AD-14
Ct No.09
04.10.2023
TN

WPA No. 19043 of 2023

Kumari Sadhana 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. Asok Kumar Chakrabarti,
Mr. Kumar Jyoti Tewari
.... for the respondent nos. 1, 2 & 3

Mr. Tanay Chakraborty,
Ms. Mrinalini Majumdar
...for the State

1. Learned counsel for the petitioner contends that the petitioner is an unmarried dependant daughter of her father who was a freedom fighter and was getting freedom fighter pension under the Swatantrata Sainik Samman Pension Scheme.

2. Learned counsel contends that the petitioner's application for the said pension was refused by the respondent authorities initially, upon which a writ petition was moved. Subsequently, the petitioner's application was considered and was refused on the ground of long lapse of time in making the application after the expiry of the petitioner's father. The other ground cited by the respondents was that the petitioner was regularly employed from 1979 to 2007 till superannuation.

3. It is argued by learned counsel for the petitioner that it is well-settled that the question of limitation has to be looked into liberally by the courts. Learned counsel submits that in a welfare State, the question of limitation cannot be an absolute bar in grant of a relief, if the petitioner was otherwise entitled to it in law. Learned counsel submits that in several cases, this court and the Supreme Court has taken a lenient view in such context.

4. It is submitted that the petitioner acted in the Gandhi Ashram and earned a paltry honorarium.

5. Learned Additional Solicitor General cites *State of Madhya Pradesh and another vs. Bhailal Bhai and others*, reported at *AIR 1964 SC 1006.* By placing particular reliance on paragraph 21 of the same, it is argued that the provisions of the Limitation act do not as such apply to the grant of relief under Article 226. However, the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The courts may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.

6. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known, it was observed.

7. Learned Additional Solicitor General reiterates the grounds as cited by the respondent authorities and submits that in view of the petitioner having regularly earned an income from 1979 to 2007, it cannot be said that the petitioner is eligible to the pension-in-question.

8. That apart, it is argued that contradictory statements have been made in the writ petition, on the one hand the petitioner claiming that the petitioner is the only unmarried and unemployed daughter of her father and on the other that the petitioner's father left behind his sons and daughters, who are the other legal heirs of the father.

9. The petitioner has solely applied for the family pension, depriving other legal heirs of the deceased freedom fighter. Moreover, she was not a nominee in the pension account, it is contended.

10. Thus, it is argued, the petitioner's application for family pension was rightly rejected under the scheme.

11. A perusal of the scheme-in-question indicates that after the death of the pensioner, the transfer of pension to the spouse/daughter will only be considered if she applies for transfer of pension within six months of the death.

12. Clause 5.2 further stipulates that application received after six months shall not be considered by the Bank but referred to the Ministry, which shall then take a view whether to allow dependent pension or not or whether any arrears are to be paid.

13. Clause 6.1.2 indicates that the Banks must ensure that a dependent pension is not sanctioned to a spouse or a daughter of a freedom fighter, if, inter-alia, the spouse/daughter is working in a private sector or having his/her own business/activity than income from such job/activity exceeds Rs.20,000/- per month.

14. In the circumstances of the present case, it is found that the petitioner was earning an honorariam from a "Gandhi Ashram" from the year 1979 to 2007 till her superannuation.

15. It is to be noted that the father of the petitioner expired as long back as on February 18, 1996. However, the petitioner made her first claim for family pension only on July 11, 2007.

16. The inordinate delay of 11 years in between is not explained by the petitioner.

17. Moreover, the conduct of the petitioner itself indicates that the reason for the petitioner not claiming pension previously despite the demise of her father in the year 1996 was her employment, which continued till 2007 when she was superannuated.

18. The co-incidence is a bit too much in respect of the year when the petitioner was superannuated from her service and the year when she made an application for family pension, both being in the year 2007.

19. Thus, the petitioner, for all practical purposes, could not be said to be a dependant of her father, who had earned his rights for getting the freedom fighter pension as per his own acts.

20. The petitioner is merely a chance seeker, who waited till her superannuation from a job and only thereafter applied for being eligible for the purpose of getting her father's freedom fighter pension.

21. The scheme-in-question contemplates honouring the freedom fighters, on whose sacrifice the nation stands. It was justified on the part of the respondent authorities to refuse the prayer of the petitioner, not only because the prayer was made after a long lapse of 11 years from the date of demise of her father but also on the ground that the petitioner was merely seeking to take a chance after having retired from her job.

22. In any event, the rider in Clause 6.1.2 regarding income not exceeding Rs.20,000/- applies to a person having his or her own business/activity.

23. Even without going into the exact quantum of the honorariam/income earned by the petitioner, she was otherwise not eligible in view of Clause 5.2, by virtue of which she was to apply within six months. Although the discretion has been left on the respondent authorities to consider an application, even if filed after the period of six months, there has to be some proportionality in the delay occasioned by an applicant and the stipulated time as per the concerned scheme. Clause 5.2 of the concerned scheme clearly envisages that the application under normal circumstances has to be made within six months from the date of death.

24. The inordinate delay of 11 years after the demise, by no stretch of imagination, can be said to have any proportionality with the said period as envisaged in the scheme. Thus, the refusal of the respondents is valid on all such scores.

25. Insofar as the question of limitation is concerned, the issue which arises here is not the limitation in filing the writ petition but the limitation in the petitioner applying in the first instance for the pension-in-question.

26. The judgments cited or relied on by the parties primarily revolve around the domain of grant of relief under Article 226 of the Constitution of India which is not squarely applicable in the present case. In fact, the ratio of *State of Madhya Pradesh and another vs. Bhailal Bhai and others* is somewhat apt in the present circumstances, since in the present case, the date on which the right of the petitioner to claim the pension first accrued was the date of demise of her father on February 18, 1996.

27. After lapse of three years thereafter, it cannot be said that the petitioner's claim for the quantum of money was valid.

28. The question of continuity of the cause of action, which might have alleviated the rigour of limitation, would only arise in the event the petitioner had applied within the time stipulated for a money claim in law.

29. Having not done so, and having waited for her superannuation, the petitioner was not entitled to get the benefit of the freedom fighter pension scheme.

30. On a more basic level, the petitioner was not a dependant of her father at the time of his demise and was having an income, thus not being entitled to the pension at the time of her father's death.

31. Hence, there is no scope of interference with the refusal of the respondents to pay the family pension to the petitioner under the freedom fighters' pension scheme.

32. Accordingly, WPA No. 19043 of 2023 is dismissed, without any order as to costs.

33. 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.)