
(2008) 07 PAT CK 0085
In the Patna High Court
Case No : LPA No. 1518 of 2000

Union of India

APPELLANT

Vs

Jaganath Prasad Keshari

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Citation : (2008) 4 PLJR 41

Hon'ble Judges : J.N. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Prashant Kashyap, for the Appellant; S.D. Sanjay and Suraj Samdarshi, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh & J.N. Singh, JJ.—Swatantrata Sainik Samman Pension Scheme, 1980, as was revised, is a Scheme introduced by the Union Executive Branch of the State. The said Scheme entailed payment of pension to those Swatantrata Sainiks who suffered during the freedom struggle of India. In order to honour those freedom fighters, the said Scheme was introduced. The Scheme required freedom fighters, who have suffered for the period and in the manner atleast to the extent as mentioned in the Scheme, to apply for grant of pension under the Scheme. The Scheme envisaged grant of pension by the Central Government. In terms of the Scheme, after having had made an application in the prescribed manner, the applicant had nothing further to do. The Scheme, however, provided that a copy of the application should be furnished to the Chief Secretary of the State Government in whose territory the suffering occurred and another to the designated Secretary of the Central Government. It provided that the State Government would scrutinize the facts furnished in the application and report to the Central Government. The Scheme further provided that the Central Government would thereupon scrutinize the application and thereafter dispose of the same in accordance with the Scheme. The Scheme did not grant any specific time to the Chief Secretary of the State or to the State Government to complete

scrutiny of the application. Similarly, the Scheme did not say that within a time specified the Central Government and its Officers would be obliged to complete final scrutiny of the application. In the circumstances, if the State Government and the Central Government as well as their Officers act on an application without any delay, it is possible that the pension accordable under the Scheme may be granted to the applicant immediately on receipt of the application. On the other hand, if the State Government and the Central Government as well as their Officers sit over such an application and do not scrutinize the application immediately, grant of pension may be unreasonably postponed. In the circumstances, the law conjoins a right in favour of the applicant to obtain pension from the date of making of the application in the event ultimately, the application matures into grant of pension under the said Scheme on the analogy that the decision to grant pension upon scrutiny of the application would relate back to the date of making of the application. In the event, although an application has been made and though the same is in the prescribed form and a copy thereof has been submitted to the Chief Secretary of the State and the other to the Central Government, but still then the application may be incomplete. In such situation, when the application is completed, in law, it would be considered that the application has been made on the date of its completion. At the time of scrutinizing the application it may be held by the Central Government that the facts upon which the pension has been sought are not so clinching that the same would tantamount to suffering by the applicant at least to the extent as mentioned in the Scheme and, accordingly, the Central Government may decide not to accord pension to the applicant. At this stage, it may also transpire to the Central Government that though a clear cut case has not been made out by the applicant, but considering the facts and circumstances of the case a benefit of doubt may be accorded to the applicant entailing pension to him under the Scheme. In such circumstances, although the application for grant of pension has succeeded, but since a benefit of doubt has been given to the applicant upon a decision to that effect having been taken, without which no pension could be accorded, it would be the date of the decision of the Central Government from which the pension will be payable and the same would not relate back to the date of making of the application. That being the position of law, in *Mukund Lal Bhandari & Ors. vs. Union of India & Ors.*: AIR 1993 SC 2127, the Supreme Court directed payment of pension to the writ petitioner before the Hon'ble Supreme Court from the date of making of the application, in-as-much as the application matured in grant of pension upon scrutiny of facts as disclosed in the application upon which there was no scope of having any doubt. The same was also reiterated by the Hon'ble Supreme Court in its judgment rendered in *Amarnath Malhotra vs. Union of India*. Subsequently, the Hon'ble Supreme Court in the case of *Union of India vs. Ganesh Chandra Dolai* held that since Ganesh Chandra Dolai could not make out a clear case of being a freedom fighter, but since benefit of doubt was given to him, Ganesh Chandra Dolai would be entitled to pension from the date of the decision to give benefit of doubt to him. All the three aforementioned judgments were rendered by Hon'ble two Judges of the

Hon''ble Supreme Court. These three judgments were considered by three Hon''ble Judges of the Hon''ble Supreme Court in *Union of India vs. Chellaiah Thevar*; decided on 30th April, 1996 in C.A. No. 2762 of 1996, when the Bench comprising of three Hon''ble Judges of the Hon''ble Supreme Court made it absolutely clear that when a clear case has been made out by the applicant and the grant of pension is on the basis thereof, the applicant will be entitled to pension from the date of the application, but if grant of pension has matured upon giving benefit of doubt, the applicant would be entitled to pension from the date of the decision giving him benefit of doubt. The observations of the Hon''ble Supreme Court in *Union of India vs. M.R. Chelliah Thevar*: C.A. No. 7762 of 1996, have been quoted by a Bench of Hon''ble Supreme Court in the case of *Government of India represented by the Secretary Vs. K.V. Swaminathan*, . That being the position, unless the grant is founded on benefit of doubt, the decision to grant pension will relate back to the date of the application.

2. In the instant case, the respondent-writ petitioner was accorded pension from a date posterior to the date of making of the application by him. That brought him to this Court. The writ petition was contested by the Union of India by filing a counter affidavit. In that it was stated that there is no scope of the decision to grant pension relating back to the date of making of the application. It was stated that there was about four years unexplained delay in claiming the same. It was, however, not stated that pension was accorded to the petitioner-respondent after giving him benefit of doubt. At the same time, it was stated that if back pension is directed to be paid, the same will create unjust and undue pressure on the exchequer. These contentions were negated by a learned single Judge by the judgment and order under appeal and hence the Union of India is before us in the present appeal. In view of the law pronounced by the Hon''ble Supreme Court, as stated above, the Learned Counsel for the appellant submitted that there was no just reason for the delay of four years on the part of the petitioner-respondent in approaching this Court and that back pension will have an adverse effect on the exchequer.

3. A right accrued under a Scheme propounded by the Government of a democratic State for honouring those, who struggled to free the people of that State in order to enable establishment of the democratic State, cannot be denied by the selfsame State on the ground of delay. Be that as it may, if in law the right to get pension accrues from the date of making of the application, the cause of action to enforce the same being a continuing cause of action, could not be scuttled on the ground of delay.

4. The moment the Scheme was propounded, the State held out to the citizens of the State that it has arranged for the necessary funds to meet the obligations under the Scheme and as a result submission to the effect that grant of pension from the date the petitioner-respondent is entitled to the same would affect the exchequer is not acceptable.

5. For the reasons as above, there is no scope of interference. The appeal,

accordingly, fails and the same is dismissed. There shall be no order as to costs. It is clarified that the directions given in the order under appeal should be understood as directions pertaining to payment of pension under the Scheme and to those who are entitled to the same.