

(2018) 01 CAL CK 0026
In the Calcutta High Court
Case No : 2067 of 2016

Smt. Debala Rani Bera

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

Citation : (2018) 01 CAL CK 0026

Hon'ble Judges : Patherya, Rajasekhar Mantha

Bench : Division Bench

Advocate : Ramdulal Manna, Swapan Kumar Mallick, Manika Sinha, Chand Kishor Chakraborty, Sudeshna Das, Dilip Kumar Chakraborty, M.C. Prusty, Sudarshan Lamba, Chandriyee Alam, Jahar Lal De, Debarati Sen (Bose)

Judgement

1. This appeal has been filed from the order dated January 25, 2016 and it is only for the reason of unexplained delay and laches either by the appellant/writ petitioner's husband and on the part of the appellant that the writ petition was dismissed and the stale claim could not be resurrected. The said reason in itself cannot be supported by us and the only reason we can give is that the appellant is a widow of a freedom fighter who struggled for Independence India. When the 1980 scheme was introduced, the appellant's husband filed an application and his application was rejected in 1984 by the Central Government. Subsequent thereto in 1985, a recommendation was made by the State of West Bengal relying on the criteria of the 1980 scheme. A writ petition was filed in 1994 and representation made. The said writ application of 1994 was to be considered by the Union of India and the Union of India did so and passed an order dated March 23, 1996. By the order dated March 27, 1996, the representation of the appellant's husband was rejected.

2. It is true that since 1996, the deceased husband of the appellant did not pursue his remedy and in 2006, he died but Paragraph No.6 of the 1980 Scheme was captioned "HOW TO APPLY" and the same is set out for relevant reference:- "Persons who consider themselves eligible for Samman Pension under the

scheme should apply in duplicate on the prescribed application form. One form duly filled and supported by required documents as proof of claim of suffering should be sent to the Chief Secretary to the State Government / Union Territory Administration concerned. The second copy should be sent to the Deputy Secretary to the Government of India, Freedom Fighters Division, Ministry of Home Affairs, First floor, Lok Nayak Bhavan, New Delhi-3 as an advance copy.

3. Therefore, the appellant was entitled to apply for "Samman Pension" under the 1980 scheme. The scheme which is being considered by us is not an ordinary scheme, but postulated the Freedom Fighters" Pension Scheme and it is only in this scenario that the Court below ought to have considered and passed the order dated January 25, 2016 and in not doing so, as mentioned hereinabove, the order dated January 25, 2016 cannot be sustained and accordingly calls for interference and is set aside.

4. Counsel for the appellant relied on 1999 (1) CLT (HC) 241 [Gokul Chandra Panja vs. Union of India & Ors.] and 2010 (4) CHN (CAL) 4 [Gajendranath Manna vs. State of West Bengal] and it is necessary that these two judgments be considered as the writ petition was in 2016 and the judgments were passed in 1998 and 2010.

5. It is true that on a wrong premise the order dated January 25, 2016 was passed, but directions ought to have been given to file affidavits and it is only for this reason that we have corrected ourselves so also the Court below in giving directions for filing affidavits by consent of the parties.

6. Affidavit-in-opposition be filed within a fortnight, reply, if any, be filed in a week thereafter and the matter to appear in the list after four weeks. A request is made by this Court to the Court below to dispose of the matter at the earliest as it involved the Freedom Fighters" Pension Scheme and the appellant is a widow of a freedom fighter and at present is aged about 82 years. If necessary, the State Government will consider the Village Crime Record as mentioned in the judgment of 1998, namely, Gokul Chandra Panja (supra) only in the interest of justice and for the ends of justice alone and none else. In MAT No.500 of 2017, an order was passed on November 21, 2017 and the same also be considered by the Court below.

7. Accordingly, the appeal succeeds and disposed of.

8. Urgent photostat certified copy of this order be delivered to the parties, if applied for, as early as possible.