
(2019) 11 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Letter Patents Appeal No. 68 Of 2017

State Of Himachal Pradesh And Another	APPELLANT
Vs	
Gulabu Devi	RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Citation : (2019) 11 SHI CK 0011

Hon'ble Judges : Tarlok Singh Chauhan, J;Anoop Chitkara, J

Bench : Division Bench

Advocate : Vinod Thakur, Bhupinder Thakur, Svaneel Jaswal, Ram Lal Thakur, Sanjeev Bhushan, Abhilasha Kaundal

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. "WHEN YOU GO HOME, TELL THEM OF US AND SAY, FOR YOUR TOMORROW, WE GAVE OUR TODAY".
2. This evocative epitaph by renowned English Classicist, Poet and Dramatist, John Maxwell Edmonds, is enshrined on the Kohima War Memorial in Nagaland built to commemorate soldiers of the empire, who laid down their lives to repel Japanese Assault in 1944 during the World War.
3. Unfortunately, the State in the instant case appears to have forgotten to acknowledge and recognize the sacrifices and contribution made by the husband of the petitioner during the freedom struggle for which he was awarded 'Tamara Patra' by none other than, the then Hon'ble Prime Minister of India on the 25th Anniversary of the Independence Day on 15th August, 1972.
4. Despite having been awarded 'Tamara Patra', the husband of the petitioner died an unsung hero on 12.06.1997 and now for the last 22 years, his aged widow is being made to run from pillar to post to get financial help from the State which is otherwise due to her under the 'H.P. Swatantrata Sainani Samman

Scheme, 1985' (for short the 'Scheme').

5. The petitioner approached this Court by filing CWP No. 5903 of 2014 for grant of financial assistance under the 'Scheme' with the allegations that her husband was a freedom fighter and had participated in the freedom struggle for which he was not only jailed, but even his property was confiscated and the family had to remain underground for long period of time. In acknowledgement of his services to the Nation, the then Hon'ble Prime Minister late Smt. Indira Gandhi awarded him with a 'Tamara Patra' on the 25th Anniversary of the Independence day on 15th August, 1972.

6. The petitioner never tried to know whether any acknowledgement or any financial assistance was given to her late husband, who unfortunately died on 12.06.1997. It is thereafter that the petitioner felt the need of financial assistance and made many representations to the respondents-State including respondent No.2 i.e. Deputy Commissioner, Solan, for grant of financial assistance being awarded to the widows of the freedom fighters.

7. Initially, the petitioner was made to fill-up the forms under the 'Swatantrata Sainik Samman Pension Scheme' which was sponsored by the Central Government, however, when nothing fruitful was done, thereafter the petitioner kept on writing to the State for grant of financial assistance.

Respondent No.2 vide letter dated 05.12.2009 directed Sub Divisional Officer (C), Solan to conduct an inquiry and to verify the entitlement of the petitioner. Pursuant to which an inquiry was conducted in which it was found that late husband of the petitioner had participated in the freedom struggle and even had been tortured during the relevant time. However, he was not granted any financial assistance. In the inquiry, it was established that the petitioner's late husband had been awarded 'Tamara Patra' by the then Hon'ble Prime Minister on 15.08.1972 for his participation in the freedom struggle.

8. On the basis of the inquiry, the case of the petitioner was recommended for grant of financial assistance which is to be granted to the family of the freedom fighter, as is evident from the letter dated 16.02.2010. However, despite passage of more than 4 years, when no financial assistance was granted to the petitioner, she approached this Court by filing the aforesaid writ petition wherein she prayed for the grant of following substantive relief:

"That a writ in the nature of mandamus may be issued directing the respondents to calculate all the arrears with respect to the financial assistance as provided to the widows of freedom fighters including the arrears of the pension scheme and to pay the same to the petitioner with interest @ 9% p.a."

9. Respondent No.1 contested the petition by filing the reply wherein it was averred that the petitioner was never declared as a Freedom Fighter by the State Government under the 'Scheme' because of the fact that he did not apply for any financial assistance as per the provisions of the 'Scheme' indicating therein the

sufferings faced by him during the freedom struggle movement. Moreover, he did not furnish any proof of his confiscated property, imprisonment as well as the reasons for remaining underground. It was thereafter submitted that the award of giving 'Tamara Patra' is not a criteria for awarding Freedom Fighter status under the State Scheme and giving the award of 'Tamara Patra' was a 'Scheme' of the Government of India and not the State Government. It was submitted that the inquiry got conducted by respondent No.2 was not in accordance with the criteria laid down under the 'Scheme' and the inquiry report was otherwise subject to the scrutiny at the Government level and subject to the satisfaction of the Sub Committee of H.P. Freedom Fighters Welfare Board which alone is the competent authority to take a decision on the genuineness of the claim.

