

S/L 2
25.04.2023
Court. No. 12
Sourav

WPA 7752 of 2017

**Muktipada Chakrabarty & Ors.
Vs.
Union of India & Ors.**

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

...for the petitioners.

*Mr. Indrajit Dasgupta
Mr. Debapriya Samanta*

...for the Union of India.

Ms. Mitali Mukherjee

...for the State.

1. All the parties to the instant writ petition are represented by their respective learned advocates.
2. Heard Mr. Ramdulal Manna and Mr. Sabyasachi Mondal, learned Advocates for the writ petitioners. Also heard Mr. Indrajit Dasgupta and Mr. Debapriya Samanta, learned Advocates for the Union of India and Ms. Mitali Mukherjee, learned Advocate for the State at length.
3. Considered.
4. Perused the entire materials as placed before this Court.
5. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioners have prayed for quashing of the letter dated July 19, 2016 with a further prayer for direction upon the respondents/Union of India to release Freedom Fighter's Dependent Pension under the Swatantrata Sainak Samman Pension Scheme, 1980, hereinafter referred to as the 'said Scheme of 1980' in favour

of the present writ petitioners from the date of application as made by their mother Renubala Chakraborty (since deceased) till the death of their mother i.e., from August 18, 1981 to April 19, 2016.

6. In support of the instant writ petition, Mr. Manna and Mr. Mondal, learned Advocates for the writ petitioners at the very outset draw the attention of this Court to the various provisions of Freedom Fighter's Pension Scheme, 1972 hereinafter referred to as the 'said Scheme of 1972' and the said Scheme of 1980. It is contended on behalf of the present writ petitioners that the mother of the present writ petitioners Renubala Chakraborty (since deceased) claimed pension under the said Scheme of 1980 on the ground that her deceased husband remained underground for more than six months as a proclaimed offender connected with freedom fighter's movement and since the Government of West Bengal has failed to provide any supporting documents in order to establish that her husband remained underground from October 2, 1942 to July 25, 1943, the mother of the present writ petitioners enclosed a certificate of suffering by absconsion issued by one Rabindra Nath Giri, a freedom fighter of District – Purba Medinipur, where the present writ petitioners' deceased mother and father used to reside during their lifetime.

7. It is contended on behalf of the present writ petitioners that the respondents/Union of India, however, repeatedly declined to grant the said pension under the Scheme of 1980 for no reason whatsoever for which the deceased mother of the present writ petitioners approached

this Court by filing successive writ petitions and even contempt application. Drawing attention to the Annexure P-18 at Page 69 of the instant writ petition, it is contended on behalf of the present writ petitioners that in WP 22801 (w) of 2009, a co-ordinate Bench of this Hon'ble Court by its order dated 08.02.2016 categorically hold that the guidelines being No. 45/03/2014 – FF (P) as issued by Ministry of Home Affairs FFR Division is not applicable to the claim of the mother of the present writ petitioners and, accordingly, the Union of India was directed to consider and dispose of the claim of the mother of the present writ petitioners for sanction of pension under the said Scheme of 1980 as expeditiously as possible but not later than four weeks from the date of communication of the said order.

8. It is further contended that even after passing of the said order, the respondents/Union of India by the impugned letter dated July 19, 2016, refused to grant the said pension under the said Scheme of 1980 to the mother of the present writ petitioners.

9. In course of their argument, both Mr. Manna and Mr. Mondal, learned Advocates for the writ petitioners draw attention of this Court to the reported decision of ***Union of India & Ors. Vs. Smt. Sadhana Bala Dhara & Ors.*** reported in **(2017) 4 WBLR (Cal) 491**. Drawing attention to the paragraph 5 of the aforesaid reported decision of *Smt. Sadhana Bala Dhara (Supra)*, it is contended that a Division Bench of this Hon'ble Court in the said case categorically held that the revised guidelines on which the Union of India

placed their reliance can have no manner of application in respect of a claim for pension submitted on July 27, 1981.

10. It is contended further that since the said judgment of *Smt. Sadhana Bala Dhara (Supra)* has not been assailed before any higher forum, the said judgment has reached its finality and in view of such situation, the respondents/Union of India cannot claim that the present writ petitioners are not entitled to the pension as payable to their the mother under the Scheme of 1980 in view of Clause 1.5 of the said guideline.

11. Drawing attention to another judgment of a co-ordinate Bench of this Court as passed on February 20, 2023 in WPA 18294 of 2005 (***Sukdeb Maity & Ors. Vs. Union of India & Ors.***), it is contended the said Hon'ble Court in a similar circumstance, directed the Union of India to take immediate steps for disbursal of the amount due to the original writ petitioner Sri Ramlal Maity (since deceased) during his lifetime and thereafter, his widow namely, Bhairabi Bala Maity (since deceased) during her lifetime. It is thus contended that since the subject matter as involved in the instant writ petition is quite similar to the decision of ***Sukdeb Maity & Ors. (Supra)***, a favourable order may be passed in the writ petition.

12. While opposing the prayer of the writ petitioners, Mr. Indrajit Dasgupta duly assisted by Mr. Debapriya Samanta, learned Advocate for the respondents/Union of India at the very outset draws attention of this Court to the aforesaid guideline for disbursement of Central Samman Pension to be followed by Authorized Public Sector Banks bearing No.

