

13th December,
2023
(AK)
27

W.P.A. 14008 of 2023

Smt. Kanchan Barman
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.

Ms. Chandreyi Alam
Ms. Runu Mukherjee

...for the Union of India.

1. Learned counsel for the petitioner contends that the petitioner's husband was a freedom fighter and had been getting freedom fighter's pension under the Swatantrata Senani Samman (SSS) Yojana (Scheme).
2. The husband of the petitioner met his sad demise on February 6, 2018. The petitioner thereafter applied for pension under the said scheme as heir of the deceased freedom fighter. Such application was made on August 30, 2018.
3. It is contended that in the order of a coordinate Bench dated February 4, 2022 in CPAN 169 of 2020 arising out of WPA 23229 of 2019, the learned Single Judge had observed that the present petitioner would be entitled to arrears of pension from the month following

the date of death of her husband till the date of actual commencement of pension in the petitioner's name.

4. Learned counsel also relies on a Division Bench judgment of this court in the matter of *Union of India and others vs. Smt. Sadhana Bala Dhara and others* reported at (2017) 4 WBLR (Cal) 491 where the Division Bench, while considering 2014 Guidelines, observed that the said guidelines could have no manner of application in respect of a claim of pension submitted on 27th July, 1981.

5. In the present case as well, the application made by the freedom fighter was much prior to the coming into force of the 2014 Guidelines.

6. It is further argued that although in the guidelines issued to Public Sector Banks it has been stipulated that the date of commencement of pension under the scheme payable to the heir of the deceased freedom fighter commences from the date of the application, such guidelines cannot override the provisions of the scheme itself.

7. Learned counsel also seeks to rely on the Pension Payment Order (PPO) in which apparently the concerned official of the Government Office had written that the date of commencement of the pension was to be the date immediately following the date of death of the freedom fighter/husband of the petitioner.

8. Learned counsel appearing for the Union of India places reliance on the concerned scheme of 1980.

9. By placing particular reliance on Clause 12 thereof, it is argued that the same provides that the heirs of a deceased pensioner shall not automatically succeed to the pension but shall have to apply afresh with proof of the pensioner and their applications will be considered in terms of the pension scheme.

10. Learned counsel also places reliance on Clause 5.2.2 of the revised guidelines issued to the Public Sector Banks by the concerned ministry under the said scheme which provides 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 petitioner.

11. It is further argued that in terms of the said guidelines, unless the application for transfer of pension is made within six months of the demise of the original pensioner, the same shall not be considered by the bank but referred to the Ministry.

12. In the present case, the petitioner made the application more than six months after the date of death.

13. Learned counsel also relies on a Division Bench judgment of the Delhi High Court in the matter of *Bhagwani vs. Union of India and Ors.*, where the Division Bench observed that in view of Clause 5.2 of the revised policy/guidelines dated 6th August, 2014 in respect of the SSS Yojana, the pension was payable to the heirs not from the date of death of the pensioner but the date of making of the application.

14. By placing reliance on the said judgment, it is argued that the respondents have rightly been disbursing the pension to the petitioner from the date of her application.

15. Insofar as the question of belated application being made by the petitioner, the same is a bygone chapter, since pension has already been started to be disbursed upon the respondents having been *prima facie* satisfied that the petitioner is the spouse/widow/heir of the deceased freedom fighter. Hence the objection as to her entitlement cannot now be raised.

16. The more important question which arises is the date on which the eligibility of such pension for the heir of the deceased freedom fighter arises.

17. A perusal of the revised guidelines, which have also been relied on by the Division Bench of the Delhi High Court, shows that the same, as rightly contended by learned counsel for the petitioner, were mere guidelines issued to authorized public sector banks by the Ministry of Home Affairs for disbursement of Central Samman Pension.

18. It has been rightly contended by the petitioner that the said guidelines, issued subsequent to the scheme by the concerned Ministry to the authorized public sector banks, do not form a corrigendum or an amendment to the original pension scheme, which still remains intact.

19. In fact, the modalities as stipulated in the said guidelines can at best pertain to procedural nuances of the disbursal under the scheme and cannot affect any substantive rights conferred upon a person under the scheme, read in conjunction with the concerned law governing the field.

20. Thus, Clause 5.2.2 which stipulates that the dependent pension shall be paid from the date of the application by the spouse/daughter and not from the date of death of the pensioner is not so sacrosanct as sought to be projected by the respondent authorities.

21. With utmost respect, the said aspect of the matter was neither argued before the Division Bench of the Delhi High Court nor considered or reflected to have been considered in the said judgment of the Delhi High Court which has been cited by the respondents.

22. The said judgment is comprised of five paragraphs in total. In paragraph no. 3, it was merely observed by the Division Bench that attention was drawn to the revised policy/guidelines dated 6th August, 2014 and in view of the same, the court proceeded to observe that the respondents therein had rightly paid the pension to the petitioner from the date of receipt of application.