10. Lastly, it was submitted that even though the petitioner contended that her husband had to remain underground and his property was auctioned by the then Raja Dhami, however, no documentary proof of remaining underground and auctioning of property had been submitted in support of the claim as a primary evidence and even the columns of Annexure 'B' were left blank by the petitioner and in such circumstances, it was not possible for the State to grant financial assistance.

11. The learned Single Judge after taking into consideration the entirety of the facts and circumstances of the case held the petitioner to be entitled to financial assistance and aggrieved thereby the State has filed the instant appeal on the same grounds as were agitated before the learned Single Judge.

12. We have heard the learned counsel for the parties and have gone through the records of the case.

13. At the outset, it needs to be noticed that the 'Scheme' in question has been formulated with a view to acknowledge the services rendered to the Nation by patriotic citizens during the freedom movement, who had suffered in one way or the other and compensate them for their sacrifices for the sake of the country. The 'Scheme' was introduced by the Government not for the purpose of adding feathers to the cap, but essentially to benefit the Freedom Fighters, who had suffered for the cause of the freedom.

14. The object of the 'Scheme' appears to be that a person, who had suffered imprisonment during the freedom struggle should not be left to suffer in his old age. This pension is granted to the Freedom Fighters and that class of persons and their families are slowly becoming extinct.

15. Having regard to the laudable object and purpose behind the 'Scheme', it is but necessary that the appropriate Government should adopt a liberal approach in the matter of grant of pension to the great Freedom Fighters and other persons entitled to financial assistance under the 'Scheme'. To say that the petitioner has no statutory right and the grant of pension is gratuitous is most uncharitable. The proof of the pudding is in its eating. This is certainly not a case where the respondents can take an inflexible attitude and try to interpret the

rules too strictly. The razor edge interpretation is certainly not called for in a case like this.

16. It is really surprising to see as to why the State of Himachal Pradesh should be so anxious to prevent the petitioner from getting the pension. Do we assume that the grant of 'Tamara Patra' to the husband of the petitioner on 15th August, 1972, by none other than the then Hon'ble Prime Minister of India, Smt. Indira Gandhi, was simply a farce or a stage managed show. At least, the State would have us to believe so or else there was no reason why the State should not have granted financial assistance to the husband of the petitioner and thereafter to the petitioner.

17. In this case, the Central Government had considered the claim of the husband of the petitioner by acknowledging him to be a Freedom Fighter and in such a situation, the Court does not see how the State Government can say that he is not a Freedom Fighter and is not entitled to grant of Freedom Fighters' pension under the State Scheme. The stand taken by the respondents that the husband of the petitioner is not a Freedom Fighter, is highly irrational and arbitrary. Surely, there cannot be a different yardstick to identify the beneficiary i.e. the Freedom Fighter in this case. Once, a person is accepted as a Freedom Fighter by the Central Government, the State Government cannot take a different stand and say that he is not a Freedom Fighter. A person cannot be treated in a different way for the purpose of getting benefits under the State Scheme, when he has already been recognized as a Freedom Fighter by the Central Government by awarding a 'Tamara Patra', which reads as under:

?????????? ?? ?????????? ???? ?? ???? ?? ??????????? ??????? ??? ??????? ??????? ??
???? ??????? ?? ?? ?? ??????? ??????? ????????? ??????? ??????? ?? ?? ??????????? ????? ??
?

15 ????? 197224

??????? 1894 ?????????? ???? ??? ???

18. As observed above, by formulating the 'Scheme', the State wanted to grant pension to the Freedom Fighters, who had suffered imprisonment for liberating the Nation from the yokes of foreign rule.

19. The very object of such 'Scheme' is to ameliorate the conditions of those, who fought for the Country and in recognition of the sacrifice made and the patriotic fervour of those, who fought for the freedom of the Nation and the payment of pension to the dependants of such freedom fighters even after the lifetime of the Freedom Fighters itself appears to be in recognition of such meritorious and selfless service rendered to the Nation at a crucial phase of the Country's freedom struggle.

20. The appellants would harp upon the production of the documentary evidence like imprisonment/detention certificate etc. little realizing that on account of long passage of time, the Freedom Fighters may not be in a position to produce the

certificates. It is, therefore, that the 'Scheme' itself provides for acceptance of co-prisoner's certificates which in the instant case were duly produced by the petitioner.

