

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 23.09.2024

DELIVERED ON: 23.09.2024

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK**

**M.A.T. 1611 of 2024
With
I.A. No. CAN 1 of 2024
+
CAN 2 of 2024**

**Union of India & Ors.
Vs.
Smt. Rasmani Sahu & Ors.**

Appearance:-

**Mr. Asok Kr. Chakraborty, Ld. Additional Solicitor General
Mr. Sukumar Bhattacharyya
Mr. Dibashis Basu
Mr. Tirtha Pati Acharya**

.....For the Appellants

**Mr. Ramdulal Manna
Ms. Manju Manna (Dey)
Mr. Sayan Mukherjee**

.....For the Respondent/Writ Petitioner

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re.:- I.A. No. CAN 1 of 2024

1. We have heard Mr. Asok Kr. Chakraborty, learned Additional Solicitor General for the appellants and Mr. Ramdulal Manna, learned advocate for

the respondent/writ petitioner. There is a delay of 101 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay in preferring the appeal and find sufficient cause has been shown by the appellants in not preferring the appeal within the period of limitation.

2. Hence, the delay in filing the instant appeal is condoned. The application being I.A. No. CAN 1 of 2024 is allowed.

In Re.: M.A.T. 1611 of 2024

3. This intra-Court appeal is by the Union of India is directed against the order dated 5th April, 2024 in W.P.A. No.4824 of 2024. In the said writ petition, the respondent is being a widowed daughter of a freedom fighter and claimed that she will be entitled to the pension payable to her father, who has been receiving the pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (for brevity, "SSS Pension Scheme").
4. The appellants raised two fold objections to the claim. Firstly, by referring to Clause - 5 of the Guidelines for Disbursement of Central Samman Pensions issued by the Ministry of Home Affairs, which provides that the dependent pension shall be sanctioned to the spouse or unmarried daughters only if their names were appearing in the original application form submitted by the freedom fighter or the sanctioned letter issued by the Ministry.
5. Secondly, if the freedom fighter marries or has a daughter, either own or adopted, after the sanction of the pension, then family pension to the spouses or daughter shall not be admissible.

6. The learned Single Bench noted that the writ petitioner was already born on the date when the application was made but, at the time when making the application, she was married, for which her name was not there in the list. Subsequently, the writ petitioner's husband passed away and she became a widow. The learned Single Bench interpreted Clause – 5 of the Scheme and held that since the writ petitioner had already been born at the time of sanction of pension, but, since she was married at that juncture and not eligible, her name did find place in the original application and thus, it cannot be said that the writ petitioner comes within the exception clause of Clause – 5 of the Guidelines, which refers to subsequently-born daughters.
7. The second question, which was raised was whether the writ petitioner is eligible in view of the Pension Scheme of 1980 providing that only unmarried daughters are eligible and that there is no provision in the scheme for pension being provided to widowed daughters.
8. The learned Single Bench was of the view that in the Scheme, the expression used is “unmarried” and not “spinsters” and, therefore, it cannot be said that the widowed daughters, who are unmarried in every sense of the term, can be excluded from the purview of the said pension.
9. The other aspect was regarding “dependency” and the learned Single Bench opined that the rider imposed under the Guideline/Scheme takes care of the apprehension that a widowed daughter may get alimony from her deceased husband's estate and in such an event, she falls outside the purview of dependency, since then she would have an independent source of income and would be ineligible under the purview of the Scheme.

