

VC-12

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

% **Date of Decision : 5th November, 2020**

+ W.P. (C) 6364/2020, C.M. Appl. No.28008/2020 (of the petitioners for condonation of delay)

DISABLED WAR VETERANS (INDIA) REGD.

.....Petitioner

Through: Mr. Jaideep Singh with Ms. Disha Sachdeva & Mr. Kartik Dabas, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Ajay Digpaul, CGSC for UOI with Mr. Kamal R. Digpaul, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. On 14th September, 2020, when this petition first came up before this court, the following order was passed:

“3. The petitioner, claiming to be a Society of Short Service Commission (SSC) Officers who were commissioned during the Indo-Pak wars in 1965 and 1971 and who were invalidated out from service owing to disability, and all of whom retired before 3rd June, 1993, has filed this petition impugning the order dated 3rd June, 1993 “to the extent that it creates an artificial discrimination” and seeking mandamus

directing the respondents to grant Death-cum-Retirement Gratuity to all Invalidated Short Service Commission War Disabled Officers who retired before the impugned order dated 3rd June, 1993.

4. Though the facts are not borne out clearly from the petition but what appears to be the case of the petitioner is, that (i) as per Army Instruction No.8/S/57, no gratuity was payable to SSC officers; (ii) an order was passed on 18th November, 1972, to the effect that SSC officers invalidated out of service are entitled to the same pensionary benefits as paid to regular permanent commissioned officers; (iii) on 3rd June, 1993, a letter was written by the Ministry of Defence to the Chiefs of Army Staff, Naval Staff and Air Staff, on the subject of "Grant of Retirement Gratuity (formerly known as Death-cum-Retirement Gratuity) to Emergency Commissioned and Short Service Commissioned Officers Granted Commission from the Rank" as under:-

"The question of grant of retirement gratuity (formerly known as death-cum-Retirement Gratuity) to Emergency Commissioned and Short Service Commissioned officers granted commission from the rank has been under consideration of the Govt for some time. The President is now pleased to grant retirement gratuity to Emergency Commissioned and Short Service Commissioned officers granted commission from the rank in accordance with terms and condition laid down in para 12 of Govt. of India letter No.1(5)/87/D (Pens/Sers) dated 30 October 87. The amount of retirement gratuity is to be calculated based on the actual qualifying service. No weightage as given to permanent regular Commissioned officers is admissible to such officers.

The provision of this letter will apply to those who were in service as on the date of issue of this letter or join/joined service thereafter and retired subsequently.

This issue with concurrence of the Finance Division of this Ministry vide their U.O. No.246/DFA(GS/Pen) of 1993.”;

(iv) the petitioner filed W.P.(C) No.487/2004 in this Court inter alia seeking payment of Death-cum-Retirement Gratuity to SSC officers, as sanctioned by letter dated 24th February, 1972; (v) the said petition was entertained and was pending in this Court and on coming into force of the Armed Forces Tribunal (AFT) Act, 2007 was transferred to the AFT, New Delhi and converted into TA No.115/2010; (vi) AFT, vide order dated 19th March, 2010 disposed of the said petition, though inter alia reasoning that a SSC officer and a permanent service commissioned officer form the same class and fight the enemy shoulder to shoulder and if unfortunately both of them receive an injury and are disabled, then no distinction can be made in payment of gratuity, but holding that it could not give the said benefit but nevertheless requesting the Government that the discrimination should be removed; (vii) the petitioner thereafter claims to have represented to the appropriate authorities but no order was made; and, (viii) the claim made by one of such officers was denied on 10th April, 2019.

5. We have at the outset enquired from the counsel for the petitioner, how challenge to a communication dated 3rd June, 1993 can be made now, after 27 years, and whether not the petition is liable to be dismissed on this ground alone. It cannot be lost sight of that if today an order of payment of gratuity were to be made, the same will entail financial outflow and

such financial outflow, in our prima facie opinion, cannot be directed after such length of time. We may notice that gratuity is not a recurring payment and once no challenge in accordance with law was made to the denial of gratuity, as far back as in 1993, to the persons for whose benefit this petition has been filed, the Government was entitled to arrange its affairs presuming its decision to have attained finality and not making any provision for financial outflow therefor. If such belated/dead claims also were to be entertained it would require the Government books to be kept open forever, without any finality and throwing all audits and preparation of financial plans to the wind.

6. In fact, we also did not find in the petition any particulars of, how many such people does the petitioner represent and what will be the financial outflow entailed, even if we, considering that the persons for whose benefit the petition is filed are war veterans, were to entertain the petition. On enquiry, it transpires that the counsel for the petitioner also is unaware and states that at the moment he knows only of two persons who have contacted him through the petitioner.

7. We have also asked, whether not a large number of said persons may not even be living today and whether a benefit like gratuity, which was denied and which denial remained unchallenged, can form part of the estate, for a direction for payment of gratuity sought, to be given to the heirs.

