



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 08th AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 6939/2022**

SMT LAKSHMI DEVI

..... Petitioner

Through: Mr. I. C. Mishra, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Umesh Kumar Barnwal, Sr. Panel
Counsel with Ms. Samiksha, GP for
UoI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court seeking the following relief:-

“It is, therefore, most respectfully prayed that this Hon'ble Court may kindly please to quash the letter dated 18.09.2020 and by respondent No.3 and modify the letter dated 03.09.2013 directing the respondent directing the respondents to grant the SSS pension to husband of the petitioner Late Ram Prasad Nayak from date of application i.e. 31.03.1982 instead 14.06.2013 and arrear from 31.03.1982 to 13.06.2013 alongwith 18% interest pa and also be directed to respondents and such arrear also be paid to petitioner being a wife of Late Freedom Fighter Ram Prasad Nayak and heavy cost upon the respondent No.1 to 3 also be imposed and respondent No.4 also be directed to release the health allowance/pension to petitioner as arrear since 31.03.1982 to 13.06.2013 with future health allowances.”



2. Shorn of details, the facts leading to the instant writ petition are as follows:-

- i. It is stated that the husband of the Petitioner late Shri Ram Prasad Nayak S/o Late Acche Lal Nayak, R/o Village Satdhara, P.O. Rajnagar, District Madhubani, Bihar had participated in the Quit India Movement, 1942 and criminal cases were registered against him for participating in the freedom struggle.
- ii. It is stated that the Government of India brought out the Swatantrata Sainik Samman Pension Scheme, 1980 (*hereinafter referred to as 'SSS Pension Scheme'*) to honour the freedom fighters.
- iii. Under the said pension scheme, pension could be granted to the freedom fighters, his family (if the freedom fighter is not alive), i.e., mother, father, widow/widower, if he/she has not since remarried and unmarried daughters. It is stated that not more than one eligible dependent can be granted pension under the said scheme and if there are more than one dependents, the sequence of eligibility will be widow/widower, unmarried daughters, mother and father.
- iv. Under the said scheme, a freedom fighter is a person, who has suffered minimum imprisonment for a period of six months in the mainland jails before Independence. Ex-INA personnel are also eligible for pension even if the imprisonment/detention suffered by them was outside India. Pension was also to be granted if a person has undergone more than six months imprisonment or he/she had been declared as a proclaimed



offender for an offence of being participating in the freedom movement or on whom an award of arrest or head was announced.

- v. It is stated that a criminal case had been registered against the Petitioner's husband and his colleagues which was registered as GR No. 819/1942 and the husband of the Petitioner Late Shri Ram Prasad Nayak was declared as an absconder and his name figured in the list of Proclaimed Offenders.
- vi. After scheme was announced, the Petitioner's husband applied for pension under the SSS Pension Scheme as laid down by the Central Government on 31.03.1982. Admittedly, the claim of the Petitioner's husband was received by the Ministry of Home Affairs through letter dated 15.10.2007 and since there were some clarifications which were sought by the Central Government from the State Government and finally on 14.06.2013 the State Government made its final recommendation on the claim of Petitioner's husband.
- vii. A letter dated 03.09.2013 was issued by the Government of India to the Pay & Accounts Officer, Ministry of Home Affairs for grant of pension to the Petitioner's husband under the SSS Pension Scheme.
- viii. The widow of Late Shri Ram Prasad Nayak, i.e., the Petitioner herein, claims that the pension should be granted from the date of the application, i.e., 31.03.1982 and not from the date of appeal by the Central Government which is 03.09.2013.



3. Notice was issued in the matter on 04.05.2022 and counter affidavit has been filed.
4. Learned Counsel for the Petitioner contends that husband of the Petitioner was a freedom fighter and he was entitled for pension at least from the date of his application, if not from 15.08.1981, the date when the SSS Pension Scheme was sanctioned. He, therefore, contends that the decision of the Central Government to grant pension to the Petitioner herein, who is the widow of the freedom fighter only from the date when pension was granted by the Central Government should be set aside because entitlement of the Petitioner's husband accrued on the date when the SSS Pension Scheme was announced or at least when the Petitioner's husband made his claim for grant of pension on 31.03.1982.
5. *Per contra*, learned Counsel for the Respondents submits that the case of the Petitioner can be considered only from the date the Government decided to grant pension and decided that Petitioner's husband was entitled to pension under the SSS Pension Scheme which was on 03.09.2013. He relies on Clause 1.4 of the Guidelines for Disbursement of Central Samman Pensions which applies to cases of disputes regarding the entitlement of pension under the SSS Pension Scheme.
6. Heard learned Counsel for the parties and perused the material on record.
7. A perusal of the counter affidavit does not show that the claim of the Petitioner's husband was disputed at any stage. Paragraph 11 and 12 of the counter affidavit reads as under:-

“11. That after receipt of claim of Shri Ram Prasad Nayak from State Government, same was examined at this Ministry and it was found that the State



Government had not endorsed their specific recommendation and verification report which is mandatory in order to consider the claim of an applicant. Accordingly, a letter dated 14.05.2008 was issued to the State Government to verify the claimed suffering of the applicant from their official records and to furnish a report alongwith their specific recommendation. Thereafter several communications were made with the State Government due to various shortcomings in the claim of Shri Ram Prasad Nayank and eventually on 14.06.2013 the State Government had made their final recommendation on claim of Shri Ram Prasad Nayak.

