
(2012) 02 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 64 of 2012 : Against order Dated 22.9.2011, Passed by Single Judge in Writ Petition No. 2035 of 2009

Union of India

APPELLANT

Vs

Dr. Raghunath Paprikar and Another

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 1 JLJ 435 : (2012) 2 MPHT 381

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Vijay Sundaram on behalf of Ankur Mody, Assistant Solicitor General, for the Appellant; Ravindra Dixit for respondent No. 1, Vivek Khedkar, D.A.G. for respondent No. 2/State, for the Respondent

Final Decision : Allowed

Judgement

Gangele, J.—The appellant-Union of India has filed this writ appeal against the order dated 22.9.2011, passed by the learned Single Judge in Writ Petition No. 2035/2009. The respondent No. 1, who is getting Samman Nidhi (Pension) from the State Government being a Freedom Fighter, submitted an application to the Union of India for grant of Pension under Freedom Fighter Pension Scheme. The matter was forwarded to the State Government for verification. The State Government vide letter dated 3.4.2007 requested the Union of India to grant Freedom Fighter Pension to the respondent No. 1-petitioner. The appropriate authority of Union of India considered claim of the respondent No. 1 and rejected the same vide order dated 23.8.2007 on the ground that the respondent No. 1 did not fulfill the criteria in regard to grant of Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as the "Scheme of 1980") because he failed to prove the fact that he had remained underground for more than six months during Freedom Struggle.

2. The respondent No. 1 challenged the aforesaid order in the writ petition. Learned Single Judge allowed the writ petition on the ground that the respondent

No. 1 has been getting Samman Nidhi (Pension) being a Freedom Fighter by the State Government and he has been declared as Freedom Fighter by the State Government, hence, it is obligatory on the part of the Central Government to grant Samman Nidhi to the respondent No. 1 also under the Scheme of 1980.

3. Learned counsel appearing on behalf of the appellant has contended that the appellant does not fulfill the criteria in regard to grant of pension under the Scheme of 1980, hence, he is not eligible to receive Swatantrata Sainik Samman Pension. The criteria to receive pension of Samman Nidhi under the Scheme of 1980 of Union of India and the rules framed by the State Government named as "Madhya Pradesh Swatantra Sangram Sainik Samman Nidhi Niyam, 1972" (hereinafter referred to as the "Rules of 1972") is different. Hence, the order passed by the learned Single Judge is contrary to law. In support of his contentions, learned counsel relied on the judgment of Hon'ble Supreme Court in the case of Mahender Singh Vs. Union of India (UOI),

4. Per contra, learned counsel for the respondent No. 1 has submitted that the respondent No. 1 has been declared as Freedom Fighter by the State Government. He is getting pension in accordance with the Rules of 1972. Earlier, he filed a writ petition before this Court in regard to grant of pension of Freedom Fighter from the State Government, that was allowed. Against the aforesaid order, an LPA was preferred, that was dismissed. Thereafter a SLP was filed, which was also dismissed, hence, the decision of the Court that the petitioner is a Freedom Fighter has become final. Consequently, the order passed by the learned writ Court is in accordance with law.

5. The appellant submitted an application to the Deputy Collector, District Gwalior, dated 7.12.2006, copy of which has been filed as Annexure R-4 in pursuance to the verification of the respondent No. 1 for grant of pension under the Scheme of 1980. He mentioned in the application that he was not a proclaimed offender, neither there was any reward in this regard against him proclaimed during Quit India Movement, 1942. He further made a declaration that he was not arrested, neither any reward was announced on him. He further disclosed that no order of preventive detention was passed against him, neither his property was forfeited or sold by the State due to participation in Freedom Struggle. He further explained that during the Freedom Struggle, all the important leaders were in jail and it was necessary to continue the movement, hence, he remained underground and he had participated in freedom movement.

6. Initially, the Union of India framed a Scheme named as Freedom Fighters Pension Scheme 1972, which commenced from 15th August, 1972. The scheme was modified in the year 1980, named as "Swatantrata Sainik Samman Pension Scheme, 1980". Clause 4 of the Scheme of 1980 prescribes eligibility and clause 4(b) of the Explanation is in regard to a person, who remained underground for more than six months. The relevant clause is as under:

4(b). A person who remained underground for more than six months provided he

was;

1. a proclaimed offender; or
2. one on whom and award for arrest/head was announced; or
3. one for whose detention order was issued but not served.

(c) A person interned in his home or externed from his district provided the period of internment/externment was six months or more.

(d) A person whose property was confiscated or attached and sold due to participation in the freedom struggle.