45/03/2014-FF (P) as issued by Ministry of Home Affairs FFR Division. Attention of this Court is also drawn to the said Scheme of 1972, more specifically upon Clause 2 which deals with the meaning of 'family' under the said Scheme and Clause 3 which deals with the eligibility of the persons claiming pension under the said Scheme of 1972. On behalf of the respondents/Union of India, attention of this Court is also drawn to Clause 3 and Clause 4 of the said Scheme of 1980. It is contended by Mr. Dasgupta, that on conjoint perusal of the aforesaid clauses of said two Schemes and the guidelines as mentioned above, it would reveal that the present writ petitioners do not come under the purview of family or eligible dependents within the meaning of either the said Scheme of 1972 or the said Scheme of 1980.

13. It is further contended on behalf of the respondents/Union of India that in view of the aforesaid guideline as issued by the Ministry of Home Affairs, the present writ petitioners are not entitled to any arrears as wrongly claimed. Mr. Dasgupta, learned Advocate for the Union of India thus submits that it is a fit case for dismissal of the said writ petition.

14. Ms. Mitali Mukherjee, learned Advocate for the State, however, submits that during the lifetime of the mother of the present writ petitioners, the relevant records to substantiate that her husband was in underground on account of declaring him as a proclaimed offender due to his involvement in freedom movement could not be located.

15. This Court has given due consideration over the submissions of the learned Advocates of the writ petitioners

as well as learned Advocate for the respondents/Union of India and learned Advocate for the respondent/State of West Bengal. This Court has minutely perused the entire materials as placed before this Court.

16. Unfortunately, for some reason or other during the lifetime of Renubala Chakraborty (since deceased), the predecessor-in-interest of the present writ petitioners, the prayer for pension under the said Scheme of 1972 or under the said Scheme of 1980 was successively rejected on behalf of the Union of India. Sufficient materials have been placed before this Court to substantiate that in spite of obtaining favourable order by the mother of the present writ petitioners, she is unable to get pension under the said two Schemes on account of the refusal on the part of the Union of India, the respondent herein. Admittedly, in WP 22801 (W) of 2009, a co-ordinate Bench of the Hon'ble Court by its order dated 08.02.2016, categorically held that the aforesaid guideline has no manner of application in respect of the claim of the writ petitioner i.e., in respect of the claim of Renubala Chakraborty (since deceased).

17. However, position has been altered after the death of the mother of the present writ petitioners. In order to come to a logical conclusion, as to whether the present writ petitioners being the legal heirs of Renubala Chakraborty (since deceased) are at all entitled to the arrears of pension or not, in considered view of this Court, a fresh look to the relevant provisions of the said Scheme of 1972 and the said Scheme of 1980 are required to be looked into. On perusal of the Clause 2 of the said Scheme of 1972, it reveals that under

no stretch of imagination, the present writ petitioners can claim themselves as family members within the meaning of Clause 2 of the said Scheme of 1972. Similarly, under the said Scheme of 1980, the present writ petitioners cannot claim that they are eligible dependents in view of Clause 3 of the said Scheme of 1980.

18. At this juncture, this Court considers that a look to Clause 1.5 of the said guideline is required and the same is reproduced hereinbelow in verbatim:

“1.5. Sanction of pension after the death of Freedom Fighter: No pension shall be sanctioned in the name of the freedom fighter after his/her death even if his/her matter was under examination. This also entails that no lifetime arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter.”

19. On conjoint perusal of the aforesaid Scheme of 1972 and the said Scheme of 1980 and Clause 1.5 of the aforesaid guideline, it would reveal that the present writ petitioners being the legal heirs of Renubala Chakraborty (since deceased) are not entitled to any lifetime arrears or dependent pension.

20. In considered view of this Court, the order dated 08.02.2016 as passed in WP 222801 (W) of 2009 by a co-ordinate Bench of this Court has also got no manner of application in the present lis since in the said writ petition, the present writ petitioners were not the petitioners and on the contrary in the said writ petition, the writ petitioner was

their mother and in view of clear Bar of Clause No. 1.5 of the said guideline, the benefit of the aforesaid order dated 08.02.2016 as passed in WP 22801 (W) of 2009 cannot be claimed to be percolated upon the present writ petitioners being, the legal heirs of Renubala Chakraborty (since deceased).

21. It is to be kept into mind that the instant writ petition has not been filed by the mother of the present writ petitioner, Renubala Chakraborty (since deceased) during her lifetime and/or the present writ petitioners have been substituted in place of their mother during the pendency of the writ petition and in view of such position, the judgment dated February 20, 2023 as passed in the case of *Sukdeb Maity & Ors. (Supra)* is quite distinguishable from the facts and circumstances as involved in the instant writ petition since in the case of *Sukdeb Maity & Ors. (Supra)*, the said writ petition being WPA 18294 of 2005 was originally filed by the freedom fighter and after his death during the pendency of the writ petition, his widow and the other legal heirs were impleaded as writ petitioners and subsequently, the widow also expired and, accordingly, her name was expunged and the other legal heirs of the said freedom fighter carried on the proceeding.

22. In further considered view of this Court, the reported decision of *Sadhana Bala Dhara & Ors. (Supra)* is also distinguishable from the facts and circumstances as involved in the present *lis* since in this said case the respondent/writ petitioner herself was the widow of a freedom fighter whereas in the instant writ petition none of the writ

petitioners are either the widow or comes under the purview of family under the said Scheme of 1972 and under the eligibility Clause of the said Scheme of 1980.

23. In view of the discussion made hereinabove, this Court thus holds that the respondents/Union of India is very much justified to deny the claim of the present writ petitioners in view of Clause 1.5 of the guidelines bearing no. 45/03/2014/-FF(P) as issued by Ministry of Home Affairs FFR Division.

24. As a result, the instant writ petition being WPA 7752 of 2017 fails and the same is hereby dismissed on contest.

25. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)