8. The counsel for the petitioner though agrees but again has no particulars or instructions in this regard.

9. We have also asked, whether not gratuity cannot be claimed without any right, whether in a contract or in a statute and how a claim for gratuity can be made without pleading any such right. It prima facie appears that if there is no such right then the decision taken on 3rd June, 1993, for payment of gratuity to those retiring thereafter, cannot qualify as discriminatory as in case of such payments, not payable without any right, there necessarily has to be a cut-off date and fixation of the cut-off date of 3rd June, 1993 does not appear to be discriminatory in a matter like gratuity which is but a gratuitous payment in acknowledgment of service.

10. We may notice that the first challenge made by the petitioner by way of W.P.(C) No.487/2004 also was after eleven years of the letter dated 3rd June, 1993 and after the order of AFT dated 19th March, 2010 also, the petitioner has waited for ten years to file this petition.

11. Though ordinarily, for all the aforesaid reasons we would not have entertained the petition or given an opportunity to the counsel to study but considering that the claim which is canvassed is stated to be of disabled war veterans, we deem it apposite to grant an opportunity to the counsel for the petitioner to study all the said aspects and if need be, file an additional affidavit particularly about the number of persons/families entailed and amount which is claimed as gratuity.

12. On request, list on 5th November, 2020.”

2. The petitioner, in pursuance to the aforesaid order, has filed an additional affidavit of its President and Authorised Signatory Mr. N.K. Mahajan, stating (i) that the disabled war veterans who

retired pre-1993, are mostly very old and infirm, having fought the last major war in 1971 and are not technology - friendly; many, if not most, have died over the years; (ii) many of the non-commissioned officers and soldiers, who got disabled, are residing in their villages, some of which fall in remote areas of the country; (iii) on account of their old age and disability, they have been vulnerable to the Covid pandemic; (iv) that the petitioner Society has not been able to get all the details of the all the aggrieved disabled war veterans that they seek to be the face of before this Court and it is extremely difficult for the petitioner to get all the aggrieved people before this court; (v) in the circumstances, the number of claimants is expected to be quite small; (vi) the petitioner has been able to gather particulars of only two disabled war veterans, namely Capt. Narender Kumar Mahajan and Capt. T.R. Taneja, who served the army for 7 years and 9 months and 3 years and 21 days respectively; (vii) that the respondents should be directed to place on record the requisite data pertaining to the personnel eligible for the benefit as per their records and also the amounts involved; (viii) the respondents have all the data available, as they pay pension to all retired Army Officers including the disabled war veterans who retired pre 1993; (ix) the cut-off date for payment of gratuity is arbitrary to the extent it does not qualify the test of intelligible differentia; (x) the object of beneficial legislation is not to discriminate but to provide benefits to the ones that deserve it the most; (xi) the disabled war veterans have served the nation during all the wars, notably the Indo-Pak

war; (xii) gratuity is not only an acknowledgement for services rendered but is a deferred compensation and is an amount to which the petitioners are rightfully entitled to; and, (xiii) the amount being miniscule ought not to be considered as a financial burden on the State.

3. The counsel for the petitioner, with all the emotions at his command has attempted to persuade us to issue the directions, as sought, to the respondents.

4. On perusal of the aforesaid affidavit, it becomes clear that there is no aggrieved person before this Court. The petition has been filed by a Society and the counsel for the respondents has rightly stated that the constitution of the Society or details of the members of the petitioner Society have also not been disclosed. It is further the contention of the counsel for the respondents that if an individual were to make the claim, the same, as per the Armed Forces Tribunal (AFT) Act, 2007, would lie before the AFT and the writ petition would not be maintainable.

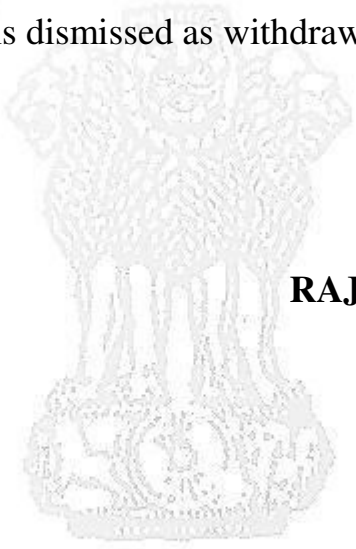
5. We have already, in the order dated 14th September, 2020, noted that the challenge in this petition filed in the year 2020 is to the order dated 3rd June, 1993, the challenge is thus being made after 27 years; although the petitioner had earlier filed W.P.(C) 487/2004, which after coming into force of the AFT Act got transferred to the AFT but the order of the AFT also is of 19th March, 2010 i.e. of 10 years prior to the filing of this petition,

though making recommendation to the Govt. of India but not granting the relief sought.

6. Since there is no aggrieved person before us and for all the aforesaid reasons, we in our discretion, choose not to adjudicate the challenge made in this petition on merits.

7. The counsel for the petitioner at this stage, seeks to withdraw the petition.

8. The petition is dismissed as withdrawn.



**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

NOVEMBER 05, 2020

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