12. That since the claim of the husband of the petitioner was not based on primary evidence as the concerned record concerning the claim had already been destroyed, as disclosed by the District Archive Officer vide their letter dated 18.04.1987, as such considering the claim of the husband of the petitioner sympathetically giving him benefit of doubt and after taking a lenient and sympathetic view on the claim of Shri Ram Prasad Nayak, SSS pension was sanctioned to him from the date of receipt of final recommendation of State Government i.e. 14.06.2013 vide this Ministry order dated 03.09.2013. A true copy of the said letter dated 18.04.1987 is annexed herewith and marked as Annexure-R-3.”

8. A reading of the said paragraphs shows that certain clarifications were sought by the Central Government which were given by the State Government. Paragraph 1.4 of the guidelines for Disbursement of Central Government Pension Scheme reads as under:-

“1.4 Case of disputed Pensions adjudicated by the Courts - Where the competent authority in the Ministry has earlier rejected the application of the Freedom Fighter or his/her dependent, and he/she



has gone to the Court and obtained a favorable Order then the Date of sanction of the Pension shall be guided by the Principles laid down by the Honble Supreme Court of India in the matter of Union of India vs Kaushalya Devi and such date shall be dependent upon the evidence produced by the Applicant.

(i) In case of primary Evidence - Pension shall be paid from the date of Application.

(ii) In case of secondary evidence - Pension shall be paid from the date of Court Order.

(iii) In doubtful nature of evidence - Pension shall be paid from the date of Court Order.”

(emphasis supplied)

9. A reading of the counter affidavit shows that the case of the Petitioner does not fall under Clause 1.4. Paragraph 11 of the counter affidavit shows that the Central Government only directed the State Government to verify the claim of the Petitioner from the official records and furnish a report along with specific recommendation which was done by the State Government. Clause 1.4 applies only when the competent authority in the Ministry had rejected the application of the freedom fighter and the freedom fighter or his/her dependent had gone to the Court and obtained a favourable order. The present case, therefore, clearly does not fall within Clause 1.4.

10. The Apex Court in Mukund Lal Bhandari & Ors. v. Union of India & Ors., AIR 1993 SC 2127, has observed as under:-

“9. That leaves us with the question as to whether, notwithstanding the date on which the application itself is made, the claimant should be entitled to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with retrospective effect, reliance is placed on the two cases cited earlier where the benefit



is given with effect from August 1, 1980. We have given our anxious consideration to the question and are of the view that for reasons more than one, the benefit should flow only from the date of the application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospectivity of the benefit was neither raised nor answered. We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such strait-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs 5000. It is only later, i.e., from August 1, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit



is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now.

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11. (c) The pension should be paid to the applicant from the date on which the original application is received whether the application is filed with or without the requisite evidence. The sanction of the pension would, however, be subject to the requisite proof in support of the claim.”

11. A perusal of the above shows that the application was made by the Petitioner's husband on 31.03.1982. The Central Government accepted that Petitioner's husband was entitled to grant of pension under the SSS Pension Scheme on 03.09.2013. Applying the dictum of the Apex Court, the pension ought to be granted from the date when the application was made, which is 31.03.1982.

12. The reliance placed by learned Counsel for the Respondents on Clause 1.4 Guidelines for Disbursement of Central Samman Pensions cannot



be accepted because there was no dispute regarding eligibility of the Petitioner's husband since the application of the Petitioner's husband had not been rejected and only clarifications had been sought and the Petitioner's husband did not go to the Court to get favourable order in his favour.

13. In view of the above, the writ petition is allowed.

14. The Respondents are directed to pass necessary orders for grant of pension to the Petitioner from the date of the original application, i.e., 31.03.1982. The Respondents are directed to ensure that the Petitioner receives the arrears of the pension from the date of the application till the grant of pension within a period of six weeks from today. The Petitioner would be entitled to the interest @ 6% on the arrears of pension. If the arrears of pension are not cleared within the period prescribed by this Court, the Respondents are directed to pay interest @ 9% after the said period.

15. With these observations, the writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 08, 2023

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