

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Reserve : 18.02.2008
Date of Decision : 29.02.2008

+ **WP(C) No.15556/2004**

Bhodra Devi
W/o Late Sh. Mahesha Nand Petitioner

Versus

1. The Chief of Army Staff
2. The Hon'ble Defence Minister
3. The Controller General of Defence Accounts ... Respondents

Advocates who appeared in this case :

For the petitioner : Mr. A.C. David, Advocate.

For the respondents : Mr. Rajan Sabharwal, Advocate.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

J.M. MALIK, J.

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1. Sh. Mahesha Nand joined the defence organization as Civil Cleaner on 9.8.1947. On 20.9.1957 he was boarded out

medically from service. He expired on 15.2.1958. The petitioner Bhodra Devi, who is widow of Mahesha Nand, was given family pension w.e.f. 14.1.1988. However, the Family Pension Scheme was launched by the respondents w.e.f. 22.9.1977. The petitioner was not given pension for the period September 1977 to January 1988. The petitioner was informed that she was not granted the pensionary benefit w.e.f. 1977 because the medical and other record of her late husband were not traceable as the same were destroyed by the concerned department. The petitioner sent legal notice dated 19.6.2004 calling upon the respondents to take necessary measures to ensure that the petitioner is provided pensionary benefits w.e.f. September 1977 to 14.1.1988. Consequently, she filed the present writ petition with the following prayers :

“(a) to issue necessary writ/orders/directions to the respondent thereby directing the respondent to family pension to the petitioners w.e.f. September 1977 instead of 14.1.1988.

(b) to direct the respondents to provide the petitioner the pension/other pensionary benefits for which the late husband of petitioner was entitled from the date of his retirement upto his death.

(c) to issue necessary directions to the respondents in the nature of appropriate writ/orders thereby directing the respondents to do the needful at the earliest.

(d) to direct the respondent to pay the damages to the tune of Rs.5 lacs to the petitioner on account of their negligence and not performing their statutory obligation in petitioner's favour which has resulted into mental pain, agony and further hardship inconvenience.

(e) to issue/pass any other writ/order/directions to the respondent in the fitness of circumstances of the case."

2. The respondents have contested the present petition.

3. We have heard the counsel for the parties. The learned counsel for the respondent strenuously argued that as per Family Pension Scheme, which was introduced on 22.9.1977, the petitioner became entitled to get the pension. He also drew the attention of the court towards the fact that as per Rule 54 of CCS Pension Rules, 1972 the petitioner was entitled for pension w.e.f. 22.9.77. Again vide its letter dated 8.12.1999 the respondent assigned the reason of granting pension w.e.f. 14.1.1988 as per Government of India order Dept. of P&P.W. O.M. No. 1/75/87-P&P.W. dated 14.1.1988. It is pointed out that the said order was only applicable on temporary / quasi permanent employees whereas the petitioner's husband was a permanent employee and therefore the petitioner should have been granted pension w.e.f. 22.9.1977. It was explained that the cause of action arose

in favour of the petitioner on 18.9.2003 when the petitioner's request for grant of pension was declined and she was asked not to make further correspondence.

4. The counsel for the petitioner kept on veering from the main topic but did not come to grips with the real problem. It is pertinent to note that the petitioner is receiving the said pension w.e.f. 14.1.1988 till the filing of the instant petition without any demur or objection. She made the first representation on 3.8.1994. She went on accepting the pension for 16 years without raising any objection. It provoked not even an iota of action or whimper of protest. The documents of a non-pensioner is required to be retained for a period of 25 years as per para 595 of Regulation for the Army, 1987(revised edition). On expiry of the said mandatory detention period, the said documents are destroyed. Vide letter dated 8.12.1999 the petitioner was informed that "it is verified from our records that as per the ASC Records (MT) Bangalore letter No. 1033/Sub/11/47/FT(Pre 64) dt. 28.8.1991, the records of the individual were destroyed being time barred. However, it was clearly mentioned in the said letter that the individual was medically boarded out of service without any pensionary benefits. In such cases family pension benefits

were made applicable w.e.f. 14.1.1988 only as per the Government of India Dept. P&PW OM No. 1/75/87-P&PW dt. 14.1.1988”.

5. Moreover, what is to be borne in mind that petitioner is getting family pension from 14.1.1988. The claim in the petition is to grant pension for the period from September 1977 to 13.1.1988. Thus, the pension for a particular period is demanded. This cannot be a case of continuous cause of action and the consideration for laches and delays would come into play for a relief like this. Viewed from this angle, we are of the opinion that the petition suffers from unexplained delays and laches.

6. In a case reported in Hans Ram Vs. Union of India & another, 1995 IV AD (Delhi) 177, the facts were these, the petitioner had retired in 1956. His claim for pension was also rejected in 1957. Writ petition under Article 226 of the Constitution of India challenging rejection of claim for pension was filed in the year 1993. It was held :

“5. It is true that ordinarily in matters relating to pension the writ courts do not deny the relief on account of delay merely. A sympathetic and liberal view is always taken. Indulgence is invariably shown. In the case of Bachan Kaur v. Union of India, (W.P. 621 of 1989) decided on 13.4.1985, a Division Bench of this court has taken the view that a writ petition claiming pension if the claim be otherwise just and

legal may be entertained and allowed limiting the same to a period of three years before the date of filing of the petition. In the present case the petitioner has on account of culpable delay and laches extending over a period of 25 years himself created a situation which disentitles him to any relief. The service record of the petitioner is not available. It is not known as to why and in what circumstances the petitioner was paid merely the gratuity and yet felt satisfied therewith though no pension was allowed. If only the petitioner would have approached the court within a reasonable time, the respondents could have been directed to search and produce the relevant service record of the petitioner enabling a just decision of the petitioner's claim, which is not possible in the present case. The entire fault is of the petitioner. Howsoever sympathetic we may be with the petitioner, sitting as a writ court, we cannot grant relief of pension, to the petitioner merely as a charity of bounty in the absence of relevant facts being determinable and relevant documents available."

7. Similar view was taken by a Division Bench of this court in case reported in *Shri Bhagwan Vs. Union of India*, 2003 (1) AD (Delhi) 185.

8. In a recent authority reported in *Shiv Dass Vs. Union of India and others*, AIR 2007 SC 1330, it was held :

"9. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there

was no scope for interference, it would have dismissed the writ petition on that score alone.

10. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition."

(Emphasis added)

9. In the light of the discussion it is clear that the stale claim made by the petitioner cannot be granted in favour of the petitioner after inordinate delay of so much time and due to the destruction of the record in question. The court can grant her pension for the last three years only. The court has no power to grant her pension pertaining to the years 1977 to 1988 i.e. after the lapse of 16 years from 2004. The writ petition is therefore dismissed but there shall be no orders as to costs.

J.M. MALIK, J.

February 29, 2008
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A.K. SIKRI, J.