

HONOURABLE SRI JUSTICE P. KESHA VA RAO

WRIT PETITION No. 61 of 2007

ORDER:

Heard the learned counsel for the petitioner as well as the learned Assistant Solicitor General.

2. The prayer of the writ petition is as under:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Court may be pleased to issue a writ, order or direction more particularly in the nature of writ of mandamus declaring the action of the first respondent in not granting pension to the petitioner from the date of receipt of his application under Swatantra Sainik Samman Pension Scheme, as illegal, for extraneous consideration and in violation of Article 14 of the Constitution of India and to issue a consequential direction to the 1st respondent to grant pension to the petitioner with effect from the date of receipt of application forthwith under Swatantra Sainik Samman Pension Scheme and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

3. The facts of the case are that the petitioner had participated in Anti Nizam Movement for the merger of Hyderabad State into Indian Union along with several other freedom fighters. In the said freedom struggle, he was in various border camps under the leadership of well-known freedom fighters. The Union of India framed a scheme called as Swatantra Sainik Samman Pension Scheme (SSSP Scheme) with an intention to provide financial assistance to those persons who suffered in the hands of the Razakars and in the hands of Nizam Government. As per the scheme, the petitioner is eligible for granting pension. Pursuant to the said scheme, he submitted an application to the respondents in the year 1985 and the same was acknowledged by the first respondent vide file No. 112/761/85, dated 10.03.1985. As per the scheme framed by the first respondent, a Screening Committee was constituted by the Union of India under the leadership of Sri Ch. Rajeshwar Rao to verify and recommend the cases of genuine freedom fighters for granting pension. The Joint Secretary to the Ministry of Home Affairs, Union of India is one of the members in the said

Committee. The Hyderabad Special Screening Committee after considering the entire material submitted by the petitioner recommended his case to the respondents in the year 1989 for granting pension. When the respondents failed to consider his application along with other freedom fighters, a batch of writ petitions are filed in this Court and on 11.2.1998 the respondents are directed to consider their cases if necessary framing a new method for consideration since the period of committee was expired. Therefore, the first respondent framed a policy in referring all the cases to State Government for verification and for submission of report in accordance with the provisions of the scheme. The State Government in turn directed the concerned District Collectors to enquire into the applications and submit a report. After enquiry, the District Collector recommended the case of the petitioner to the State Government and in turn the State Government recommended to the first respondent for granting pension. Thereafter, first respondent was pleased to grant pension to the petitioner vide Proceedings No.112/671/85-FF(HC)(A) Part dated 15.09.2003 with effect from 12.04.2003. Pursuant to the said orders, the petitioner is drawing pension vide Pension Payment Order MHAFF0412181.

4. The petitioner states that he is entitled to pension from the date of receipt of the application, but pension was granted with effect from 12.04.2003 only by giving benefit of doubt. Aggrieved by the said action of the first respondent in not granting pension from the date of application, the present writ petition is filed.

5. Per contra, the first respondent originally filed counter affidavit through R.C. Naik, the Deputy Secretary in the Ministry of Home Affairs

stating that the persons who applied for pension pertaining to border camps suffered in Hyderabad Liberation Movement were not accepted initially as they did not fulfill the eligibility criteria under the SSPS Scheme, 1980 resulting in constitution of Special Screening Committee where the applicants have failed to fulfill the eligibility criteria by furnishing stipulated documentary evidence in support of their claim, can be considered only by giving benefit of doubt. The petitioner herein has been sanctioned family pension treating the claim as recommended by the HSSC by giving benefit of doubt. In fact, the petitioner's deceased husband had not produced any primary or secondary evidence as prescribed under the scheme to substantiate his claim of underground sufferings. The State Government also has not given their recommendations based on any official records. In fact, the recommendation made by the State Government was only on the basis of the personal knowledge certificates of other freedom fighters. Relying on the judgments of the Apex Court, the respondents contended that since the petitioner is not entitled to the pension as freedom fighter from the date of application but he was given relief only on the basis of benefit of doubt. Therefore, he is not entitled to the pension from the date of the application. But, it is only from the date of the order.

6. Subsequently, another counter affidavit has been filed through S.D. Kaushik, Under Secretary in the Ministry of Home Affairs stating that only specified category of freedom fighters are eligible for Samman Pension who fulfill the conditions of the scheme by furnishing the proof of claimed sufferings of the nature and in the manner specified in the scheme itself. Even after the recognition of the border camp sufferings in the