7. From the aforesaid clause, it is clear that it was incumbent upon the respondent No. 1 to prove the fact that he was a proclaimed offender or an reward for arrest was announced against him or a detention order was issued but not served against him or he was externed from the district or his property was confiscated or attached or sold due to participation during freedom struggle. The respondent No. 1 himself admitted the fact that no such eventuality had happened in his case. He simply submitted certificate of three prominent persons namely, Shri Leeladhar Joshi, Shri Yashwant Singh Kushwah and Shri Ramchandra Nawal, mentioning the fact that the respondent No. 1 was remained underground during freedom struggle. Hence, the respondent No. 1 failed to meet the criteria for grant of pension under the Scheme of 1980.

8. The State Government has also framed Rules for grant of Samman Nidhi named as "Madhya Pradesh Swatantrata Sangram Sainik (Pension) Rules, 1964" (hereinafter referred to as the "Rules of 1964"). Rule 8 of the Rules, 1964 is in regard to underground persons, which is as under:

From the perusal of the rule, it is also clear that the criteria mentioned in the rule is quite different from the criteria mentioned by the Union of India in the Scheme of 1980.

9. The respondent No. 1 filed a petition before this Court in regard to grant of Freedom Fighter Pension by the State Government. It was registered as Writ Petition No. 381/1997. Learned Single Judge of this Court allowed the petition on the following grounds :

11. It is not disputed that the petitioner had filed two certificates of the freedom fighters of the category whose certificates are conclusive and fulfils the compliance of rule 3(3) of Rules of 1972. Learned counsel for respondents has not been able to point out any flaw in the certificates furnished by the petitioner or to say the respondent No. 1 found any flaw in the case of petitioner owing to which, his application met with rejection. In the return also nothing has been stated as to insufficiency of the material submitted by the petitioner. The material which was produced is not disputed and that was enough as per the requirement of rule 3(3) of Rules of 1972 to allow the "Samman Nidhi" to the petitioner as a freedom fighter. In similar cases, the respondents have acted

upon on such certificate as is apparent from documents, Annexures P-11 and P-12. This Court long back in the year 1993 had laid down that furnishing of certificate is adequate compliance of rule 3(3) of Rules of 1972 and it has to be acted upon and the rule has to be applied uniformly to everybody.

12. It is surprising that freedom fighters who rendered the yeomen service to the cause of the nation which is unforgettable owing to whose efforts, the nation freed from the clutches of the foreign rule are treated in such a manner. When the State has framed the rules and has prescribed a particular certificate to be the requirement of the rule and on fulfilling of that requirement various persons who have participated in the freedom struggle in various forms and remained underground for the prescribed period cannot be denied unreasonably the benefit of "Samman Nidhi". The very purpose of enacting the law for "Samman Nidhi" defeats if a person is unreasonably denied of the same in spite of furnishing certificates which is admissible under the rules.

13. In number of other similar cases, this Court had directed that such certificates should be acted upon which is provided under the rules itself. The conclusion is inescapable that the case of the petitioner has not been dealt with properly and he ought to have been sanctioned the "Samman Nidhi" when the order was passed on 22.7.1995 (Annexure P-1). The date of the order of the State Government in the instant case has to be taken as the date on which State Government decided the application of the petitioner. The State Government should have allowed the application of the petitioner on 22.7.1995. It has grossly erred in law and acted in violation of the rules framed for granting "Samman Nidhi" while disallowing the application of the petitioner.

14. The writ petition is allowed. The impugned order, Annexure P-1 is quashed. State Government is directed to release the "Samman Nidhi" with effect from the date of the order passed on 22.7.1995. The arrears of "Samman Nidhi" be paid within a period of three months from the date of production of a certificated copy of this order along with interest at the rate of 12% per annum and continue to pay the "Samman Nidhi" falling due in future regularly.

Costs on parties.

10. From the perusal of the order passed by the learned Single Judge, it is clear that the pronouncement of the Court is based on interpretation of rule 3(3) of Rules 1972 framed by the State Government. Against the aforesaid order an LPA was dismissed and also an SLP was dismissed, however, this order could not operate as res judicata or binding in nature in regard to grant of pension to the petitioner under the Scheme of 1980 because the criteria is quite different. Even though if the State Government has forwarded the case of the respondent No. 1 for grant of pension, however, that is not binding upon the Union of India.

