

CWP No.16433 of 2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.16433 of 2014
Date of decision:04.07.2016**

Darshan Singh (deceased)
through his widow Smt. Jagdish Kaur ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Amarinder Pratap Singh, Advocate, for
Mr. Gurnam Singh, Advocate, for the petitioner.

Mr. V.K.Kaushal, Advocate, for UOI.

Mr. Suresh Singla, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

Darshan Singh (since deceased), substituted by his widow Jagdish Kaur as his legal representative, prayed for a direction to grant him freedom fighter pension under the Swatantrata Sainik Samman Pension Scheme, 1980, along with arrears from the date on which the application was initially submitted by him.

In short, it may be pertinent to mention that the Government of India introduced "Freedom Fighter Pension Scheme, 1972", which was modified and renewed as "Swatantrata Sainik Samman Pension Scheme, 1980" and made applicable w.e.f. 01.08.1980. Darshan Singh (since deceased) applied, for the freedom fighter pension, on 23.08.1993 on the prescribed proforma to the State of Punjab, alleging that he had participated in the freedom struggle of the country and suffered imprisonment at Lahore

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Jail w.e.f. 20.10.1942 to 19.10.1943. Darshan Singh put up his claim by enclosing his own affidavit, certificates of the co-prisoners Balwant Singh S/o Sh. Khushal Singh and Gurmukh Singh S/o Sh. Hakam Singh because the official record relating to his imprisonment was not available. As a matter of fact, he relied upon the secondary evidence. An inquiry was ordered by the State Government through Deputy Commissioner, Patiala who, after verification of documents, recommended the case of the petitioner to the State Government for grant of pension. On the recommendation of the Deputy Commissioner, Patiala, the Government of Punjab, Department of General Administration (Political-III) Branch recommended the case of Darshan Singh to the Government of India for the grant of freedom fighter pension, vide its letter dated 27.07.1998 and the Government of Punjab started realizing the pension w.e.f. 25.06.1998 @ ₹1,500/- per month vide PPO No.8196/FF/Punjab. However, the Government of India did not grant pension and ultimately, Darshan Singh, after serving a legal notice on 19.05.2014, filed the present petition on 13.08.2014, in which notice of motion was issued on 19.08.2014 for 09.02.2015.

The case of Darshan Singh is that since he has been recommended for pension as a Freedom Fighter on the basis of the certificate of his co-prisoners, therefore, the Government of India should also recognize him as a Freedom Fighter on the recommendation of the State of Punjab and grant him pension along with arrears from the date of his application.

In the reply filed by respondent No.3, on behalf of the State of

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Punjab, it is admitted that Darshan Singh is getting the Punjab State freedom fighter pension vide PPO No.8196/FF/Punjab w.e.f. 25.06.1998 but in the reply filed on behalf of respondent Nos.1 and 2, it is averred that the Government of India is not bound by the recommendation of the State Government and can independently assess the genuineness of the case of pension set up by the alleged freedom fighter. It is averred in the reply that the Ministry of Home Affairs has found that many such certificates have been issued by few prisoners/freedom fighters who would not have otherwise remembered the personal details, including the date of imprisonment and date of release of the co-prisoner, after 30-40 years. It is also alleged that case of the petitioner Darshan Singh was rejected in 1994 and even if his case is allowed by the Court, he cannot be awarded the pension from the date of the application as it is not based upon the jail certificate produced by him. In this regard, reliance has been placed upon a judgment of the Supreme Court rendered in the case of **Union of India and another vs. Kaushalya Devi**, 2007(9) SCC 525.

It is further submitted that since Darshan Singh had expired and his widow, who has though been impleaded as his legal representative by this Court, cannot be allowed freedom fighter pension because of the office memorandum, as per which, if the legal heir/widow of the freedom fighter is getting pension of ₹20,000/- per month, then she would not be entitled to the pension on account of death of her husband.

Counsel for the petitioner has submitted that the widow of Darshan Singh is not getting pension of ₹20,000/- per month rather she is getting pension of ₹15,793/- per month and had produced the bank

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statement in this regard. An order was passed on 27.04.2016 allowing the counsel for the Union of India to seek instructions. The said order is reproduced as under:-

“This petition was filed by Darshan Singh seeking pension under the Swatantarta Sainik Samman Scheme, 1980. However, he died during the pendency of the petition and his wife Jagdish Kaur was impleaded as petitioner vide order dated 07.01.2016.

The Union of India has taken a stand that widow of a freedom fighter is not entitled to pension of a freedom fighter. He has relied upon a office memorandum dated 8.2.2016.

Counsel for the petitioner has submitted that the said instructions dated 8.2.2016 are not applicable. The present petitioner is getting pension less than ₹20,000/- per month and has produced the bank statement as per which the petitioner is getting ₹15793/- per month. A copy of the bank statement is given to learned counsel for the Union of India, who prays for time to seek instructions.

Adjourned to 17.5.2016.”

I have heard learned counsel for the parties and examined the available record with their able assistance.

There is no dispute that Darshan Singh (since deceased) is getting freedom fighter pension from the State of Punjab on the basis of the certificates issued by the co-prisoners, which is considered to be secondary evidence as the primary evidence i.e. jail record is not available. The Government of India has not given any other reason in their reply except that there may be a possibility of issuance of fake certificates by other co-prisoners and in this regard, they have given the names of Gpoal Singh Quami, Som Prakash Gir, Kesar Singh, Bahal Singh, Karnail Singh, Kala Singh and Sher Singh, whereas the co-prisoner who have issued certificate to the deceased Darshan Singh are Balwant Singh S/o Sh. Khushal Singh

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and Sh. Gurmukh Singh S/o Sh. Hakam Singh, whose names do not find mention in the list of the alleged freedom fighters who had issued the certificates of co-prisoner indiscriminately.

In this view of the matter, I am inclined to hold that Darshan Singh (since deceased) is entitled to freedom fighter pension but it has to be from the date of this order in view of the decision of the Supreme Court in **Kaushalaya Devi's case (supra)**, in which it has been categorically held that if the claim is not based upon the jail certificate produced as primary evidence and it is rather based upon oral statement of other co-prisoners, the pension has to be awarded not from the date of application but from the date of order.

Accordingly, it is held that Darshan Singh (since deceased) is entitled to the freedom fighter pension to be awarded by the Central Government from the date of this order and insofar as the objection raised by the counsel for the Government of India that his widow Jagdish Kaur is not entitled to the pension, the petitioner has already submitted her bank statement showing that she is getting an amount of ₹15,793/- per month, which is less than the amount of ₹20,000/- per month, as fixed in the office memorandum dated 08.02.2016.

Thus, keeping in view the totality of the facts and circumstances, the present writ petition is hereby allowed and the direction is issued to respondents No.1 and 2 to release freedom fighter pension to the widow of Darshan Singh from the date of this order.

July 04, 2016
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(Rakesh Kumar Jain)
Judge