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 229 of 2016

Shri Sitakant S. Dubhashi	Vs	APPELLANT
Government of India		RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 21, Article 226

Citation : (2017) 2 ALLMR 832 : (2017) 3 BCR 477

Hon'ble Judges : Anoop V. Mohta And Nutan D. Sardesai, JJ.

Bench : Division Bench

Advocate : Ms. A. Agni, Senior Advocate with Ms. P. Sawant, Advocates, for the Petitioner; Mr. M. Amonkar, Central Government Standing Counsel, for the Respondents No. 1, 3 and 4; Mr. V. Sardesai, Additional Govt. Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

Anoop V. Mohta, J. (Oral)—The matter is called out from final hearing Board. Heard finally.

2. The petitioner claims to be a noted Freedom Fighter having participated in the liberation movement of Goa, Daman and Diu Phase II (1954-55), and has been recognised by Government of Goa by issuing an identity card accordingly. In 2008, the petitioner was also felicitated at the hands of the then Governor of Goa. The petitioner has filed this petition and prayed for the following reliefs :

"A. Declaration that the decision of Government of India dated 4/2/03 and the notification dated 17/2/03 to the extent it restricts the entitlement of pension to freedom fighter participants of Goa Liberation Movement Phase II who were in receipt of pension as on 1/08/2002 is arbitrary null and void being violative of Article 14 of Constitution of India and for a declaration that freedom fighters recognised by the Government of Goa and in receipt of State Government pension notwithstanding the date being later than 1/08/02 are entitled to pension.

B. Writ of mandamus, writ in the nature of mandamus directing the respondent to consider the application of petitioner for grant of pension under the Swatantra Sainik Sanman Pension Scheme 1980 Goa Liberation Movement Phase II (1954-55).

C. For writ of certiorari, a writ in the nature of certiorari or any other writ direction and other quashing and setting aside Communication dated 16/11/09 and 13/11/2014 passed by the Ministry of Home Affairs."

3. The petitioner had applied for pension under the Swatantra Sainik Sanman Pension Scheme 1980 Goa Liberation Movement Phase II (1954-55) (the Scheme) to the Central Government, as also the Government of Goa in 2002. Denial of the pension to the petitioner is solely on the ground that he had not been issued necessary payment order as on 2002 by the Government of Goa.

4. Ms. A. Agni, learned Senior Counsel appearing for the petitioner has placed on record various Judgments, including the following, two Judgments of the Supreme Court and one of Kerala High Court :

(1) Mukund Lal Bhandari and ors v. Union of India and ors. AIR 1993 SC 2127;

(2) Gurdial Singh v. Union of India and ors., (2001) 8 SCC 8,

(3) Goa Freedom Fighters Association v. Union of India, WP(C) No. 37460 of 2007(H).

The crux of all these judgments supports the case of the petitioner. In Mukund Lal Bhandari and ors v. Union of India and ors., the Supreme Court, has observed at paras 4 and 5, thus :

"4. ... 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.

5. ... 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...."

5. After hearing the learned Counsel appearing for the parties, we have noted that the respondents are unable to place any material on record to justify the action taken based upon the Communications dated 16/11/2009 and 13/11/2014 issued by the Ministry of Home Affairs. So also unable to justify the Notification dated 17/2/2003, to the extent it restricts the entitlement of pension to freedom fighters who participated in the Goa Liberation Movement Phase II and who were in receipt of it as on 1st August, 2002. This is in the background and an undisputed position that the petitioner, in every respect, is otherwise eligible to receive such pension, but for the condition so put in the communications that he is being denied the pension.

6. As far as the averments & prayers of the petitioner are concerned, there is no specific denial, nor even reply filed by the respondent till this date. Therefore, the contentions and the grounds so raised in the petition, in the background of the observations so made by the Supreme Court and other High Courts and as there is no justification on record, except those vague communications., without going into the specific prayers made by the petitioner for his entitlement, we are inclined to observe, in the facts and circumstances of the case, that the action of the respondent not to extend the pension and the other benefits, though the petitioner is otherwise eligible to receive such benefits, as extended to other similarly situated freedom fighters, is arbitrary.

7. The petitioner has averred that in fact he had applied for such scheme on 17th March, 1982, but the same was not considered. The Scheme, in question, came into force with effect from 17th February, 2003. The petitioner is, admittedly, getting the pension from 11th March, 2008. The requirement, as per the Scheme is that a person who gets the State Pension is only entitled to the Scheme in question of Central Government. Therefore, taking overall view of the matter and considering the Scheme, as well as its purpose, including the fact of the petitioner's entitlement to the Scheme itself would commence from the date of getting pension from the State Government, we are inclined to allow the petition by directing the respondents to deal with the application of the petitioner so filed expeditiously to avoid further delay in getting the pension.

8. The learned Senior Counsel appearing for the petitioner submits that such entitlements fall within the Scheme of the Central Government, and we are therefore, keeping in mind the rival contentions, as well as the interest of both the parties, allowing this petition, directing respondent No.1 to grant the pension under the Swatantra Sainik Sanman Pension Scheme 1980 Goa Liberation Movement Phase II (1954-55), from 11th March, 2008, including the arrears for the unpaid period, as expeditiously as possible and preferably within six weeks from today.

9. The petition is allowed accordingly. No costs.