



C.M.P. No.4607 of 2022 in W.A. No.175 of 2013

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T.RAJA, J.
and
S.SOUNTHAR, J.

(Order of this Court was delivered by T.RAJA, J.)

This petition is filed to condone the delay of 1034 days in filing the Restoration Application to restore the W.A. No.175 of 2013 that was dismissed on 08.04.2019.

2.Learned counsel appearing for the petitioners submitted that since the Co-prisoner of the husband of the writ petitioner/respondent herein, who issued the certificate, underwent only 11 months of imprisonment, whereas as per the Scheme, the Co-prisoner should have undergone one year imprisonment, the claim of the writ petitioner/respondent herein was rejected by the petitioners. Aggrieved by the same, the writ petitioner filed W.P. No.20881 of 2010 before this Court for grant of pension under the 'Swatanthara Sainik Sanman Pension Scheme' and this Court, by order dated 08.08.2011, directed the second respondent therein to grant pension under the above scheme within a period of eight weeks. Aggrieved by the same, the petitioners preferred the above W.A. No.175 of 2013,



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but, the same was dismissed for non-prosecution. Learned counsel appearing for the petitioners further submitted that after the dismissal of the above writ appeal, on 20.01.2022, the file was immediately processed to decide further course of action with the concerned officials on the above said order and accordingly, on 28.01.2022 and 02.02.2022, the file was referred to the Legal Cell of the Ministry for preparation of Restoration Application as well as the Delay Condonation Application, which were forwarded by the Legal Section on 03.02.2022. Therefore, the delay in filing the Restoration Application is neither willful, nor wanton, but, only due to the reasons stated above. Concluding his arguments, learned counsel appearing for the petitioners further submitted that since allowing the 'Swatanthara Sainik Sanman Pension Scheme' benefits to the writ petitioner is totally against the policy formulated by the Government, the above W.A. No.175 of 2013 deserves to be restored and heard, on merits.

3.Learned counsel appearing for the respondent/writ petitioner, urging this Court to dismiss this petition seeking condonation of delay, submitted that this is the 7th round of litigation. In support of her submission, learned counsel for the respondent submitted that husband of the respondent, late Kannare, who took part in the



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freedom struggle, was a member of Indian National Army, organised by Nethaji Subash Chandra Bose and was in the Propaganda Department of INA from the end of 1942 and during his participation, he was arrested and retained by the British force in Rangoon Central Jail from May 1945 to December 1945 and therefore, the writ petitioner applied 'Swanthara Sainik Sanman Pension Scheme' along with the certificate of the co-prisoners. Since the writ petitioner's claim was rejected on 03.10.2005, she had filed initially W.P. No.29575 of 2008 before this Court seeking grant of pension. This Court, by order 01.04.2009, after analysing various judgments of the Hon'ble Supreme Court as well as this Court, allowed the W.P. No.29575 of 2008, directing the respondents therein to grant pension to the writ petitioner under the Scheme from the date of her application. In the second round of litigation, since the said order has not been complied with by the petitioners herein, the respondent filed Contempt Petition No.1075 of 2010 before this Court. Without complying the said order, in the third round of litigation, the petitioners filed W.A. No.91 of 2010 before this Court challenging the above W.P. No.29575 of 2008. The Division Bench of this Court, by judgment dated 15.04.2010, disposed of the above W.A. No.91 of 2010, directing the petitioners herein to relax the conditions imposed by them, in the light of the observation



made by the Hon'ble Supreme Court in para 5, which reads as under:

'5.In Gurdial Singh v. Union of India (2001 (8) SCC 8), the Supreme Court held as follows:

"The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. Millions of masses of the country had participated in the freedom struggle without any expectation of grant of any Scheme at the relevant time. Moreover, in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Therefore, in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It is also to be kept in mind that the claimants under the Scheme are supposed to be such persons who had given the best part of their life for the country.

The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. The case of the claimants under the Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment



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for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.”

4.Learned counsel for the respondent further submitted that despite the same, the petitioners herein have not come forward to comply with the said order. Therefore, in the fourth round of litigation, when the respondent has come to this Court with W.P. No.20881 of 2010, this Court, by order dated 08.08.2011, allowed the writ petition, directing the second respondent therein to grant pension under the “Swanthara Bainik Sanman Pension Scheme” to the respondent within a period of eight weeks. Pursuant to the same, in the fifth round of litigation, when the petitioners herein have not come forward to grant pension, the respondent filed Contempt Petition No.1079 of 2012 before this Court. Without complying the order passed by this Court, in the sixth round of litigation, the petitioners herein again come to this Court with W.A. No.175 of 2013 challenging the W.P. No.20881 of 2010. This Court, by judgment dated 08.04.2019, dismissed the above W.A. No.175 of 2013 for non prosecution of the appellants and now the petitioners are before this Court in the seventh round of litigation. Therefore, learned counsel for the respondent prays for dismissal of



this petition.

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5. After dismissal of the above W.A. No.175 of 2013, keeping the matter in the cold storage for more than three years, the petitioners herein have now come to this Court with this petition with a huge and unexplained delay of 1034 days in filing the Restoration Application to restore the W.A. No.175 of 2013 that was dismissed on 08.04.2019. Once the order passed by the Hon'ble Apex Court, extracted above, has become final and the same reveals that some of the conditions shall be relaxed and based on the same, W.A. No.91 of 2010 was also disposed of by the Division Bench of this Court, directing the petitioners herein to relax the conditions imposed by them and after dismissal of the above W.A. No.175 of 2013, no further appeal was filed by the petitioners, hence, the petitioners are bound to follow the order passed by this Court. But, without complying the order passed by this Court, the petitioners herein made the writ petitioner to run from pillar to post from the year 2008 even after 7th round of litigation. Therefore, we do not find any justification or reason or sufficient cause to condone the delay of 1034 days in filing the Restoration Application to restore the W.A. No.175 of 2013 that was dismissed on 08.04.2019, hence, the petitioners are hereby directed to comply with the order passed by this Court in W.P.



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No.20881 of 2010 within a period of four weeks from the date of receipt of a copy of this order. With this direction, this petition stands dismissed.

(T.R.,J.) (S.S.,J.)
22.04.2022

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22.04.2022