11. The Hon'ble Supreme Court in the case of Mahender Singh Vs. Union of India (UOI), , has held as under in regard to grant of pension to a freedom fighter under the Scheme of 1980, even though the case has been recommended by the

State Government:

10. Now, let us consider the manner in which the claim is to be proved which is provided in para 9 of the Scheme which reads thus :

9. How to prove the claims (evidence required). -- The applicant should furnish the documents indicated below whichever is applicable:

(a) Imprisonment/detention, etc. -- Certificate from the jail authorities concerned, District Magistrate or the State Government in case of non-availability of such certificates, co-prisoner certificate from a sitting MP or MLA or from an ex-MP or an ex-MLA specifying the jail period (Annexure I in the application form).

(b) Remained underground. -- (i) Documentary evidence by way of Court's/ Government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention.

(ii) Certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

(c) Internment or externment. -- (i) Order of internment or externment or any other corroboratory documentary evidence.

(ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available. (Annexure II in the application).

Note : The certifier veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganisation of States and their area of operation must be the same.

(d) Loss of property, job, etc. -- Orders of confiscation and sale of property orders of dismissal or removal from service.

11. As stated earlier, the appellant laid his claim only on the ground that he had remained underground for more than four years and from the aforesaid provision, it can be seen that there are two modes of providing the evidence for the same. The first one is by producing documentary evidence and the second where the official records are not forthcoming due to their non-availability, the claim is to be proved by certificates from the veteran freedom fighters who have themselves undergone imprisonment for five years or more. In the case of the appellant, he asserted that the official records are not traceable due to non-availability and submitted a certificate from one Shri Jagdish Singh who was a veteran freedom fighter. The learned counsel for the appellant also brought to our notice the recommendation dated 4, 1997 of the Government of Bihar recommending the case of the appellant for payment of freedom fighters' pension under the scheme w.e.f. 1.8.1980.

12. It is true that based on the particulars furnished by the appellant, the State Screening Committee, Bihar recommended the case of the appellant for payment of pension under the Central Scheme. However, the Central Government in the absence of any authenticated records particularly the details about "underground suffering" for a minimum period of six months and finding that the certificate issued by Shri Jagdish Singh is not sufficient, rejected the claim of the appellant.

13. In the light of the controversy, particularly, the claim of the appellant and the stand taken by the Government of India, we have carefully gone through the eligibility provisions as well as relevant criteria to prove the claim under the Scheme. In his application dated. 3, 1981, the appellant had merely indicated that he remained underground from 1942 to 1946. As rightly pointed out by the respondent, he did not indicate the details of the case in which he had gone underground. Though the appellant has placed record of proceedings which show that the relevant records were not available with him, the fact remains that the said non-availability of records certificate (NARC) did not indicate the date of disposal of the case as well as the relevant provisions of the Penal Code, 1960. In such circumstances, as rightly pointed out by the respondent, it is not clear whether the said case, if any, was related to freedom struggle and what was the duration of the claimed suffering of the appellant. Though the appellant had given an opportunity to furnish the name of the co-accused in the same case, who are presently getting pension on the basis of GR No. 985 of 1942, the appellant was unable to furnish such details.

14. Insofar as the personal knowledge certificate (PKC) of Shri Jagdish Singh, it is the stand of the Government of India that the same is not acceptable as the certifier was in jail for most of the period of the claimed suffering of the appellant. In view of the same, it could not be possible for the certifier to verify the period as well as the reasons of the claimed suffering of the appellant based on his (Jagdish Singh) personal knowledge.

15. Though the State Advisory Committee and the Government of Bihar recommended the case of the appellant for the Central Scheme, it is pointed out by the learned counsel for the respondent that the same is not binding on the Central Government in the absence of required proof for the same. In other words, the recommendation of the State Government is not final or conclusive and it is for the authority of the Central Government granting such pension to make further inquiry in the matter in terms of various conditions prescribed in the Scheme and to take a final decision.

16. In the light of the above discussion, we conclude that the appellant has failed to establish his claim for freedom fighters' pension in terms of the Central Scheme; on the other hand, we are in agreement with the conclusion arrived at by the Division Bench of the High Court. Consequently, the appeal fails and the same is dismissed. No order as to costs.

12. From the aforesaid judgment of the Hon''ble Supreme Court, it is clear that

the decision of the State Government to the effect that a person is a freedom fighter is not binding on the Union of India and it has liberty to decide the eligibility of a freedom fighter to grant pension in accordance with the Scheme of 1980 as mentioned earlier, the respondent No. 1 has to met out the criteria for grant of pension under the Scheme of 1980. Hence, in our opinion, the Union of India has rightly rejected the claim of the respondent No. 1. Consequently, the appeal filed by the appellant-Union of India is hereby allowed. The impugned order dated 22.9.2011, passed by the learned Single Judge in Writ Petition No. 2035/2009 is hereby quashed. No order as to costs.