Hyderabad Liberation Movement to be at par with underground suffering for the purposes of pension under the SSS Pension Scheme, 1980, none of the participants would have qualified for grant of pension as their sufferings could not have been substantiated by the normal evidentiary requirements (primary or secondary) of the SSS Pension Scheme, 1980. Therefore, the special non-official screening committee was formed to identify and recommend the border camps and the participants. It is only mentioned in the counter affidavit about number of applicants who were submitted for grant of the pension. The procedure followed by the committee was also explained. Wherever there is no primary or secondary evidence, the personal knowledge certificates of other freedom fighters and camp in-charge certificates were also looked into. In fact, the cases were considered in relaxation of normal eligibility and official requirements of the scheme. The personal knowledge certificate and camp in-charge certificates were not counter checked by the first respondent and there are complaints of malpractices and corruption against the recommendations of Sri Ch. Rajeshwar Rao. So, in these circumstances, these type of cases as per the policy, it is uniformly and consistently followed so far, pension in the approved cases was being sanctioned by giving benefit of doubt with prospective effect only from the date of approval. The petitioner was granted pension from the date of approval by giving benefit of doubt. It is only stated in the counter affidavit that the petitioner admittedly applied for pension only in 1984 i.e. after 12 years of commencement of scheme and this fact creates a doubt about the genuineness of the claim. However, as subsequently decided, as per para 21, all the cases including the sanctioned cases are

being re-verified and will be processed further in accordance with the decision mentioned in para 21.

7. Thereafter, another additional counter has been filed on behalf of the first respondent through Sri A.P. Ojha dated 16.05.2014 stating that in similar cases relating to grant of pension from the date of application, a Division Bench of this Court in its judgment dated 14.08.2012 upheld the grant of pension from the date of order and not from the date of application. The petitioner herein has been granted pension on the basis of his claimed suffering supported by document based records, but he has been granted pension on the basis of statements made by the camp-in-charge, personal knowledge certificates and on the basis of recommendation of the Hyderabad Special Screening Committee by giving him the benefit of doubt. The tests for grant of pension from the date of application or date of order has been laid down by the Apex Court in MUKUND LAL BHANDARI v. UNION OF INDIA AND OTHERS¹ which was also subsequently referred in other cases. It is also specifically stated that in UNION OF INDIA AND ANOTHER v. KAUSHALYA DEVI² and UNION OF INDIA AND OTHERS v. KASHISWAR JANA³. The Apex Court has clearly laid down the principles that in cases where claim is allowed on the basis of oral statement of some other co-workers, and not on the basis of document based records, the pension should be granted from the date of order. Therefore, the petitioner is entitled for pension from the date of the order but not from the date of the application.

¹ (1993) Supp (3) SCC 2

² (2007) 9 SCC 525

³ (2008) 11 SCC 309

8. Learned counsel appearing for the petitioner would contend that the petitioner is entitled for pension from the date of the application but not from the date of order. The petitioner made his application on 10.03.1985 but the pension is being paid only from 12.04.2003 onwards. The order does not contain any reasons. In fact, the petitioner produced primary and secondary evidence. Therefore, the petitioner's case would have been considered and pension would have been granted from the date of the application. Wherever, the primary evidence is not available and when the application is considered on the basis of the personal knowledge certificates and the camp in-charge certificates, their cases also should be considered on par with the primary evidence and pension could have been granted from the date of application. As far as petitioner is concerned, he has submitted all the relevant documents to the respondents and neither the first respondent nor the second respondent expressed any doubt regarding the correctness of the documents submitted by her. In fact, it is the duty of the first respondent to state as to why the petitioner was refused arrears. The respondents cannot refuse pension to the petitioner with effect from the date of receipt of the application by simply saying the benefit of doubt and they ought to have given reasons. In fact, there are no defects in the documents submitted by the petitioner and no doubt was expressed by the Government of Andhra Pradesh or Central Government at any point of time. To support his contentions, he relied on the following judgments:

- 1) DULI CHAND AND OTHERS v. UNION OF INDIA AND OTHERS⁴
- 2) SURJA AND OTHERS v. UNION OF INDIA AND ANOTHER⁵
- 3) MUKUND LAL BHANDARI AND OTHERS v. UNION OF INDIA AND OTHERS⁶

⁴ 1990 (Supp) SCC 762

⁵ (1991) 4 SCC 366;

- 4) GOVERNMENT OF INDIA REPRESENTED BY THE SECRETARY v. K.V. SWAMINATHAN⁷
- 5) UNION OF INDIA AND OTHERS v. GANESH CHANDRA DOLAI AND OTHERS⁸
- 6) GURDIAL SINGH v. UNION OF INDIA AND OTHERS⁹
- 7) UNION OF INDIA v. AVTAR SINGH¹⁰
- 8) UNION OF INDIA AND ANOTHER v. KAUSHALAYA DEVI¹¹
- 9) UNION OF INDIA AND OTHERS v. KASHISWAR JANA¹²
- 10) C. VENKAT REDDY AND OTHERS v. UNION OF INDIA AND OTHERS¹³
- 11) SECRETARY TO GOVERNMENT OF INDIA v. SAWINDER KAUR AND ANOTHER¹⁴.

Basing on the above said judgments, the learned counsel for the petitioner contended that the petitioner is entitled for pension from the date of the application.

