

M/L. 13.
April 1, 2024.
MNS.

WPA No. 6974 of 2024

Smt. Kalyani Bhowmick
Vs.
Union of India and others

Mr. Biswaranjan Bhakat,
Ms. Subrota Mukherjee,
Mr. P. Das,
Mr. G. Patra

... for the petitioner.

Mr. Asok Kumar Chakraborti, ASG,
Mr. Sukumar Bhattacharyya

...for the Union of India.

Mr. Amrita Lal Chatterjee

...for the State.

1. Learned counsel for the petitioner contends that the petitioner applied as the widow daughter of her father, who was getting the freedom fighter's pension under the Swatantra Sainik Samman Pension Scheme (SSSPS) of the Government of India.
2. It is contended that the said claim was rejected on the ground that the petitioner is not eligible as the scheme mentions only unmarried daughters and not widowed daughters.
3. Learned counsel for the petitioner cites a Division Bench judgment of the Delhi High

Court in *Union of India Vs. Kolli Uday Kumari* reported at 2023 SCC OnLine Del 264.

4. The Division Bench, in the said judgment, upon considering the judgments of several other High Courts, including a decision of this Court, had come to the conclusion that the widowed daughters of freedom fighters were also included within the connotation of the term “unmarried daughters”, making them eligible for such pension.
5. Learned Additional Solicitor General controverts the contentions of the petitioner and submits that a scheme confers limited rights strictly in accordance with the terms and conditions of the scheme and not a blanket statutory right on a claimant. Since the scheme is very specific as to who are eligible, which consciously excludes widowed daughters, the petitioner cannot be said to fall under the category of eligible claimants/dependents under the said scheme.
6. It is argued that a judgment of this Court on a similar contention in a different matter is at present under challenge before the Division Bench.
7. It is further submitted that in any event the respondents have not had any occasion to consider whether the petitioner was a

dependent of the freedom fighter at the relevant point of time and thus otherwise eligible under the scheme.

8. Insofar as the submission of the respondents regarding the rights conferred by a scheme being limited to the scheme itself, there cannot be any quarrel to such proposition as such. However, the question here is as to the connotation of the expression “unmarried daughters”, who have been considered to be eligible under the scheme itself.

9. It may be noted that the term “unmarried daughter” is not restricted to spinsters but may also take within its fold widowed daughters.

10. As such, this Court agrees with the view taken by the Division Bench of the Delhi High Court, which has been cited in the present case, and it is clear that the petitioner, being a widowed daughter of the freedom fighter concerned, could not have been shut out by the respondent authorities on the ground that she is not eligible under the scheme since she is not an unmarried daughter within the scheme.

11. However, the fact remains that in view of the impugned rejection being only on the ground of eligibility criterion since the petitioner was held not to be “unmarried”, the respondent authorities did not have any occasion to

consider the documents produced by the petitioners to the effect that she is otherwise entitled as a dependent under the scheme.

12. Thus, such limited consideration is required to be left to the respondent authorities, which is to be done within particular period.

13. Accordingly, WPA No. 6974 of 2024 is allowed on contest, thereby holding that the petitioner is entitled as a widowed daughter of her freedom fighter father to come within the expression "unmarried daughter", who is entitled under the scheme to get freedom fighter's pension as per the Swatantra Sainik Samman Pension Scheme.

14. However, in view of the respondents having not entered into the question or any of the documents furnished regarding alleged dependency of the petitioner, the respondent no. 3, that is, the Under Secretary, Government of India, Ministry of Home Affairs, Freedom Fighter Division, is directed to consider the petitioner's representation afresh in the light of the above observations and scrutinize the documents furnished by the petitioner for the sole purpose of ascertaining whether the petitioner was a dependent of the freedom fighter concerned and is thus entitled otherwise to get the benefit of the scheme.

15. It is expected that such exercise shall be concluded within four weeks from date.

16. There will be no order as to costs.

17. 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.)