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(2006) 07 DEL CK 0001

In the Delhi High Court

Case No : Writ Petition (Civil) No. 12676/05

Smt. Yashodamma — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Citation : (2006) 07 DEL CK 0001

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : N. Annapoorani, for the Appellant; Gaurav Duggal in Writ Petition (Civil) No. 12676/05 and Suresh Kait and Yogesh Kumar, in Writ Petition (Civil) Nos. 8413, 8559 and 8598/04, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—The four writ petitions have been heard together as they raised the common question of law and facts and are accordingly disposed of by this common judgment.

2. A central scheme for grant of pension to freedom fighters and their dependents after their death was introduced by the Government of India with effect from 15.8.1972. The Scheme was subsequent liberalised and renamed as "Swatantrata Sainik Samman Pension Scheme, 1980"(hereinafter referred to as the `Scheme'') and was made effective from 1.8.1980.

3. The petitioner Yashodamma is the widow of Late Sri Naganna. He was sanctioned pension under the Scheme with effect from 24.12.1991. Sri Naganna died on 17.9.1993. In the present writ petition which is filed on 2.8.2005, it is prayed that the pension should have been granted with effect from 20.10.1981 when the application for the pension was submitted and not from the date of the order sanctioning pension i.e. 24.12.1991. Her claim is for arrears for the period from 20.10.1981 to 21.12.1991 together with interest at the rate of 12% per annum.

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4. Shri Elluru Pandurangappa, petitioner in Writ Petition(C) No. 8413/2004 also applied for pension under the Scheme and was granted pension with effect from 25.12.1991. His claim is also that the pension should have been awarded from the date of the application. He also prays for arrears of pension with effect from 23.12.1981 to 24.12.1991 with interest at the rate of 12% per annum.

5. Shri Sadashiva Raj Purohit, petitioner in Writ Petition(C) No. 8559/2004 also was granted pension under the Scheme with effect from 28.7.1992. He seeks his arrears from 17.8.1981 to 28.7.1992.

6. Shri Kashirao Patel, petitioner in Writ Petition(C) No. 8598/2004 who was similarly awarded pension under the Scheme seeks arrears from 20.9.1988 to 25.12.1991 with interest at the rate of 12% per annum.

7. Thus, the question that has arisen in these writ petitions is whether these writ petitioners can be granted pension with effect from the date of their application or with effect from the date of the orders sanctioning pension to them.

8. The first writ petition whose facts can be given is WP(C) No. 8413/2004 in which the petitioner is Shri Elluru Pandurangappa. He applied for freedom fighters pension under the Swatantrata Sainik Samman Pension Scheme, 1980 on 23.12.1981. The pension was granted to him on 16.4.1992. As per the order, the pension was payable with effect from 25.12.1991. The prayer in the writ petition is that the pension should be granted to the petitioner from the date of his application for pension i.e. 23.12.1981.

9. Reliance is placed on the judgment of Duli Chand and others Vs. Union of India and others, and Mukund Lal Bhandari and others Vs. Union of India and others, . In Duli Chand''s judgment, relief was given on the statement of the counsel for Union of India that on the documents being produced in support of the claim, there would be no objection to the grant of pension and in view of the fact that no counter have been filed challenging the specific claims, pension was directed to be paid to 41 petitioners atleast from 1.8.1980.

10. In the case of Mukund Lal Bhandari and Ors. v. Union of India and Ors. (supra) the Supreme Court expressed the view that pension under the Scheme should be made available from the date on which the application is made whether the application is accompanied by the necessary proof of eligibility or not, but the pension should be sanctioned only after the required proof is produced. It is further opined in this judgment that pension should be paid to the applicant from the date on which the original application is received whether the application is filed with or without the requisite evidence and the sanction of pension should, however, be subject to requisite proof in support of the claim.

11. In the case of Government of India represented by the Secretary Vs. K.V. Swaminathan, , the Supreme Court concludes the question about the date on which the pension should be granted by saying that entitlement for the pension is from the date of the order if the pension is given on benefit of doubt, in all

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other cases, the pension has to be from the date of the application.

12. The Scheme makes specific provisions of pension of different categories of sufferers of the freedom struggle. The two types of sufferings which is necessary to recall for the purpose of the present judgment are imprisonment and underground. The specific type of imprisonment and the evidence to be submitted are as under

(1) Imprisonment: A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Govt. indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 years and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the certifier happens to be a sitting or Ex.M.P./M.L.A., only one certificate in place of the two is required.