21. Clause-5 of the 'Scheme' reads as under:

5. Procedure:- Persons eligible for financial assistance under this scheme should apply in the prescribed Performa (Annexure- 'A' which can be obtained from the Secretary General Administration Department to the Government of Himachal Pradesh, Shimla-2 or from the Deputy Commissioner/Sub-Divisional Magistrate offices in Himachal Pradesh. This application supported by an affidavit duly sworn in and attested by an Executive Magistrate to the Freedom Fighter is not in receipt of Freedom Fighters Pension or financial assistance from any other State Government is to be submitted to the Sub-Divisional Magistrate concerned who will verify the particulars to the best of his ability and then submit the application along with his observations to the Deputy Commissioner. The Deputy Commissioner will forward the application to the State Govt. with the appropriate recommendations. A Sub Committee of the Himachal Pradesh Freedom Fighters Welfare Board to be constituted under the order of the President of the Board will consider these cases for the grant of financial assistance and recommend these cases to the Himachal Pradesh Freedom Fighters Welfare Board for confirmation and reference to the Government for sanction of financial assistance.

(c) Externments:

An affidavit with a copy of the order of the externment or any other documentary evidence. Where such documentary evidence is not available, a certificate from a Freedom Fighter who is getting Freedom Fighters Pension from the Central Government specifying the period of externment of the applicant may be accepted subject to the satisfaction of the Government."

22. Most of the 'Schemes' relating to financial assistance to the Freedom Fighters are quite alike because the object of such 'Schemes' is common that is to say that persons, who fought for the Country's independence should not be left to suffer in their old age.

23. At this stage, it shall be apposite to refer to the judgment of the Hon'ble Supreme Court in Gurdial Singh vs. Union of India and others (2001) 8 SCC 8 wherein dealing with a similar 'Scheme', as is involved in the instant case, the Hon'ble Supreme Court observed as under:

"The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the

record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukand Lal Bhandari case observed (SCC pp.7-8, para 9)

"The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

The Court categorically mentioned that the pension under the scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not".

24. The standard of proof required to establish a case is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of a party. This position has been made clear when one reads paragraph-7 of the judgment from Gurdial Singh's case (supra) which provides:

"7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the

imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

25. In *State of Orissa vs. Choudhuri Nayak* (2010) 8 SCC 796, the Hon'ble Supreme Court has held that no genuine Freedom Fighter should be denied pension.

26. The husband of the petitioner in this case, unfortunately, expired on 12.06.1997. The respondents have adopted hyper-technical approach while dealing with the case of the writ petitioner and have ignored the basic principle/objective of the 'Scheme' intended to give the benefit to the sufferers of the freedom movement. The case of the writ petitioner has been rejected by ignoring the mandate of law and the 'Scheme'. The impugned order has been passed with a close mind completely ignoring the verdict of the Hon'ble Supreme Court on the subject particularly *Mukund Lal Bhandari and others vs. Union of India and others* 1993 Supp (3) SCC 2, *Gurdial Singh vs. Union of India and others* (2001) 8 SCC 8 and *State of Orissa vs. Choudhuri Nayak* (2010) 8 SCC 796.

27. Having failed to convince that the decision of the learned Single Judge was in any way wrong much less perverse, the learned Additional Advocate General would resort to the last weapon in his armoury by canvassing that the writ petition being barred by delay and laches ought not to have been entertained and should have been dismissed at the threshold.

28. Even this contention is equally without merit as it ill-behoves the Government to raise pleas of limitation against such claims, as was held by the Hon'ble Supreme Court in *Mukund Lal Bhandari's* case (supra) which reads as under:

"7. As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting, the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to

assist and honour those who had given the best part of their life for the country, it ill-behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Schemes has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time- limit."

29. In addition to the aforesaid, it shall also be apposite to refer to a judgment rendered by a learned Division Bench of this Court in Sukh Lal vs. Union of India and others, AIR 1993 HP 65 wherein it was observed as under:

"7. Lastly, Shri Dharam Chand Chaudhary contended that the case is thoroughly belated. The case of the petitioner had been rejected in 1984 and he did not pursue the matter vigorously. We are not inclined to accept this contention. The petitioner had been moving from pillar to post to seek pension for his participation in the movement. However, he had been facing rough weather at every place. He had not left the efforts and then now ultimately he has approached this Court by way of this petition. We do not see that there is any culpable delay in pursuing and initiating the present case before this Court. The plea based on delay is, therefore, rejected."

30. In view of the aforesaid discussion, we are of the considered opinion that the least the State could have done was to have respected and rewarded its Freedom Fighters and not to have indulged in technicalities and procedural wrangles thereby depriving the petitioner of the benefits only because of red tapism.

31. In view of the aforesaid discussion, we find no merit in this appeal and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.

32. However, before parting, we need to observe that the manner in which the respondents have treated the claim of the petitioner, who is currently more than 89 years, ill-behoves the State and only reflects upon its callousness and apathy. We hope and trust that the State and its Officers would act more responsibly in future.