9. Per contra, the learned Assistant Solicitor General appearing for the respondents would contend that the petitioner has not produced either primary or secondary evidence based on record. But, his case was considered by the Hyderabad Special Screening Committee based on the personal knowledge certificates and the camp-in-charge certificates which cannot be treated as the primary or secondary evidence based on the record. Therefore, the petitioner is not entitled for pension from the date of the application. To support his contention, he relied on the judgment dated 14.08.2012 in Writ Appeal No. 315 of 2012 in the matter of UNION OF INDIA v. YELMAREDDY SURYAMMA AND ANOTHER. Wherever, the applications are considered on the basis of the personal knowledge certificates and camp in-charge certificates, they were considered only

6 1993 Supp (3) SCC 2
 7 (1997) 10 SCC 190
 8 (1997) 10 SCC 289;
 9 (2001) 8 SCC 8;
 10 (2006) 6 SCC 493
 11 (2007) 9 SCC 525
 12 (2008) 11 SCC 309
 13 (2009) 6 SCC 472
 14 (2013) 14 SCC 789

from the date of approval but not from the date of application. In fact, in UNION OF INDIA AND ANOTHER v. KAUSHALAYA DEVI (11 supra) the Apex Court clearly laid down the principles that in cases where the claim is allowed on the basis of the oral statements of some other co-workers and not on the basis of the document based records, the pension should be granted from the date of the order. In view of this, the petitioner is entitled to pension from the date of approval but not from the date of application. As such, there are no merits in the writ petition and he sought dismissal of the same.

10. From the facts stated above and based on record, the question that arises for consideration is whether the petitioner is entitled for sanction of family pension from the date of application or from the date of approval/sanction.

11. From the perusal of material on record, it is revealed that the petitioner submitted an application to the respondents for grant of pension under the SSSP Scheme and the same was acknowledged on 10.03.1985. When the said application was not considered, the petitioner along with others filed writ petitions and sought a direction on 11.02.1998 from this Court to consider their cases, if necessary, by framing a new method of consideration. After consideration of the same, the petitioner was granted pension vide proceedings dated 15.09.2003 with effect from 12.04.2003 i.e., from the date of approval. However, the petitioner contended that he is eligible for pension from the date of application. However, the respondents have contended that the application of the petitioner was not enclosed with any primary or secondary evidence based on record. But, the petitioner has enclosed the personal

knowledge certificates and camp in-charge certificates which were scrutinized by the State Level Committee. There was no opportunity for the 1st respondent to counter check and look into the said evidence. Therefore, on the ground of benefit of doubt, the petitioner was granted pension from the date of approval. Though, two counter affidavits and one additional counter affidavit have been filed on behalf of the respondents specifically stating that the petitioner has been granted pension on the basis of statements made by the camp in-charge, personal knowledge certifier and on the basis of the recommendation of Hyderabad Special Screening Committee by giving him the benefit of doubt but not on the basis of the claim suffering supported by document based records. Though the petitioner has categorically stated that along with the application he has enclosed all the relevant certificates, he has not filed any reply affidavit controverting the specific statement made in the counter affidavit that his case is not supported by document based records. The other contention raised by the petitioner is that while granting pension, the respondents have not raised any objection and as such, he would have been granted pension from the date of application. However, the issue for grant of pension either from the date of application or from the date of approval is the evidence that is produced along with the application is relevant and material.

12. In the case on hand, the respondents have categorically stated that the petitioner was granted pension on the statements made by the camp in-charge, personal knowledge certifier and on the recommendation of the Hyderabad Special Screening Committee, but not supported by the document based records. As far as this issue is

concerned, the Apex Court in Kaushalaya Devi (11 supra) laid down the principles that in cases where the claim is allowed on the basis of oral of some other co-workers and not on the basis of document based records, pension should be granted from the date of the order. The relevant portion is as under:

“In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of the secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.”

13. In the said case, the Apex Court was pleased to observe that the judgment of Mukund Lal Bhandari (1 supra) is distinguishable as it has been stated therein that the pension cannot be granted from any date prior to the application. Further, in Kashiswar Jana (3 supra) also the Apex Court was pleased to consider the said issue and held that the effective date for grant of pension was not on the basis of record, but on benefit of doubt or secondary material is only from the date of approval. In the said case, the Apex Court was also pleased to approve the judgment stated supra.

14. In the case on hand, the respondents have categorically stated that the petitioner has not produced any primary evidence i.e., the jail certificate, but the certificates issued by the camp in-charge and personal knowledge certifier. Further, there is no evidence forthcoming from the petitioner that the evidence produced along with the application is of primary in nature i.e., document based records. Therefore, this Court feels that it is not a fit case to grant pension from the date of application, but it is only from the date of approval as laid down by the Apex Court in the judgments mentioned supra. In these

circumstances, this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed.

15. Accordingly, the writ petition is dismissed. No costs.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO, J

Date: 02 .05.2018
ccm

