



W.P.No.33268 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.33268 of 2015

Fathima Bibi

.. Petitioner

VS

Deputy Secretary to the
Government of India,
Ministry of Home Affairs /
Grih Mantralaya (FFR Division),
2nd Floor, New Delhi City Centre,
Parliament Street, New Delhi – 110 001.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondent to sanction Swatantrata Sainik Samman Pension to the petitioner's husband from the date of his application i.e., 30.11.1988 to the date of the petitioner's husband demise on 24.02.2002 and continue to pay the Freedom fighters family pension to the petitioner from 25.02.2022.

For Petitioner : Mr.T.Dhanasekaran

For Respondent : Mr.Rajesh Vivekanandan
Deputy Solicitor General



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ORDER

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1. The petitioner is the widow of one Shri. Ismail Khan, who was a freedom fighter for Indian independence. The petitioner would state that her husband had participated in Quit India Movement and in demonstrations conducted on 25.02.1946 aligning with Royal Indian Naval Mutiny. He faced incarceration on several occasions. The freedom fighter had applied on 30.11.1988 for grant of Central Pension under the Swatantrata Sainik Samman Pension Scheme (in short 'the Scheme'). His application was duly recommended by the State Government on 20.02.1989.

2. Despite recommendation of the State, the application did not receive any consideration. The petitioner's husband passed away on 24.02.2004. The petitioner thus moved a writ petition in W.P.No.6543 of 2005 seeking a mandamus for grant of pension. That writ petition came to be allowed on 16.06.2005 issuing mandamus as sought for and directing the respondent to pay the pension in accordance with law within sixty days from the date of receipt of a copy of that order.

3. The State took the matter in writ appeal (W.A.No.2116 of 2005) which also came to be dismissed on 26.08.2011. Not



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content with the dismissal, the matter was carried further in appeal before the Supreme Court, which SLP also came to be rejected on 03.12.2012, though leaving the question of law open. With the closure of the matter as aforesaid, the respondents have acceded to the entitlement of the petitioner to pension and had sanctioned the same vide order dated 20.02.2013.

4. It is the stand of the petitioner that she is entitled to such pension from the date of application being 30.11.1988, whereas the respondents would rely on the judgment of the Hon'ble Supreme Court in the case of *Union of India and another v Kaushalaya Devi* reported ((2007) 9 SCC 525) to the effect that pension is payable only on, and from the date of sanction, being 20.02.2013.

5. This question can well be decided based on the ratio of the subsequent judgment of Hon'ble Supreme Court in the case of *Union of India and others v Kashiswar Jana* ((2008) 11 SCC 309) to the effect that the grant of pension is to be on and from the date of the order of the High Court, in case where such an order has been passed, sanctioning the same.



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6. In this case, the relevant order would be the order passed in W.P.6543 of 2005, dated 16.06.2005. Hence the petitioner is entitled for pension for the period from 16.06.2005 till the date of sanction being 20.02.2013 to be quantified and paid over within a period of two weeks from date of receipt of a copy of this order. This writ petition is allowed. No costs.

27.01.2023

Index:Yes
Neutral Citation:Yes
ssm

Note to Registry : Issue copy on 30.01.2023.

To

The Deputy Secretary
Government of India,
Ministry of Home Affairs /
Grih Mantralaya (FFR Division),
2nd Floor, New Delhi City Centre,
Parliament Street, New Delhi – 110 001.



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DR. ANITA SUMANTH,J.

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