

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

W.P.NO. 27351 OF 2007

ORDER:

This writ petition is filed seeking a writ of mandamus to declare the action of the respondents in not granting the family pension to the petitioner as illegal, arbitrary and against the principles of natural justice, and consequently to direct the respondents to grant and pay the family pension to the petitioner along with arrears.

2. The brief facts of the case are that the petitioner is the first wife of Arepally Swamy, who was a freedom fighter and granted pension under 'Swatantrata Sainik Samman Pension Scheme', formerly known as Freedom Fighters Pension Scheme, 1972, and was paid till his death on 07.03.2000. Later on, the pension is being paid only to the second wife of the freedom fighter i.e., Arepally Laxmi, 4th respondent herein. Therefore, the petitioner filed W.P.No.26257 of 2000, which was disposed of by this Court on 17.07.2002 with a direction to consider the case of the petitioner within six months, pursuant to which, the petitioner made her representations on 03.08.2002 and on 29.08.2002 to the respondents. However, the 1st respondent sent a communication dated 22.11.2002 stating that the freedom fighter had mentioned only the name of 4th respondent as his wife, who is getting family pension after his death, and thus, the petitioner is not entitled for the dependent family pension in terms of Para (iv) of the letter No.8/2/98-FF(P), dated 13.10.2000 of the Ministry of Home Affairs, Central Government. Hence, the petitioner filed the present writ petition seeking a direction to the respondents/ authorities to grant dependent family pension to her.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for Central Government, and considered the material on record.

4. The learned counsel for the petitioner submits that as per the orders of the Respondents dated 28.07.1982 and 21.09.1998, both the wives are entitled and eligible for full pensions, and the order dated 01.05.1992 makes it very clear that 'in case where nomination does not exist, the disbursing officer may make payment of family pension after obtaining an affidavit, confirming the dependant's relationship with the freedom fighter'. The learned counsel further submits that this Court had already directed the respondents in W.P.No.26257 of 2000 dt. 17.07.2000 to consider and dispose of the representation of the petitioner herein, and in spite of that the respondents have not considered the request of the petitioner for grant of dependent family pension under the Scheme.

5. From the order of the competent authority i.e., the Government of India, dated 22.11.2002, it is clear that the family pension to the petitioner, who claims to be the first wife of the deceased freedom fighter, has been rejected on the ground that the freedom fighter had not mentioned the name of the petitioner and he had mentioned only the name of Smt.Laxmi, as his wife, who is getting family pension after death of the freedom fighter. The petitioner produced the record to show that she is the first wife of the deceased freedom fighter and whereas Smt. Laxmi to whom the pension was granted and paid till her death, was the second wife.

6. The learned counsel for the petitioner submits that rejection of family pension under the Scheme to which the petitioner, as first wife, is fully eligible, is untenable, and the authorities are required to cause a thorough enquiry into to the matter and consider the request made for sanction, but shall not reject the same merely on the ground that the deceased freedom fighter had not disclosed the name of the petitioner, being first wife.

7. The claim of the petitioner Gopamma who is now aged about 85 years is that she is the wife of the freedom fighter Swamy, who was drawing the

pension, and he having died in March, 2000, the family pension is being paid to the 4th respondent – Arepally Laxmi, who according to the petitioner is the second wife of the freedom fighter. It is further contended that even Arepally Laxmi died and now the freedom fighter family pension is not being paid to anybody.

8. This is the second round of litigation for the same relief. Originally, the petitioner filed W.P.No.262571 of 2000 and this Court vide Judgment, dated 17.07.2002, directed the first respondent herein to consider the application of the petitioner if the same is made within six weeks from the date of that Order.

9. In pursuance to the said direction, the petitioner made the application and vide impugned proceedings, dated 22.11.2002, the first respondent rejected the representation of the petitioner on the ground that the late freedom fighter has mentioned the name of Smt.Laxmi as wife who is getting the family pension after the death of the freedom fighter, since the freedom fighter has not mentioned the name of the petitioner as his wife, she is not entitled to family pension.

10. It is the contention of the petitioner that the rejection of the application of the petitioner for grant of family pension on the ground that the deceased freedom fighter has not nominated her as being entitled to family pension in the event of his death cannot be the ground for rejection of the pension inasmuch as the circulars and the rules in force at the time when the freedom fighter died clearly show that even in the absence of there being a nomination, after making necessary enquiries, the competent authority can grant family pension to more than one widow.

11. The contention of the respondents is that the instructions have undergone several changes and as at present, no dependent family member is entitled to pension. Previously, all the dependents put together were

entitled to one family pension. However, insofar as the present case is concerned, since the freedom fighter died in the year 2000, the rules which have been amended subsequently cannot be made applicable to the request of the petitioner. Learned Counsel submits that the authorities had to satisfy themselves that the late freedom fighter has two wives, that whether the petitioner was the first wife and the 4th respondent is the second wife and whether the petitioner is also entitled to pension on par with the 4th respondent. Without conducting any enquiry, the authorities have rejected the representation of the petitioner solely on the ground that the deceased freedom fighter has not nominated the petitioner as his wife and consequently entitled to receive the family pension.

12. There is no dispute insofar as the factual aspect is concerned viz., that as on the date when the freedom fighter died, family pension was payable to more than one wife if the same has been nominated. Subsequently, that has been changed. It is also not in dispute that the name of the petitioner was not communicated by the freedom fighter to the authorities for grant of family pension in the event of his death. However, the petitioner submits that she has documentary evidence to show that she is the legally wedded wife of the late freedom fighter and consequently entitled to the family pension in view of the rules that were in force as on the date when the freedom fighter died. It is further submitted that as on today, the family pension which is granted to the 4th respondent has also been stopped in view of her death.

13. In view of the above controversy, it may not be proper to adjudicate upon the claim of the petitioner as to whether she is entitled to the freedom fighter's family pension or not. It is for the competent authority to cause necessary enquiries in the matter and decide as to whether the petitioner can be granted the family pension. The previous rejection of the request of the

petitioner on the sole ground that the freedom fighter has not communicated the name of the petitioner as entitled for family pension should not be the sole ground for rejecting the request of the petitioner. Therefore, without recording any findings on the factual aspect, the petitioner is directed to make appropriate application to the competent authorities for grant of family pension and if the same is made within a period of two months from the date of receipt of a copy of this order, the respondents shall consider the same in accordance with law and pass appropriate orders within two months thereafter.

14. In view of the above, the writ petition is disposed of, directing the petitioner to make a fresh application within a period of two months from the date of receipt of a copy of this Order to the competent authorities for grant of family pension enclosing all the relevant proof and documents, and the authorities are directed to cause necessary enquiries into the same and consider the application of the petitioner in accordance with law within two months thereafter and grant the same to her if she is found to be eligible, however, the request of the petitioner should not be rejected solely on the ground that the late freedom fighter has not communicated the name of the petitioner as his wife entitled to family pension. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 24th October, 2017
kv/smr