

(2008) 08 SHI CK 0002
In the High Court Of Himachal Pradesh

Union of India (UOI)

APPELLANT

Vs

Ganga Ram and Another

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 3 ShimLC 497

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—This is a Letters Patent Appeal filed by the appellant/ Union of India against the judgment of the Court of the learned Single Judge, dated 6.5.2003, allowing the petition filed by respondent No. 1 for the grant of Freedom Fighters" Pension.

2. Briefly stated the facts of the case are that respondent No. 1 filed a writ petition under Articles 226/227 of the Constitution of India against the appellant/ Union of India, who was impleaded as respondent No. 1 and as against respondent No. 2, State of H.P., who was impleaded as respondent No. 2 in the petition. It was submitted by the petitioner that the Government of India had promulgated a Scheme known as Freedom Fighters" Pension Scheme, 1972. The said Scheme was further liberalized in 1980 and renamed as the Swatanarta Sainani Samman Pension Scheme, 1980. It was alleged by the petitioner that he suffered at the hands of the Ruler of Bilaspur for taking part in the Praja Mandal Movement of Bilaspur State as he was externed under the verbal orders of the Raja of Bilaspur from September 1946 to October. 1948. It was alleged that the petitioner falls within the definition of the Freedom Fighter and since his externed period was for over six months, he was entitled to get pension under the Scheme.

3. It was further alleged by the petitioner that he sent an application, dated 30.1.1982, for the grant of pension under the Scheme enclosing therewith a

certificate of one Sada Ram, another certificate from one former Dy. S.P. and another certificate issued by one Kahna Ram, a Freedom Fighter and pension holder, alongwith a certificate of one Narotum Dutt Shastri, Vice President of Bilaspur State Praja Mandal Movement and an ex MLA. It was also alleged by the petitioner that these certificates conclusively show that the petitioner was externed under the verbal orders of Raja of Bilaspur for taking part in the Praja Mandal Movement and he remained externed for more than six months and his case was, therefore, covered under the Scheme. It was further alleged that the petitioner's application for grant of pension was not decided and he filed a writ petition in this High Court, which was decided on 30.12.1994 and the petitioner was asked to make a fresh application alongwith documents and he applied afresh to the State Government on 23.1.1995. His application was acknowledged by the respondents vide acknowledgment, dated 31.1.1995, but no intimation was given to the petitioner about his application and, therefore, he filed the present writ petition praying for grant of the pension under the Scheme.

4. In reply filed by respondent No. 1/Union of India, they pleaded that the petitioner filed an application, dated 23.1.1995, on two grounds. Firstly, half of his immovable property was forfeited to the State of Bilaspur and secondly, that he was externed from the State of Bilaspur due to participation in Praja Mandal Movement. It was pleaded that the matter was enquired into by the Government of Himachal Pradesh, who reported that the petitioner is not entitled to the pension as he had got land in inheritance on 16.12.1952. It was also pleaded that the State Government further reported that the records pertaining to the Praja Mandal Movement were looked into but there was no mention of the name of the petitioner and this Court cannot scrutinize the documents produced in support of the claim and pronounce upon their genuineness.

5. In reply filed by respondent No. 2/State of H.P., they pleaded that the claim of the petitioner was got verified through the Deputy Commissioner, Bilaspur and the report of verification was sent to respondent No. 1, vide letter dated 21.6.1996, and the pension is to be granted by respondent No. 1.

6. We have referred to the pleadings of the petitioner as well replies filed by the respondents from the original record of the civil writ petition decided by the learned Single judge.

7. We have heard the learned Counsel for the parties and have gone through the record of the case.

The submissions made by the learned Assistant Solicitor General of India for the appellant were that earlier there was an income ceiling of Rs. 5,000/-, which was removed in 1980 and since the State Government had reported that no land of the petitioner was forfeited, his application was rejected and there was no recommendation by the State Government in favour of the original petitioner. It was also submitted that documents furnished by the petitioner were not found to be sufficient and therefore, the learned Single Judge had wrongly given his

findings on the basis of the documents itself that the petitioner was entitled to the grant of pension. It was submitted that this responsibility was of the State to consider as to whether the documents were sufficient or not but these could not have been perused by this Court to give its findings accordingly.

8. On the other hand, the learned Counsel for respondent No. 1 had argued that these certificates of the Freedom Fighters have been relied upon by this Court in several cases. To substantiate his case, he relied upon two judgments of this Court. The first decision relied upon was in CWP No. 539 of 1990, decided on 29.12.1994, in which this Court had directed the Union of India to grant benefit of the Scheme to the petitioner in accordance with the provisions thereof. The second decision relied upon was in CWP No. 745 of 1995, decided on 21.9.1995, in which similar orders were passed. The certified copies of the judgments or duly attested copies should have been placed on record before they can be considered in full. However, since the copies have been placed on record and not challenged by the other party, these are being considered.

9. A perusal of these decisions shows that these are mainly based upon the facts of those cases. In CWP No. 745 of 1995, the State Government had not doubted the genuineness of the certificate nor it was willing to make verification and it had not filed any reply in the case. Therefore, the pension was granted by the Court. In CWP No. 539 of 1990, the relief was granted keeping in view the facts of that case.

