
(2008) 05 PAT CK 0034
In the Patna High Court

Smt. Radhika Devi

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Citation : (2008) 05 PAT CK 0034

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Jayanandan Singh, JJ.—Heard learned Counsel for the appellant and learned Counsel for the Union of India Mr. S.N. Pathak.

2. The appellant had claimed arrears of freedom fighter pension for the period between 4.3.1978 to 9.11.1997 through writ petition bearing C.W.J.C. No. 10718 of 1998 which has been dismissed by., order under appeal dated 30.3.2000 but the Writ Court has given an observation that if the petitioner is able to produce relevant materials to the satisfaction of the Central Government that the doubt as to whether her husband was compelled to remain underground for six months or more is dispelled, then the respondents will consider the case of the pensioner Dargahi Lal Keshari, the deceased husband of the petitioner, and then a fresh order may be passed by the respondents in respect of the petitioner's claim in accordance with law.

3. From the materials available on record, it is not in dispute that petitioner's husband was granted freedom fighters pension under the 1972 Scheme on 12.5.1975 with effect from 15.8.1972 but the said grant was suspended on receipt of complaints on 4.3.1978. It appears that after filing show cause etc. in the matter the husband of the petitioner died on 9.10.1990. Upon receipt of several reports from the authorities of the State Government, the pension in favour of petitioner's husband was cancelled on 11.3.1996. However, it appears from letter of the concerned authority of the Central Government that despite the aforesaid cancellation, a fresh decision was taken and as a result, by extending benefit of doubt in respect of the claim of petitioner's husband for freedom fighter samman pension, the petitioner, as the widow, was allowed such pension

with effect from the date of the order i.e. 9.11.1997.

4. The grievance of the appellant-petitioner is against the aforesaid order. It has been submitted that even if a benefit of doubt was the basis for allowing pension to the petitioner, since her deceased husband was sanctioned such pension and he received the same prior to 4.3.1978, the pension which has been restored, should be with effect from that date with entitlement for arrears which have not been paid for the period between 4.3.1978 to 9.11.1997.

5. There is no doubt that under the law as discussed by the learned single judge, in a case of grant of freedom fighter samman pension in spite of some doubt regarding the claim, the grant of pension is justified from the date of decision allowing such pension and not from the date of application. In this regard reliance has been placed by the Writ Court on decision of the Supreme Court dated 30.4.1996 in Union of India v. M.R. Chelliah Thevar Civil Appeal No. 7762 of 1996. That decision of the Supreme Court has considered the judgment of the Apex Court in the case of Mukund Lal Bhandari and others Vs. Union of India and others, on which learned Counsel for the appellant has placed reliance. We find no difficulty in accepting that had the case of the appellant been of a fresh grant of pension, in the facts and circumstances as discussed by the Writ Court, the grant of pension from the date of order would have been absolutely justified and covered by the aforesaid decision of the Supreme Court.

6. The only distinction sought to be pointed out by learned Counsel for the appellant is that in the present case the petitioner has not been given pension as a fresh grant but it has been restored to her as widow of a freedom fighter entitled for freedom fighter samman pension as would appear from Annexure-8 to the writ petition dated 23rd December, 1997. According to learned Counsel for the appellant, once the freedom fighter samman pension of petitioner's husband was restored, it not being a fresh grant, the arrears of pension should have been allowed and the decision to grant pension to the petitioner prospectively from 9.11.1997 is not proper and legal. Learned counsel for the appellant has pointed out that the decisions of the Supreme Court relate to cases where such pension was being granted for the first time and in such a situation the policy of the Government to grant pension even when some element of doubt exists, from the date of order and not from the date of application has been approved but such policy can not be applied in the present case which relates to restoration of an - existing pension which had been suspended, then cancelled and again revived.

7. On facts, particularly in view of use of the word "bahaal" in Annexure-8 there is no difficulty that pension granted earlier to the husband of the appellant was acknowledged and in that context a decision was taken to grant pension to the appellant. Hence, it would amount to restoring the pension of the appellant's husband and therefore the word "bahaal" was used which according to Hindi English Dictionary published by Rajpal means ""restored, to restore or to maintain."" However, since the concerned authority had decided to restore the pension on the basis of materials which in its opinion made the claim of the

appellant acceptable only as a doubtful claim, hence in its opinion it was required to be allowed only prospectively in view of an apparent policy decision to that effect. It is the consistent case of the respondents that when such claim which is considered to be doubtful claim is accepted, the actual payment is permitted from the date of the decision and not from the date of the claim. Clearly, on account of such policy decision the pension restored to the appellant was made payable from the date of the decision and not from the date of actual claim or in other words from the date the pension of the appellant's husband was suspended.

8. The judgments of the Supreme Court noticed above as also judgment of the Supreme Court in the case of Union of India (UOI) and Another Vs. Kaushalaya Devi, clearly support the case of the respondents that when such pension is granted on the basis of benefit of doubt or on the basis of secondary evidence, its grant from the date of the decision and not from the date of application or date of claim is justified. The issue is whether restricting the entitlement of actual payment on the basis of nature of materials available to support a claim for pension is justified or not. The aforesaid judgments of the Supreme Court take the view that such restriction is justified. In this case the respondents have restricted the right of actual payment of the restored pension from the date of the decision instead of the date of the claim. There is no doubt that authorities have considered the relevant materials and have found the claim fit to be allowed by giving benefit of doubt only. In our view, in such circumstances, restricting the right to receive actual payment from the date of the decision can not be faulted.

9. There is yet another aspect of the matter which needs to be noticed. From paragraph 4 of the counter affidavit of the concerned respondents, it is clear that the pension granted to the husband of the appellant was finally cancelled on 11.3.1996. There is no material on record to show that such order of cancellation of pension was ever challenged by the appellant. On that account also it is difficult to accept the claim of the appellant for grant of arrears of pension with effect from 4.3.1978. After having cancelled the pension of the appellant's husband without any challenge, the concerned authority apparently acted suo motu as a benevolent gesture to a widow in restoring the pension after giving benefit of doubt. In such a situation the grant of pension after restoration and not from 4.3.1978 when the pension of the appellants husband was suspended can not be interfered with. Whatever rights the appellant's husband or the appellant had on the basis of earlier pension stood terminated on account of cancellation of the pension on 11.3.1996. Hence, on this score also it is not possible to grant any relief to the appellant, because Annexure-8 clearly shows that the order dated 11.3.1996 was noticed by the authority but the same was neither cancelled nor withdrawn.

10. Thus we find no good reason to interfere with the order of the learned Single Judge. As a result, this appeal is dismissed but without costs.

It goes without saying that appellant may take benefit of observations given by learned Single Judge if she has access to any fresh material.