10. Thus, the learned Writ Court held that the writ petitioner being a widowed daughter of a deceased freedom fighter was entitled to get pension as provided in the 1980 Scheme, subject of course, to her being eligible otherwise, being a dependent of the estate of her father, not having any other independent source of income within the contemplation of the Scheme, from whatever source.
11. Therefore, the writ petition was allowed directing the appellants to take immediate steps for processing the application of the petitioner by treating her as eligible under the SSS Pension Scheme as a widowed daughter. The appellants were directed to ascertain that the writ petitioner does not have any independent source of income within the contemplation of the Scheme to make her otherwise ineligible for the benefit of the scheme.
12. The first objection raised by the appellants both before the learned Writ Court as well as before this Court was raised before the High Court of Punjab and Haryana in the case of ***Khajani Devi Vs. Union of India & Ors.*** reported in ***2016 0 Supreme (P & H) 3209*** and the Hon'ble Division Bench allowed the said appeal. The operative portion of the judgment reads as follows:-

“5. The underlying object in the clause of the Scheme listing eligible dependents is that only one be granted the pension. Therefore, the authorities have to construe the admissibility of benefit from that angle. It is not the case that the daughters are excluded altogether. An unmarried daughter finds mention in the list of eligible dependents. It would, thus, be a travesty to exclude a divorced daughter. There would be no rationality to the reason that the unmarried daughter can be included in the list of eligible dependents and a divorced daughter would stand excluded, particularly when she is the sole eligible dependent and thus, qualifies for the benefit, which is concededly made admissible only to one dependent. Even otherwise, we are of the opinion that a beneficial Scheme such

as the one in hand should not be fettered or constructed by a rigorous interpretation which tends to deprive the claimants of the benefit to result in virtual frustration or negation of the laudable motive of the Scheme itself. We also notice that the Ministry of Defence has issued instructions dated 14.12.2012 (on record as Annexure P8) which included a divorced daughter in the category of eligible dependents for grant of liberalized/special family pension beyond 25 years. We may extract the same herebelow:

“2. The above matter is considered by the Government and it has been decided in consultation with Department of P & PW that unmarried/widowed/divorced daughter shall also be eligible for grant of liberalised/special family pension beyond 25 years of age subject to fulfillment of other prescribed conditions as hitherto fore.”

6. Both the liberalized/special family pension and Swatantarta Sainik Samman Pension Scheme are intended to honour the valour of the uniformed people who laid down their lives or suffered for the cause of the country. We would, thus, not place any demeaning interpretation on the Scheme to deprive the unsung heroes of the country of benefits meant to ensure a life of dignity to their dependents.

7. With the aforesaid observations, we accept the appeal and direct that the benefit of Swatantarta Sainik Samman Pension Scheme shall be admissible to the divorced daughter as well. Consequently, letter (Annexure P5) and Show Cause notice (Annexure P7), by which the pension was stalled, stand quashed.”

13. The above decision was challenged by the Union of India before the Hon’ble Supreme Court in Special Leave Petition (Civil) Diary No.17706 of 2017, which was dismissed by a speaking order dated 27th September, 2019. Against the said order, the Union of India filed a **Review Petition (C) D.Nos.8205 of 2020**, which was dismissed by order dated 19th January, 2021. Not stopping with that, the Union of India filed **Curative Petition (Civil) No.181 of 2021**, which was dismissed by the Hon’ble Supreme Court by order dated 21st September, 2022.

14. Thus, the first issue raised by the appellants before us, has attained finality and has been decided against the appellants in the aforementioned decision and the appellants are precluded from rearguing the said point.
15. With regard to the rider as to “dependency”, the learned Single Bench has rightly issued directions to the appellants to ascertain as to whether the writ petitioner has any independent source of income within the contemplation of the Scheme to make her otherwise ineligible to the benefit of the Scheme.
16. Thus, we find no ground to interfere with the impugned order.
17. Accordingly, the appeal fails and stands dismissed. Consequently, the connected application (IA No. CAN 2 of 2024) also stands dismissed.
18. After we have dictated the judgment, the learned Additional Solicitor General submitted that the time for compliance of the order passed by the learned Single Bench may be extended.
19. The appellants are directed to comply with the directions issued by the learned Single Bench within a period of 12 weeks from the date of receipt of server copy of this judgment and order.
20. No costs.
21. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(BIVAS PATTANAYAK, J.)