
(2002) 04 JH CK 0046
In the Jharkhand High Court
Case No : LPA No. 82 of 1998 (R)

Syed Mohammad Muztar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-04-2002

Acts Referred:

Citation : (2002) 04 JH CK 0046

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : A. Prasad, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal & H.S. Prasad, JJ.—This appeal u/s 10 of the letters patent is directed against the Judgment dated 20.1.1998 passed by a learned single Judge in CWJC No. 3844/95 (R), whereby the learned single Judge has been pleased to dismiss the writ application.

2. The facts, briefly stated, are that the petitioner appellant filed an application on 28.12.1981 under Freedom Fighters Pension Scheme enunciated by the Central Government along with a certificate granted by Babu Shaligram Singh, a prominent freedom fighter, who had been to Hazaribagh Central Jail and who escaped from Central Jail, Hazaribagh along with Lok Nayak Jai Prakash Narayan on 9.11.1942. The application of the petitioner with such certificate, as required, was received by the State and the Centre and after full verification and thorough scrutiny the petitioner was granted sanction order by the Central Government, vide Annexure 1/A of the original writ application being CWJC No. 3844/95 (R) and also a P.P.O. from the office of the respondent No. 4 as made Annexure 1 to the above writ application. When the petitioner was to draw pension, a false and fabricated application against the petitioner and 17 others was filed before the Deputy Commissioner, Hazaribagh and as such, pension amount was withheld. Then, for redressal of his grievances, the petitioner filed a writ application along

with others being CWJC No. 731/93 (R) but that writ application could not be decided on merit, although an order was passed on 15.7.1993 by the Hon"ble High Court with a direction to the petitioner in CWJC No. 731/93 (R) to file a show cause to the respondent No. 2 within one month from 15.7.1993 and the competent authority will dispose of the show cause within six weeks from the date of receipt of the show cause and the petitioner will be informed accordingly. The petitioner sent his show cause to the respondent No. 2 through lawyer within the period and the respondent No. 2 received the same within the time but failed to dispose of the same within six weeks as directed by the Hon"ble High Court in its order dated 15.7.1993. Then petitioner filed a contempt application being MJC No. 382/93 (R) arising out of CWJC No. 731/93 (R). After much delay the respondent Nos. 1 and 2 filed a show cause in the contempt petition enclosing the rejection order of Samman Pension of the petitioner and the Hon"ble High Court disposed of the MJC No. 382/93 (R) on 5.7.1994 and held that the order has been complied with and accordingly proceeding was dropped. Then petitioner filed this CWJC No. 3844/95 (R).

3. In course of argument, learned counsel appearing for the petitioner, submitted that two of the colleagues of the petitioner, namely, Satyanand Singh and Md. Amin filed a writ application being CWJC No. 2897/94 (R), which was admitted on 19.8.1995 and thereafter finally decided and one Lakshmi Prasad Dubey of the same lot was granted pension by order dated 30.11.1995. vide MJC No. 177/93 (R) and as such, this petitioner also deserves Samman Pension as per P.P.O. granted to him. vide Annexure 1 to the original writ petition being CWJC No. 3844/95 (R). Learned counsel further submitted that in the similar case some of his colleagues have been allowed Samman Pension and there is no reason why the petitioner should be refused. It was also pointed out that the petitioner-appellant fulfils the criteria for grant of Samman Pension and the learned single Judge, in his order dated 20.1.1998, has also held the same. Learned counsel further submitted that the proof required in such cases will not be like that of a criminal trial or any other matter adjudicated in between the rival contentions of the parties. In this connection, learned counsel for the petitioner relied upon a decision in the case of Gurdial Singh v. Union of India and Ors., reported in 2002 (1) PLJR 230, in which it has been held that a presumption is required to be drawn in claimant's favour unless the same is rebutted by cogent, reasonable and reliable evidence and the contradictions and discrepancies pointed out by the authorities cannot be held to be material for rejecting the claim. In relevant paragraphs 7 to 10 of the judgment, their Lordships held :--

"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 touchstone 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.

8. We have noticed with disgust that the respondent authorities have adopted a hyper -technical approach while dealing with the case of a freedom fighter and ignored the basic principles/objections of the Scheme intended to give the benefit to the sufferers in the freedom movement. The contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the Scheme. The impugned order also appears to have been passed with a biased and closed mind completely ignoring the verdict of this Court in Mukund Lal Bhandari's case. We further feel that after granting the pension to the appellant, the respondents were not justified to reject his claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High Court has completely ignored its earlier judgments in CWP No. 3790 of 1994 entitled Mohan Singh v. Union of India, decided on 16.6.1995 and CWP 1442 of 1995. decided on 11.12.1995.

9. We are satisfied that the order of the respondent authorities impugned before the High Court (Annexure P-14) dated 1.11.2000 is liable to be set aside and the appellant entitled to the grant of relief of pension. However, keeping in view the lapse of time and peculiar circumstances of the case, we are not inclined to grant him the pension with effect from 12.3.1973 as claimed and feel that the ends of justice would be met if the appellant is granted pension with effect from March, 1996 when he was forced to file Writ Petition No. 12350 of 1996.

10. Accordingly the appeal is allowed by setting aside the order of the High Court impugned in this appeal and the order of the respondents dated 1.11.2000 (Annexure P-14). The appellant is held entitled to the grant of pension by the State of Punjab and the Union Government as determined vide Annexures P-9 and P-10 but with effect from March. 1996. The arrears shall be calculated and paid to the appellant positively within a period of six weeks from today, failing which he is held entitled to interest at the rate of 12% per annum from March, 1996 till the date, arrears are actually paid. The appellant is also held entitled to the payment of costs quantified at Rs. 5.000/-."

4. In view of the case law cited and facts appearing on the record, we feel that the learned single Judge has committed error in dismissing the writ application. In the circumstances, this appeal is allowed and the order dated 20.1.1998 is set aside. The petitioner-appellant is entitled to grant of pension by the State of Jharkhand and the Union Government, vide Annexure 1/A of the original writ application being CWJC No. 3844/95 (R), but with effect from March, 1993.