(2) Underground: A person who on account of his participation in freedom struggle remained underground for more than six months provided he was;

A A proclaimed offender; or

B. one on whom an award for arrest was announced; or

C. one for whose detention, order was issued but nor served.

Explanation:

Voluntary underground suffering or self-exile suffering for party work under command of the party leaders, are not covered as eligible sufferings for pension under the Central Scheme.

(3) Internment/Experiment A person who, on account of participation in the freedom struggle was interned in his home or externed from his district for a minimum period of 6 months is eligible subject to furnishing of order of internment or externment issued by the competent authority, from official records. In absence of the official records, NARC from the State Govt./UT Administration concerned, along with a certificate from prominent freedom fighter, who had proven jail sufferings of at least two years; who belonged to the same administrative unit and whose area of operation was same as that of the applicant, should be furnished.

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13. The writ petitioner, Shri Elluru Pandurangappa has annexed to his writ petition the true copy of the application submitted by him on 23.12.1981 which is Annexure P-I. In the column of particulars of sufferings undergone during the freedom struggle, the petitioner mentioned "underground" and "externment" . The claim on the basis of externment is not pressed. However, claim is passed only on the ground of "underground" . As mentioned above, for pressing a claim on the ground of suffering for being underground , there are three proviso, namely, that he was (a) a proclaimed offender; (b) one on whom an award for arrest was announced; or (C) one for whose detention, order was issued but not served.

14. In the case of Indumati Bai v. UOI in WP(C) No.8481/2004, a single Bench of this Court granted pension from the date of the application when there was nothing to show that there was any doubt about the claim and the Union of India had failed to produce the records.

15. In Pandurangappa''s case, the pension under the Scheme is applied for on the plea that the applicant had remained underground. As per the Scheme relied upon by the petitioners, a person who remain underground is entitled to the pension if the period of underground was more than six months provided:

(A) He was a proclaimed offender;

(B) He was one on whom an award for arrest was announced; OR

(C) One for whose detention, order was issued but not served.

16. Mr. Elluru Pandurangappa in his application, copy of which has been placed on the record, did not at all claim that any of the above three conditions were present in his case. Two affidavits were filed in support of the claim, one was of the petitioner himself and the other was by Shri B. Shankarappa. In none of these affidavits, there is any mention of their being either an award on his arrest or there being an order of detention or he being declared a proclaimed offender by any Court. Yet a freedom fighters pension under the aforesaid Scheme has been awarded to him. It is contended on behalf of the Union of India that this was a case of benefit of doubt and, Therefore, the pension could be granted only from the date of the order and not from the date of the application.

17. The case of petitioner, Kashirao Patel is similar in which he claimed in his application, copy of which is enclosed, that he was underground and had worked at Challakudlur. In his application also, there is no mention that any of the above three conditions was present. Nor did he produce any evidence of any of the three above conditions being present.

18. In the case of petitioner-Sadashiva Raj Purohit, the plea taken was that he had undergone imprisonment for the period 1.6.1948 to 25.8.1948 and was underground from 15.2.1948 to 1.6.1948. As per the Scheme, the minimum period of imprisonment should be six months. In the present case so far as underground is concerned, the same is not accompanied by any of the three

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factors. So far as the imprisonment is concerned, the period is only of 85 days that is less than six months. Yet the pension under the Scheme has been granted to the petitioner, Sadashiva Raj Purohit. According to the Union of India, all the three cases are covered by the judgment in the case Government of India represented by the Secretary Vs. K.V. Swaminathan,

19. So far as petitioner-Yashodamma, she is a widow of the applicant. The pension under the Swatantrata Sainik Samman Pension Scheme, 1980 was applied for on 20.10.1981 and it was sanctioned to him with effect from 25.12.1991. The husband of the petitioner Sri Naganna also filed an application in which he claimed the pension on the ground that he was underground. He has neither mentioned in his application the period for which he was underground, nor has he mentioned if any of the three conditions mentioned above required to be fulfilled for getting pension under this criteria was present. Accordingly, this case is also covered in the case of Government of India v. K.V. Swaminathan (supra). I, Therefore, find that in all the cases pension has been rightly granted from the date of the order and in none of these cases pension should be granted from the date of the application.

20. It has further to be added that all the four writ petitions are filed long after the time when the claim should have been made. In all these cases, pension was sanctioned in the years 1991, 1992 and 1998. As such, their claims are stale. All the four petitions suffered from the defect of laches and no indepth scrutiny apart from what has been done in this judgment is possible.

21. All the four writ petitions are accordingly dismissed.

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