

(2008) 08 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 14575 of 2006

Sri Boraiah

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2009 Kar 764 : (2008) ILR (Kar) 5102

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : N. Jagadish Baliga, for the Appellant; K. Nageshwarappa, CGSC for R-1 and R.B. Sathyanarayan Singh, HCGP for R-2, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhakthavatsala, J.—The petitioner is before this Court under Article 226 of the Constitution of India, praying for quashing the communication dated 2.6.2006 bearing No. 124/52/CC/32/06 FFW2 at Annexure-A on the file of respondent No. 1 and to extend the benefits of Swatantra Sainik Sanman Pension Scheme, 1980, (in short "the SSS Pension Scheme") from date of application.

The brief facts of the case leading to the filing of the Writ Petition may be stated as under:

2. The petitioner claims that in the year 1942, he participated in Quit India Movement and he was tried and detained in Srirangapatnam Jail from 25.10.1942 to 30.4.1943. Again, in the year 1947, on account of participation in the freedom fight movement, the petitioner was imprisoned from 14.9.1947 to 12.10.1947. It is the case of the petitioner that the respondent No. 2 viz., the State of Karnataka has granted the pension and he has been receiving the same. On 15.5.1984, the 2nd respondent recommended the 1st respondent to grant pension to the petitioner under the SSS Pension Scheme. On 17.12.1991, the 1st respondent requested the 2nd respondent to forward a revised report. On

15.5.1992, the 2nd respondent sent a revised report recommending grant of pension to the petitioner. Subsequently, on 19.4.2003 the petitioner issued a legal notice to the respondent No. 1. On 4.8.2003, the petitioner filed a Writ Petition in WP No. 34834/2003 seeking grant of pension. The Writ Petition was disposed of directing the respondent No. 1 to consider the request of the petitioner within six months.

3. The respondent No. 1, by letter dated 2.6.2006 (vide Annexure-A) rejected the request of the petitioner seeking grant of pension under the SSS Pension Scheme. Therefore, the petitioner is before this Court praying for quashing the communication/letter dated 2.6.2006 at Annexure-A and direct the respondent No. 1 to grant the pension.

The respondent No. 1 has filed statement of objections contending that in the Quit India Movement, millions of people have participated. However, only specified categories of participants who fulfill the eligibility and produce the evidence (as required under the Scheme mentioned in para-5), are entitled for pension.

4. It is contended that the petitioner has failed to produce any acceptable primary/secondary evidence to substantiate his claim that he was detained in Srirangapatnam Jail. It is also contended that the case of the petitioner was examined on earlier two occasions and rejected by order dated 28.12.1983 and 23.2.1993 on the ground that the petitioner failed to produce any acceptable evidence in support of his claim. It is contended that the statement of objections of respondent No. 1 that the petitioner in his affidavit dated 24.12.1993 has stated that he was detained in Srirangapatnam Jail from 25.10.1942 to 30.4.1943 and N. Narasimhe Gowda, H. K. Revenna, A. Dyavarasegowda and D. Karadigowda were with him in Srirangapatnam Jail. But, he has not mentioned the name of V.S. Narayan Rao, who has issued Co-Prisoners' Certificate (in short "CPC") in the affidavit of the petitioner. According to the SSS Pension Scheme, pension is granted to a person, who had suffered a minimum imprisonment of six months (3 months in case of women SC/ST freedom fighters) on account of participation in freedom struggle subject to production of imprisonment/detention certificate from the concerned Jail authority, District Magistrate or the State Government indicating the periods of sentence awarded, date of admission, date of release, facts of the case and reasons for release or in the alternative to produce secondary evidence.

5. In case the records are not available, two certificates from two co-prisoners, who have suffered minimum of one year certifying that the applicant was put in Jail for having participated in freedom struggle. Further, in the case of CPC issued by a sitting Ex. MP/MLA, only one certificate is required instead of two. It is further stated that the instructions inter alia require the State Government to issue Non-Availability of Records Certificate (NARC) only after due verification from all sources. Further, the NARC is treated as valid only when it is furnished by the State Government certifying that "all concerned authorities of the State

Government, who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available." The Central Sanman Pension is granted by the Central Government as per SSS Pension Scheme only after due verification and recommendations made by the State Governments/Union Territory Administration, as the case may be. It is also contended that the State Government's recommendation is not binding on the Central Government if the applicant does not satisfy the eligibility criteria and proof as required under the Central Scheme.

