

(2019) 04 CAL CK 0005
In the Calcutta High Court

Case No : Tender Of Md Appl (MAT) No. 1774 Of 2016 With CAN 10150 Of 2016

Union Of India & Ors

APPELLANT

Vs

Sobha Rani Mal & Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Citation : (2019) 04 CAL CK 0005

Hon'ble Judges : Biswanath Somadder, J;Arindam Mukherjee, J

Bench : Division Bench

Advocate : Anuran Samanta, Pingal Bhattacharyya, Subhankar Das

Final Decision : Dismissed

Judgement

Biswanath Somadder, J

By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the application for stay.

The instant appeal arises out of a judgment and order dated 7th June, 2016, passed by a learned Single Judge in W. P. 2890 (W) of 2016 (Sobha Rani Mal vs. Union of India & Ors.). By the impugned judgment and order, the learned Single Judge proceeded to set aside the order dated 18th February, 2015, issued by the concerned Section Officer together with the show cause notice dated 22nd August, 2012, along with a further direction that an order, restoring the family pension of the writ petitioner (being the respondent no. 1 herein), should be issued immediately, but not later than thirty days from receipt of the impugned judgment and order dated 7th June, 2016. Learned Single Judge further directed that the arrears should be computed and released within such period. Current pension as and when payable, was also directed to be released in favour of the writ petitioner till such time she was alive. The writ petition was accordingly allowed.

The present appeal has been preferred by Union of India through the Home

Secretary, Ministry of Home Affairs, Freedom Fighters Division, New Delhi, its Under Secretary and Deputy Secretary.

The facts of the instant case reveals that the respondent no. 1/writ petitioner is the widow of a freedom fighter (Sridam Chandra Mal). The respondent no. 1/writ petitioner's husband - during his lifetime - had applied for samman pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (hereafter the scheme). The authorities were satisfied as regards the claim and credentials of the respondent no. 1/writ petitioner's husband and accepted him to be a freedom fighter. The pension payable to a freedom fighter was allowed in favour of the respondent no. 1/ writ petitioner's husband on and from 2nd February, 1991, and he was in receipt thereof till he breathed his last on 14th April, 2009. The respondent no. 1/writ petitioner had applied for family pension and the authorities, satisfying themselves that the claim of the respondent no. 1/writ petitioner for family pension was genuine, sanctioned the same. As a result thereof, with effect from the death of her husband, the respondent no. 1/writ petitioner started receiving family pension at the applicable rate.

By a communication dated 22nd August, 2012, the Deputy Secretary to the Government of India, Ministry of Home Affairs, Freedom Fighters Division, called upon the respondent no. 1/writ petitioner to show cause as to why family pension should not be cancelled and the amount of pension already drawn by her not be fully recovered along with interest with effect from 2nd February, 1991, i.e. the starting date of drawal of pension by her late husband. The respondent no. 1/writ petitioner was given the opportunity to appear before the Deputy Secretary on 10th September, 2012, for explaining her version. The ground on which such communication was made is that the State and the Union suspected fraudulent activity based on receipt of an anonymous complaint to the effect that 12 persons were drawing pension unlawfully.

The respondent no. 1/writ petitioner had replied to the show cause notice denying any fraudulent activity having been indulged by her late husband. No final order was passed by the Ministry of Home Affairs upon receipt of the response of the respondent no. 1/writ petitioner. Finding no other alternative, the respondent no. 1/writ petitioner prayed for restoration of family pension. However, such application for restoration was refused by a Section Officer attached to the Ministry of Home Affairs, Freedom Fighters' Division, by a communication dated 18th February, 2015. The ground assigned was that the name of the respondent no. 1/writ petitioner's late husband did not figure in the records of the pre-independence era as one who had participated in the freedom struggle.

Learned Single Judge - while deciding the matter finally - took into consideration the relevant facts of the instant case as also the stand taken by the appellants, Union of India, in its affidavit-in-opposition. In its affidavit-in-opposition, the Union of India referred to various communications received from the authorities of the State, mainly, the police authorities, to oppose the claim of the respondent

no.1/ writ petitioner. According to the Union, the records that have now surfaced at the State level did not justify the claim of the respondent no. 1/writ petitioner that her late husband was a freedom fighter. Relying on such affidavit, it has contended that the Union was right in withholding family pension that was being paid to the respondent no. 1/writ petitioner and in also expressing that whatever amount had been paid on account of pension/family pension to the respondent no. 1/writ petitioner's late husband/writ petitioner should be recovered.

After considering the respective contentions of the parties, the learned Single Judge has observed as follows: -

"It appears that on the basis of an anonymous complaint that certain persons impersonating as freedom fighters have been receiving pensions/family pensions under the scheme had set the ball in motion resulting in discontinuance of pension, inter alia, to the petitioner. The anonymous complaint was received by the Union only after the death of the petitioner's husband. At the time the petitioner's husband applied for pension, the Union and the State must have formed an opinion that the claim deserves acceptance, or else they would not have proceeded to sanction the same. There cannot be any dispute that various checks and balances are to be found in the scheme itself before a claimant is extended the benefit of pension. If indeed the petitioner's husband was not entitled to pension and such finding could have been arrived at upon exercise of due diligence, which may not have been exercised, fraud cannot be alleged and it is not the petitioner or her husband who can be blamed therefor.

In the decision reported in AIR 1976 SC 76, the Supreme Court has observed as follows: -

".....It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of *suggestio falsi*, or *suppressio very*"

Question of any fraud by the petitioner's late husband does not, therefore, arise.

That apart, the jurisdiction of the Ministry in withholding the family pension under the scheme and seeking recovery of amounts paid on account of pension/family pension, is questionable. Such an action could have been initiated when the freedom fighter himself was alive since he would have been the best person to answer the allegation levelled against him. Going by the age of the petitioner as declared in the affidavit accompanying the writ petition, as well as the period when her husband had participated in the Quit India Movement, she may have been 8/9 years of age and may not even have any special knowledge of her husband's involvement in the freedom movement. It would be a travesty of justice if an octogenarian lady is deprived of the fruits of the scheme on a ground which she, by reason of her age and physical disability, is unable to meet. This is a peculiar case where the petitioner's claim for family pension ought to be accepted and she be allowed to pass the winter days of her life in peace with financial support being provided by the Ministry."

Consequently, the learned Single Judge proceeded to allow the writ petition in the manner as indicated at the very outset.

It is patently evident that the impugned judgment and order has been rendered with cogent and justifiable reasons.

In an Intra-Court Mandamus Appeal, interference is usually warranted only when palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts of the instant case, we do not notice any such palpable infirmity or perversity on a plain reading of the impugned judgment and order.

As such, we are not inclined to interfere with the impugned judgment and order. The appeal and the application for stay are liable to be dismissed and stand accordingly dismissed.