
(1996) 07 MAD CK 0068
In the Madras High Court

The Union of India (UOI)

APPELLANT

Vs

S. Jaganathan (Died) and Another

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Citation : (1996) 2 MLJ 408

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—The above petition has been filed for modifying the directions contained in paragraph 2 of our earlier order dated 27.2.1996 made in the main Writ Petition No. 8452 of 1991-, which reads as hereunder:

2. The petitioner applied for "Freedom Fighters" Pension by his application dated 27.3.1994. When the application was pending, the Government of India formulated a scheme known as "Swatantra Sainik Samman Pension Scheme, 1980. The petitioner was sanctioned Rs. 750 per month from 17.10.1989 vide Ministry of Home Affairs, Government of India Sanction Order No. 29/THR/614/74-FF-INA, dated 6.11.1989. It is also stated that the other freedom fighters who have applied along with the petitioner in the year 1974 and thereafter they have received the pension from 1.8.1980 irrespective of date of sanction under the scheme of the year 1.8.1980. However, the respondent has sanctioned the pension under this scheme only from 17.10.1989. In our opinion the petitioner would be entitled to receive the pension from the date of formulation of the new scheme called Swatantra Sainik Samman Pension Scheme, 1980, that is effective from 1.8.1980, even though his application was dated 27.3.1974. Since the persons like the petitioner were also granted pension under the new scheme effective from 1.8.1980, the petitioner, in our opinion shall also be entitled to receive the same with effect from 1.8.1980. The pension will be given to the petitioner at the then prevailing rate from time to time from 1.8.1980.

2. In support of the claim for modification, the petitioner herein, the respondent

in the main writ petition, placed reliance on two orders of their Lordships of the Supreme Court. The first of the orders is the one made in C.A. No. ... of 1995 (arising out of SLP (C) No. 2325 of 1995), dated 24.4.1995, wherein it was held by their Lordships that the Government of India has categorically stated that the respondents were given benefit of doubt and as such the pension can only be given from the date of the order. In addition to the said position, their Lordships of the Supreme Court also have considered the material and were satisfied that the respondents have been rightly given pension by the Government of India from the date of the order only and it is only to that extent and for the reasons noticed supra, the order of the High Court came to be set aside and that of the Union Government restored. The other order which is sought to be relied upon is the one made in C.A. No. ... of 1996 (arising out of S.L.P.(C) No. 25053 of 1995) dated 30.4.1996. The order of the Apex Court deals with the distinguishing features of two categories of cases placed for the consideration of Their Lordships of the Supreme Court and therefore it would be useful to set out the same in detail. It reads as hereunder:

Heard counsel for both sides. On behalf of the Union of India strong reliance was placed on the decision of the Division Bench of this Court dated 24th April, 1995. On the other hand, learned Counsel for the respondent placed reliance on an earlier judgment of this Court in Mukund Lal Bhandari and others Vs. Union of India and others, as well as the decision in Amarnath Malhotra and Ors. v. Union of India, dated 19th October, 1994. The distinction, however, is that in the case relied on by the Union of India the respondents were granted the benefit under the policy not because it was a clear case of the respondents being freedom fighters but because benefit of doubt was given and hence the pension was restricted from the date of the order and not the date of application. In the two cases relied on by the respondent there was no question of the benefit having been founded on a finding of fact which did not clearly establish that the petitioners were freedom fighters but on the liberal ground of giving them the benefit of doubt and restricting it from the date of order. We are, therefore, of the opinion that there is a distinction between the decision relied on by the learned Additional Solicitor General on behalf of the Union of India and two decisions relied on by the respondent. In the instant case, since the benefit of doubt was given and the status of freedom fighter was recognised on that basis, the case would be covered by the first mentioned decision Union of India v. Ganesh Chandra Dolai and Ors., dated 24th April, 1995.

In the result, the appeal is allowed and it is directed that the benefit will be given to the respondent from the date of the order and not the date of application.

[Italics applied]

3. After hearing the learned Counsel appearing for either parties, we are of the view that the later order of the Supreme Court dated 30.4.1996 sets out the real and guiding factor to distinguish the different categories of cases in coming to the conclusion as to whether the order granting pension should take effect from

the date of the order or from the date of the application and the criteria indicated is made to depend on a finding as to whether the order sanctioning pension is made on sufficient proof of the claim or in spite of the same being a doubtful claim, the same had been granted by allowing the benefit of doubt in favour of the claimant.

4. We shall now consider the facts and circumstances of the case before us. As could be seen from our earlier order dated 27.2.1996, the modification of which is sought for, the relief of granting the pension from 1.8.1980 irrespective of sanction was granted by our order only keeping in view the claim of the petitioner that other persons, who simultaneously applied and were similarly sanctioned pension were granted from such date and only the claim of the petitioner in the writ petition alone was not favoured with effect from the said date. To ascertain the correct position as to the manner of grant made in this particular case, we have gone through the relevant file produced by the learned Additional Central Government Standing Counsel. We find a copy of the of the order dated 26.10.1989, wherein the sanction is found recorded in the form of an order addressed to the Accountant General, Tamil Nadu, Madras, with copies marked to the writ petitioner. Mr. Santhanam, learned Counsel, invited our attention to the note file to point out that the authority concerned has noted in the file that the present writ petitioner has not been consistent in the claims in respect of sufferings made by him and the co-prisoners certificate submitted by him were also not consistent and therefore sanctioned prospectively. The said noting is of the date 17.10.1989. From this, it is sought to be contended that our earlier order requires to be modified in the teeth of the orders of the Supreme Court, to which a reference has been made, earlier.

5. We have carefully considered the submissions of Mr. Santhanam, learned Additional Central Government Standing Counsel, in the writ miscellaneous petition and the learned Counsel for the respondent in the main writ petition. We are unable to agree with the submission by the learned Counsel. The mere mention in the note file that the claimant had no consistent case in respect of his suffering is not the same thing or equivalent to the position that the sanction accorded ultimately is by granting benefit of doubt in favour of the claimant. The courts dealing with a situation like the one sought to be urged can accept a case of grant of pension on the basis of benefit of doubt only if the very order sanctioning the pension specifically mentions that in spite of doubtful materials or insufficiency of the materials, the pension is sanctioned taking a lenient view of the matter or extending the benefit of doubt in favour of a claimant. Short of such a conclusion or finding found recorded in the very order of sanction of pension, it is very difficult to countenance a plea that in an individual case sanction has been accorded giving the benefit of doubt, merely on some such notings or observations by dealing authorities as made in the present case. The fact as to whether a particular grant was on proper proof of the claim or merely on account of extending the benefit of doubt, is a matter of opinion or finding recorded actually and that it should be shown to have been necessarily forming

part of the order itself. In view of the fact that in this case there is no such statement or finding recorded in the very order sanctioning pension that the grant has been made extending or giving the benefit of doubt in favour of the claimant, we do not see any justification for modifying our earlier order.

6. It is proper for the authorities also in future to specifically deal with the case of the claimants, while passing the order and mentioning the position in clear cut and categorical terms. In the light of the various decisions referred to above, there can be no doubt even in our view that it is permissible for the Union Government to sanction pension prospectively from the date of the order and with reference to a date subsequent to the date of the application, provided a proper finding is recorded on the nature of material and the fact that such sanction is accorded only by extending the benefit of doubt in a particular case and not otherwise.

7. Consequently, the application for modification shall stand rejected.