

D/L. 13.
November 23, 2023.
MNS.

WPA No. 7071 of 2023

Alaka Bera @ Alok Bera
Vs.
Union of India and others

Mr. Ramdulal Manna,
Ms. Manju Manna (Dey),
Mr. Sabyasachi Mondal,
Mr. Sayan Mukherjee,
Ms. Payel Khanra

... for the petitioner.

Mr. Sukumar Bhattacharyya

...for the respondent nos. 1 to 3.

Ms. Amrita Panja Moulick

...for the State.

1. Heard learned counsel for the parties.
2. The grievance of the petitioner is that she is an unmarried daughter of a freedom fighter and is entitled to pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (in short "SSSP Scheme"), formerly known as Freedom Fighters' Pension Scheme, 1972.
3. The petitioner contends that she had applied for such pension in the year 2007, but cannot produce a copy of such application, submitting that it has been misplaced.

4. In any event, the petitioner had taken out a writ petition, which was disposed of vide order dated April 23, 2008 by a co-ordinate Bench, where it was observed that the respondent authorities were to consider the case of the petitioner by treating the said writ petition, bearing WP No. 16737(w) of 2007, as a representation and to dispose of the same by passing a reasoned order after giving opportunity of being heard to the petitioner. Subsequently, it transpires from the correspondence annexed to the writ petition and the affidavit-in-opposition that the respondent authorities sought certain documents from the petitioner, which the petitioner failed to produce. The respondents, accordingly, rejected the representation of the petitioner on such count.
5. Subsequently, however, the exercise was renewed by the petitioner, which culminated in a further order passed by another learned Single Judge on August 1, 2022 in WPA 12374 of 2017. By the said order, the learned Single Judge directed that the Union of India through the Secretary, Ministry of Home Affairs, Government of India, was to dispose

of the petitioner's entitlement to the pension upon treating the report of the District Magistrate, Purba Medinipur as a representation reflecting the stand taken by the State respondent.

6. The respondents contend that as per the SSSP Scheme, the petitioner is entitled to get pension only from the date of her application and not from the demise of the freedom fighter.
7. There cannot be any doubt in that regard, since the respondents have correctly relied on Clause 5.2.2 of the relevant Scheme, which in no uncertain terms stipulates that the dependent pension shall be paid from the date of application by the spouse/daughter and not from the date of death of the pensioner.
8. The dispute, which arises here, is as to the date of the application of the petitioner. The original purported application of the petitioner of 2007 cannot be produced by the petitioner and, thus, cannot be relied upon. The stand of the respondents is that the first order dated April 23, 2008 in WP 16737(w) of 2007 had culminated in a rejection of the petitioner's application due to the laches on the part of the

petitioner in not producing any supporting document. Hence, the said representation cannot, according to the respondents, be treated as the application of the petitioner for the purpose of disbursal of pension.

9. The plinth and strength of the petitioner's claim now is the order dated August 1, 2022 passed in WPA 12374 of 2017, which directed the report of the District Magistrate, Purba Medinipur of the year 2015 to be considered as the representation, which has been taken by the respondents as the date of application while sanctioning pension to the petitioner.
10. On the contrary, the petitioner contends that the original date of application of the petitioner should be taken to be the date of the order dated April 23, 2008, when the first writ petition was directed to be treated by the learned Single Judge as a representation.
11. Upon careful consideration of the respective contentions of the parties, the arguments of the petitioner seem to be more acceptable.
12. The genesis of the present exercise was the order dated April 23, 2008 passed in WP No. 16737(w) of 2007 and not the order dated

August 1, 2022 passed in WPA 12374 of 2017.

13. For the first time in the order dated April 23, 2008, the petitioner's then writ petition was directed to be taken as a representation and thereby the respondents were directed to process the petitioner's claim for pension. Thus, for all practical purposes, the application of the petitioner should be treated as the said representation and the date of the application to be treated to be April 23, 2008, that is, the first order of the learned Single Judge.

14. The subsequent exercise was a mere continuation and reassessment of the said application. Although the first representation was initially rejected by the respondent authorities, the entire exercise was reopened, thereby granting a fresh lease of life to the first application dated April 23, 2008.

15. The order dated August 1, 2022 merely referred to the report of the District Magistrate, Purba Medinipur, as a representation reflecting the stand taken by the State respondent and not an application of the petitioner.

16. Since the entire exercise had its beginning on the date of the first order dated April 23, 2008, the respondents are required to disburse pension to the petitioner under the SSSP Scheme from the said date by treating the same as the date of the petitioner's application for pension for all practical purposes.

17. In such view of the matter, WPA No. 7071 of 2023 is partially allowed, thereby directing the respondents to disburse pension to the petitioner under the SSSP Scheme, as referred to above, by treating the date of the petitioner's application for such pension to be April 23, 2008, that is, the order passed in WP No. 16737(w) of 2007. The necessary calculations shall be made at the earliest and the disbursal shall be positively made in favour of the petitioner within one month from this date, subject to the petitioner rectifying the defect as pointed out by the respondents regarding the spelling of the name of the petitioner within one week from date.

18. There will be no order as to costs.

19. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)