6. It is also contended that grant of pension by the State Government does not ipso facto entitle one to become eligible for grant of Central pension as per the decision of Division Bench of the Madras High Court rendered in WP No. 7707/2000 (C. Santhanam v. State of Tamil Nadu). As the petitioner was not eligible to the pension, the application was rejected and communicated the same by the impugned letter at Annexure-A, and there is no illegality or infirmity.

Heard arguments.

7. Learned Counsel for the petitioner submits that as per the SSS Pension Scheme, the petitioner made an application on 21.11.1980 seeking grant of pension as per the Scheme of 1980 and according to the Scheme of 1980, there was no condition that co-prisoner shall prove jail suffering of minimum of one year. It is further contended that if there were to be any modification and clarification made later on, those modifications, clarifications, orders and circulars of the Government of India relating to the SSS Pension Scheme, they are not applicable to the case of the petitioner. He also submits that according to provision 9(a) of the SSS Pension Scheme, the applicant should furnish NARC from the concerned jail authorities, District Magistrates or the State Government. Further, in case of non-availability of record regarding detention, CPC can be obtained from the co-prisoner/MP/MLA/an ex-MP or ex-ML A specifying the jail period as per Annexure-I appended to the application form, and the petitioner has fulfilled all the required conditions.

8. On the other hand, learned Counsel for respondent No. 1 submits that while considering the application seeking pension under the SSS Pension Scheme, modification and clarification of various orders and circulars of the Government have to be followed irrespective of the date of application. In the instant case, the petitioner has not produced any acceptable primary record or NARC in the prescribed form from the State Government. He also submits that CPC issued by V.S. Narayan Rao/Ex. MLA and others show that they have suffered jail sentence less than one year and therefore, the CPC issued by V.S. Narayan Rao and others are not acceptable and therefore, the case of the petitioner was rejected and communicated the same by the communication dated 2.6.2006.

9. According to respondent No. 1, the petitioner does not meet the eligibility criteria as required under the SSS Pension Scheme. Admittedly, the petitioner

claims pension on the basis of the secondary evidence. According to the petitioner, he was detained at Srirangapatnam jail on account of his participation in the freedom movement from 25.10.1942 to 30.4.1943. It is also the case of the petitioner that as per the Superintendent of Mandya Central Jail, there were no records regarding lock up for the year 1942-43. As per Annexure-E/C PC, one V S Narayan Rao/Ex- M L A, who had suffered imprisonment during the freedom struggle and he was lodged in Srirangapatnam jail in Mandya District from 16.9.1942 to 17.5.1943, which is less than one year. He has certified that the petitioner was also lodged in the same jail along with him during the period from 25.10.1942 to 30.4.1943. As per Annexures-F, H and J, CPCs., issued by Shivananje Gowda, Bili Gowda and H K Revenna, respectively, they have suffered imprisonment from September 1942 to 5th May 1943 and the petitioner was also lodged in the same jail along with them during the period from 25.10.1942 to 30.4.1943.

10. The CPCs., show that they suffered imprisonment less than one year. Since the petitioner has not fulfilled the required conditions as per the SSS Pension Scheme, specifically Clause 2.2(b) of the SSS Pension Scheme, the petitioner is not entitled for the pension. Merely because he has been granted pension under the State Scheme, is not ipso facto entitled to Central pension under the SSS Pension Scheme. In short, the petitioner does not fulfill the requisite conditions so as to seek Central pension under the SSS Pension Scheme. Hence, the respondent No. 1 was justified in rejecting the petitioner's application for Swatantra Sainik Sanman Pension. I see no illegality or infirmity in the impugned order at Annexure-A.

11. In the result, the Petition fails and the same is hereby dismissed. No costs.