23. Thus, the said order was less of a judgment and more of an order and is not a binding precedent regarding the issue as to whether the revised guidelines of 2014 can

override the specific provisions of the original scheme and the general law governing the field.

24. Hence, again with utmost respect, I beg to differ from the proposition sought to be advanced by the respondents that the said judgment operates as a precedent on the issue at hand.

25. Insofar as the present issue is concerned, rather, the coordinate Bench of this court in the judgment and order dated February 04, 2022, which is in respect of the present petitioner herself, observed that the petitioner would be entitled to arrears of pension from the month following the date of death of the petitioner's husband till the date of actual commencement of pension in the petitioner's name.

26. In similar vein as the above observations regarding the Delhi High Court, however, the issue which has arisen here was not canvassed or decided by the learned Single Judge.

27. However, although not as a binding precedent, the said observation operates on the principle of *res judicata* insofar as the present petitioner and the respondent authorities are concerned.

28. The same pertained to the right which is now being canvassed by the petitioner and the issue having been decided and remaining unassailed, has attained finality and binds the parties herein.

29. However, the Division Bench judgment sought to be relied on by the petitioner differs in certain aspects from the present issue.

30. In the said case, what was under consideration before the Division Bench was the original right of the freedom fighter himself to the pension under the concerned scheme.

31. In the said case, the pension was never disbursed to the freedom fighter at any point of time before the adjudication of the Division Bench came up.

32. Hence, it was decided by the Division Bench, by proceeding on the premise that the original application was made by the freedom fighter in the year 1981, that the subsequent revised guidelines of 2014 would not be applicable in the said case.

33. In the said case, however, there was no occasion for the heirs to have applied under the revised guidelines or under the scheme for the benefit of the scheme to be extended to such heirs.

34. Hence, the said Division Bench judgment is also not a decider/precedent on the issue sought to be argued before this court on the entitlement of the heirs.

35. To shed light on the issue at hand, one has to look into the scheme itself. It is evident from the relevant clause, that is, Clause 12 of the scheme that the same is the only indicator which pertains to the issue of hand,

although somewhat in an oblique manner. The exact expression used in Clause 12 is as follows:

“In the case of death of a pensioner his/her heir though otherwise eligible for pension will not automatically succeed to such a pension. They shall have to apply afresh with proof of the pensioner and their applications will be considered in terms of the Pension Scheme.”

36. A perusal of the above language clearly shows that the heir of a pensioner under the scheme becomes eligible for pension in the case of death of a pensioner.

37. However, what has been stipulated there is that such eligibility will not automatically accrue, that is, the heir shall not automatically succeed to such a pension without doing something else.

38. The said “something else” is that the heirs have to apply afresh with proof of the pensioner and their applications which will be considered in terms of the pension scheme.

39. Thus, the consideration at hand would be in light of the pension scheme, more particularly, in terms of Clause 12 thereof. The expression “otherwise eligible for pension” in the said clause clearly clinches beyond all reasonable doubt that the eligibility otherwise accrues in favour of the heir of the pensioner immediately upon the death of the pensioner, subject, however, to an application being filed within the period as prescribed therein.

40. Once an application is filed, the eligibility reverts back to the date of demise of the original pensioner and it does not commence from the date of application itself. The right to get pension triggers in favour of the heirs on the date of application but the eligibility/entitlement takes effect from the date of demise of the freedom fighter.

41. Insofar as the guidelines are concerned, as held above, the said guidelines are merely an indicator on modality and cannot operate as a corrigendum or amendment to the provisions of the scheme itself, which still remains as it is.

42. In such view of the matter, there cannot be any plausible reason or valid defence on the part of the respondents for withholding the pension to the petitioner under the SSS Yojana accrued originally to the petitioner's deceased husband/ freedom fighter, from the date of the demise of the freedom fighter himself.

43. Hence, the respondents have acted palpably without jurisdiction in granting such pension under the said scheme to the petitioner as heir/widow of the original pensioner only from the date of application and not from immediately after the date of demise of her husband.

44. WPA No. 14008 of 2023 is, accordingly, allowed on contest, thereby directing the respondent authorities to disburse all arrears of pension to the petitioner, under the SSS Yojana, which accrued to the petitioner in the

capacity of heir and widow of the original freedom fighter-pensioner (her husband) from immediately after the date of demise of the husband till the date of filing of the application.

45. Such arrears shall be disbursed in favour of the petitioner at the earliest, positively by January 31, 2024.

46. It is made clear that interest is not being imposed on the respondent authorities for delayed payment of the amount since a plausibly arguable issue was raised in the present writ petition and since there were conflicting judgments in the field which might have acted as a deterrent for the respondents to start the disbursement from immediately after the claim being made by the petitioner.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)