

THE HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.11536 of 2009

ORDER:

The writ petition is filed seeking a writ of mandamus declaring the order passed in proceedings in F.No.52/CC/12/2006-FF (HC) Vol.II, dated 24.03.2009 to the extent of denying the retrospective pension with effect from 07.10.1993 by further declaring the impugned action as illegal, arbitrary and in violation of rights guaranteed under Articles 14 and 21 of the Constitution of India and consequently set aside the same, and further consequently direct the respondent to fix the pension with effect from the date of the application of the petitioner, i.e., 07.10.1993.

The first petitioner, who was the freedom fighter, died during the pendency of the writ petition, and as such, petitioners 2 to 5, i.e., wife, two sons and daughter respectively, came on record as legal representatives of the first petitioner.

The case of the petitioners is that the first petitioner made an application in the year 1993 for grant of pension under Swatantra Sainik Samman Pension Scheme and the same was rejected. He preferred a writ petition being W.P.No.8444 of 1995 and in the said writ petition, this Court passed an order, dated 09.08.2000 directing the respondents therein to consider the representation of the petitioner for grant of pension. Subsequently, the same was rejected by the authorities. Again the first petitioner made another application and that the same was also rejected. Aggrieved by the same, the first petitioner has preferred a writ petition being W.P.No.3635 of 2002 and this Court, by order, dated 28.01.2005, set aside the rejection order of the respondent and directed the respondent to reconsider the claim of the petitioner. Basing on the said Judgment, the respondent passed orders granting pension in favour of the first petitioner from 27.07.2008. Subsequently, the first petitioner had made a representation on 05.01.2009 requesting the authorities to grant pension with retrospective effect, since he filed the application seeking Swatantra Sainik Samman Pension in the year 1993 itself and that the said representation was rejected on the ground that the application seeking pension was filed by the first petitioner only in the year 2001. The fact remains that the first petitioner made an application in 1993 itself and that the said fact is evident from the writ petitions filed by the first petitioner.

Learned counsel for the petitioners submits that even though the first

petitioner made an application in the year 1993, now he confines his claim of seeking Pension from the year 2002, since his representation was considered by the respondent in view of the decision of this Court in W.P.No.3635 of 2002, and as such, he prays this Court to direct the respondent to give retrospective effect to the order passed by the respondent in favour of the first petitioner from the year 2002.

Considering the facts and circumstances of the case and after perusal of the record, this Court is of the view that when once the respondent has taken a decision to grant pension under the Swatantra Sainik Samman Pension Scheme, 1980, necessarily it should be with retrospective effect from the date of application seeking such Pension. Even though it is disputed by the respondent that the petitioner has not filed any application in the year 1993, and that the respondent has stated that the same is filed in the year 2001, the fact remains that the order passed by this Court in W.P.No.3635 of 2002 clearly indicates that the first petitioner made application even prior to that date.

In view of the above discussion and also in view of the submission of the learned counsel for the petitioners that he confines his claim of seeking pension with retrospective effect from the year 2002, the respondent is hereby directed to give retrospective effect to the order, dated 08.08.2008, granting pension from 2002 and settle the claim of the petitioners, within a period of six months from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. Consequently, the miscellaneous petitions, if any shall also stand disposed of.

JUSTICE RAJA ELANGO

08.04.2015

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