
(2005) 09 DEL CK 0136
In the Delhi High Court
Case No : Writ Petition (C) 2208 of 2002

Smt. Ram Dulari	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 09 DEL CK 0136

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Vimal Wadhwan, for the Appellant; Shubhangi Tuli, for respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner, by these proceedings under Article 226 of the Constitution of India, claims entitlement to pension under Swatantrata Sainik Samman Pension Scheme. It is submitted that her husband late Sh. Nand Kishore had participated in the freedoms struggle and was sentenced to undergo one year rigorous imprisonment under Sections 122 read with Section 26A of the relevant laws applicable in the erstwhile State of Hyderabad. The sentence was handed down on 4th October, 1939. The petitioner surrendered to sentence and was undergoing it.

2. One Roshan Lal, a co-accused, along with the petitioner, in the respect of the same offence alleged against the petitioner's husband, was also convicted; he too was undergoing similar sentence in respect of the same incident. Both of them served the sentence together and were released on 10th November, 1939 on account of General amnesty declared by the Nizam of Hyderabad.

3. The petitioner claims the pension in terms of the Scheme. The relevant eligibility criteria, as per clause 4(a) reads as follows:

""(a) A pension who had suffered a minimum imprisonment of six month in the

mainland jails before independence. However, ex-INA personnel will be eligible for pension of the imprisonment detention suffered by them was outside India.""

4. It is contended that the period of six months imprisonment implied the sentence awarded/handed down and not the actual period undergone. Learned counsel relies upon the judgment in Surja and Ors. v. Union of India and Ors. JT 1994 (4) SCC 184 in support of his contention. In that case, it was held that if the sentence was for a period beyond six months and remission was granted resulting in the release of the convict earlier, the right to pension not taken away. The Central Government had accepted that formulation and it was so recorded in the judgment of the Court.

5. There is no appearance on behalf of the Union of India. On the previous date too there was no appearance on behalf of the Union of India. The State of Maharashtra, respondent No.2 is however represented. Learned counsel has relied upon the letter written by Superintendent, Aurangabad Central Prison which has been treated as a response to these proceedings by virtue of an order of the Court dated 12th August, 2004 The relevant portion of the said letter reads as follows:

"" 1. Husband of Smt. Ramdulari Shri Nandkishore Hitram has been admitted in this Jail on 4 Serewar 1348 Fasli(A.D.) 4.10.1939 and after completion of sentence he has been released on 10 Serewar 1348 Fasli (A.D.) 10.11.1939.

2. xxx xxx

3. Co-accused Shri Roshanlal Chatarsing and Arya Loharsing R/o the same village, taluka and District has been sentenced by the Hon''ble Court of Nijamsaheb Tq. Vaijapur u/s 122, for one year and u/s 26 for one year and were admitted in this Jail on the same date and released on the same date.

4.Certificate of Freedom Fighter in respect of deceased Shri Nandkishore has been issued to his wife Smt. Ramdulari vide this office Letter No. ASJ/FF/3490/1999 dated 23.4.1999. Co-accused Shri Roshanlal Arya has also been admitted on the same date in that is Jail and has been sentenced as mentioned in the above para No.1.""

6.Learned counsel for the petitioner contends that the co-accused Roshan Lal was granted pension and he relies upon an order dated 20th January, 1998 which has been produced as Annexure `C" to these proceedings. In that order, the Roshan Lal was granted the benefit of the Freedom Fighter's Pension.

7. The Central Government in its counter affidavit has not disputed the basic facts. However, it relies upon a subsequent order of the Supreme Court in Civil Appeal No. 6210/2000 arising out of SLP(C) No. 2342/2000 titled Manohar Lal Azad and Ors. v. Union of India and Anr. The Court after noticing Surja's case stated as follows:

"" From the above observation it is clear that on the peculiar facts of that case it

was held that each of the petitioners therein satisfied the condition for earning the benefit of pension. We are unable to read that judgment as laying down that where a person has been sentenced to imprisonment for six months or more but if he comes out within a month or so, for whatever reason, without serving his sentence, he will still be a freedom fighter within the meaning of the scheme and eligible for the Same an pension. To say so, in our opinion, would amount to giving a go-by to the definition of the expression "freedom fighter" and substituting a new eligibility criteria to the scheme enlarging its scope which is not only impermissible but also contrary to the spirit of the scheme framed on the basis of the material and keeping in mind the class of the political sufferers who would be the beneficiaries of the Samman pension Scheme.'"

8. It is contended on behalf of the petitioner that the order in Manohar Lal Azad's case does not set out the facts and that the order of the Supreme Court must be understood in the context of the facts of the case. Learned counsel also contends that even if the order is read as limiting the declaration of law in Surja's case or that there was a concession in Surja's case, in the peculiar facts of this case, the entitlement to pension cannot be taken away. The reasoning of the Central Government is attached on the footing, that it would resulting in discrimination.

9. Having considered the submissions made and the order of the Supreme Court, I am of the view that in the peculiar facts of the case, the refusal to grant relief would amount to discrimination as far as the petitioner is concerned. This is because Roshan Lal, admittedly the co-accused, was been granted the benefit. That order has been issued by the Central Government on the basis of its understanding which was that even if a person was sentenced to undergo beyond six months but for reasons not attributable to him was released prior to that period, he could not be deprived of his entitlement. That logic, in my considered opinion, holds good in this case also. Any other consideration would lead to discrimination.

10. A reading of the Supreme Court's order in Manohar Lal Azad's case does show an intention to limit the ruling in Surja's case. However, the order itself does not indicate the facts of the case, and the circumstances which impelled the court to hold that sentence had to be undergone in each case. Even handedness and consistency is the quintessence of judicial behavior. If the petitioner's claim were to be ignored, even after noticing the respondents stand in granting pension to a co-accused on the same facts, for the same offence, and after undergoing (or not undergoing) the six months" period of sentence, the court would be sanctioning a violation of Article 14-something that cannot be attributed to the Supreme Court's order in Manohar Lal Azad's cas

11. In view of the foregoing discussion, the writ petition is allowed. Respondent No.1 is directed to process the case of the petitioner and pass an appropriate order fixing the pension within a period of 10 weeks from today. Order dusty.