10. A perusal of the judgment passed by the learned Single Judge shows that it was observed as under:

Further, there is also no doubt to reject the certificates of these Freedom Fighters about the externment of the petitioner forced by the action of the Ruler during 1946 to 1948, The Freedom Fighters whose certificates the petitioner has annexed in support of his claim, are prominent Freedom Fighters of the Princely State of Bilaspur. Their sufferings are well-known in the State and they have been recognized as such by the State Government. Their certificates have been accepted by way of corroboratory evidence in many other similar cases for grant of Freedom Fighters' pension since these were key figures in this Prajamandal Movement in the Princely State of Bilaspur and had undergone jail sufferings and other kinds of punishment on the orders of the Ruler. They are recipients of Freedom Fighters' pension. There would be no justification not to accept their certificates about the participation of the petitioner in this "Movement" when their certificates certifying the participation of other workers of the "Movement" have been made the basis for grant of Freedom Fighters' pension.

11. It is clear from the above discussion that a general observation was made by the learned Single Judge that the certificates of such Freedom Fighters have been accepted in several cases but neither the names of the said Freedom Fighters have been mentioned nor it has been mentioned as to whether the same Freedom Fighter had given the certificate in this case also and there was no

mention of any decision based upon these certificates. Thus, the learned Single Judge had made general observations and by making a general statement, it was observed that these certificates had been accepted in several cases about which no reference was made and accordingly the petition was allowed.

12. In our opinion, this approach of the learned Single Judge cannot be said to be correct since the name of the person who issued certificate in this case as well as in the previous cases should have been mentioned and reference should have been made to the decision based upon such certificates before such observations, in general, could have been made and relied upon to decide the case in favour of the petitioner. To our mind, this general observation has been made by the learned Single Judge based upon his experience or knowledge in dealing with such similar cases but these cannot be taken to be conclusive to determine the claim of the petitioner. There was no mention to the claim or the certificates which were required to the attached and as to whether those certificates were in accordance with the Scheme and were sufficient to prove the case of the petitioner.

13. During the course of arguments, it was submitted by the learned Assistant Solicitor General of India that the certificates issued by a Freedom Fighter and pension holder should mention that the said person had suffered imprisonment for over two years on account of taking part in Prajamandal Movement and, thereafter, the said certificate could have been considered. All these questions are to be considered by the Union of India, who is the sanctioning authority, as to whether the certificates annexed thereto satisfy the requirement or not. This job cannot be done by this Court to consider the documents whether they are sufficient or not to grant the pension to the petitioner.

14. In making these observations, we are supported by the judgment of the Apex Court relied upon by the learned Assistant Solicitor General of India in West Bengal Freedom Fighters' Organization Vs. Union of India (UOI) and Others, , in which it was observed in considering a similar case for grant of pension to the Freedom Fighters under the Swatantrata Sainik Samman Pension Scheme, 1980 that the State Advisory Committee appointed to verify claims of these applicants. The State Government and the Committee opined that none of the applicants was eligible for pension. It was found that the applicants had not submitted the relevant documents, but had given only certificates from co-prisoner without producing NARCs and that in most of the cases the applicants claimed to have gone underground. The Committee, therefore, rejected all the applications. It was held that it is not possible for the Court to interfere as the Committee has come to a conclusion on the basis of available material and that conclusion cannot be said to be perverse or one which no reasonable person could arrive at. Therefore, no relief was granted by the Apex Court.

15. From the above discussion, it is clear that this Court cannot itself look into the documents, consider their genuineness and hold as to whether they satisfy the requirement of the Scheme or not since that job is to be done by the Union

of India and it can consider the recommendations of the State Government also in this regard. Therefore, the impugned order passed by the learned Single Judge is liable to be set aside, which is set aside accordingly.

16. However, as the petitioner has applied already and some verification had been made by the State Government, we consider it necessary, in the facts of the case, that the documents attached by the petitioner alongwith the application should be considered afresh by the State Government. Therefore, the petitioner shall apply afresh alongwith documents to respondent No. 2/State of H.P., which shall consider the case and decide the application and send its recommendation to respondent/ Union of India within a period of 3 months and the Union of India shall take a decision on such recommendation within four months of the receipt of such recommendations/report made by the State Government. Further, it has been held by the Apex Court in the judgment supra that the case of such Freedom Fighters should not be kept pending on some technicalities keeping in view the sufferings of these Freedom Fighters and, therefore, it is directed that within the period of two months from today, the State Government shall take a decision on the case of the petitioner for financial help even if no application is submitted to. it. The State shall also consider the question if the condition of the petitioner is such that he requires some financial aid after verifying the facts through the Collector of the concerned District, it shall be granted to the petitioner as the State Government may deem appropriate in the facts and circumstances of the case within the period of two months from today and for that purpose, the case shall be referred to the State Government by the Deputy Advocate General present in the Court today. The appeal is accordingly allowed and the impugned order of the learned Single Judge is set aside.