REPORTABLE

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

RESERVED ON: 16.04.2026

DELIVERED ON: 07.05.2026

PRESENT:

THE HON'BLE MR. JUSTICE TAPABRATA CHAKRABORTY

AND

THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA

MAT 2332 OF 2023

WITH

IA NO. CAN 1 OF 2023

KUMARI SADHANA BERA

- VERSUS –

UNION OF INDIA AND ORS.

Appearance:

Mr. Ramdulal Manna, Adv.

Mrs. Manju Manna (Dey), Adv.

Mr. Sabyasachi Mandal, Adv.

Mr. Sayan Mukherjee, Adv.

... For the Applicant/Petitioner

Mr. Ashoke Kumar Chakraborty, Ld. A.S.G.I.,

Mr. Sukumar Bhattacharyya, Adv.

Mr. Tirthapati Acharya, Adv.

... For the Union of India

Reetobroto Kumar Mitra, J.:

1. The present appeal arises out of an order passed by a learned Single Judge of this Hon'ble Court on October 4, 2023, refusing the prayer of the appellant for grant of pension of her late father, a freedom fighter under the Freedom Fighter's Pension Scheme, 1972 which was later modified as Swatantrata Sainik Samman Pension Scheme, 1980.

2. The facts leading to the present appeal are brief and not in dispute:

    i. The father of the appellant, Krishna Pada Bera, had participated in the Quit India Movement in 1942 and had been imprisoned for a period of 6 months for such participation.

    ii. After independence, the Freedom Fighter's Pension Scheme, 1972 was promulgated and the said Krishna Pada Bera applied and was granted pension of Rs. 150/- per month which was later enhanced to Rs. 200/- per month on February 18, 1996. Krishna Pada Bera passed away leaving behind several sons and daughters.

    iii. The appellant filed an application for grant of pension with the authorities sometime in 2007 after the expiry of 11 years from the date of death of Krishna Pada Bera. She alone was entitled to the pension, being an unmarried daughter, dependant on her father.

iv. Between June and July 2007, the appellant had made multiple representations, which were not considered. This prompted the appellant to file a writ petition being WPA No. 2991 of 2009.

v. The said writ petition was disposed of, directing the authorities concerned to consider the case of the appellant on the basis of her representation, within a period of six months. The said representation was considered and rejected on August 7, 2012.

vi. The appellant made a fresh representation on December 13, 2016, which was considered and rejected on January 9, 2017, in line with the rejection of August 7, 2012. The rejections were not challenged by the appellant and it was only after a lapse of more than 5 years from the second rejection, that the petitioner approached this Hon'ble Court with a second writ petition being WPA No. 19043 of 2023.

vii. This writ petition was dismissed by the impugned order of October 4, 2023, which is assailed before us.

3. Mr. Ramdulal Manna, learned advocate appearing for the appellant, has raised the following issues:

a. The appellant is entitled to the pension which was being paid to her father till his death in 1996. The appellant being the only unmarried daughter is entitled to such pension.

b. There was no time constraint for making an application for pension in the original scheme of 1972 or in the modified scheme of 1981.

c. Timelines were introduced only in 2014, vide office memorandum 45/03/2014-FF(P) dated August 6, 2014.

d. The pension scheme being a beneficial legislation cannot be constricted by introduction of definite timelines. Hence this portion of the modified scheme of 2014 is bad in law and liable to be set aside.

e. He has placed reliance on several decisions, enumerated as under: Alaka Bera @ Aloka Bera vs. Union of India and Ors., WPA 7071 of 2023; Kanchan Barman vs. Union of India and Others, WPA 14008 of 2023; to establish that similarly situated persons have been granted pension regardless of constraints, and there is no reason why the appellant herein should be treated in a discriminatory manner as compared to Alaka Bera (supra) and Kanchan Barman (supra).

4. Mr. Ashoke Kumar Chakraborty, learned Additional Solicitor General of India, has raised the following issues:

i. The scheme of 1972 and its subsequent modifications are schemes not framed under Article 309(A) of the Constitution of India and therefore do not have the force of a statute.

ii. Though these schemes are all benevolent in nature, the benchmark parameters set forth in such schemes and their subsequent modifications have to be strictly adhered to, as any infraction therefrom would result in ineligible persons taking advantage of and getting benefits of such schemes.

iii. The applications made by the appellant are squarely barred by limitation. Even though the strict timelines of limitation as prescribed under the Limitation Act, 1963 may not be applicable, as reiterated by the Hon'ble Supreme Court of India and as held by all High Courts, any monetary claim has to be made within a period of 3 years and any infraction of such timeline has to be well explained.

iv. Thus, even if it is considered that there can be no timelines in beneficial legislations, that delay has to be explained. The appellant herein has not given any explanation of the delay caused in making the application for pension by her.

v. In support of his submissions, he has relied upon the following decisions of the Hon'ble Supreme Court of India and of this Hon'ble Court:

a. AIR 1964 SC 1006,

b. 2021 4 SCC 535,

c. 2022 5 SCC 731 and

d. 2017 4 WBLR (Cal) 491.

5. We have heard the learned advocates appearing for the parties at length and perused the records as well as considered the judgements relied upon by the parties.

6. It is not in dispute that the legislation with which we are presently concerned is a benevolent legislation. It was promulgated with the idea and purpose of the nation showing gratitude for those people who had fought for and obtained the freedom of this great nation.

7. It was as a mark of honour and gratitude for such freedom fighters that it was decided that a lifetime pension would be granted to all those freedom fighters who had sacrificed a substantial period of their lives or had suffered ignominy in the hand of the foreign rulers. There were certain parameters set forth, as to who and how they would be entitled to obtain such pension. This was the

scheme framed in 1972 called the Freedom Fighters' Pension Scheme, which commenced on August 15, 1972.

8. Over a period of time, certain amendments and modifications were made to such scheme, starting from 1981, 1990, 1992 and 2014. There was an office memo on February 2017 which was more in the nature of a guideline to the concerned banks as to why and under what circumstances and the manner to release pension.

9. It is also not in doubt that prior to 2014 there were no timelines fixed for making the application.

10. Over a period of time the portals of the scheme were enlarged to extend the pensionary benefits of the freedom fighter to their unmarried and widowed daughters.

11. The 2014 guideline for disbursement of the pension specified that the transfer of pension to spouse or the daughter had to be made within a period of six months from the date of death of the freedom fighter. It was also specified that application received after six months shall not be considered by the bank but be referred to the Ministry. The Ministry would take a view whether the dependent or not or whether any arrears are to be paid. It was also specified that the application made by the daughter would be treated as a fresh application and not a continuation of the pension given to the freedom fighter.

12. To overcome the disparity contained in the guidelines of 2014, a communication was made on February 23, 2017 by the Deputy Secretary of the Government of India vide his office memo dated December 30, 2015. This merely clarified that the uniform income ceiling would be applicable to all persons whether holding a public office or a private job.

13. Upon perusal of the scheme of 1972 and the scheme of 1981 and the amendments thereto, the following conditions appear to be a sine qua non to enable widow/unmarried daughter of a freedom fighter to obtain the pension:

a. The daughter has to be unmarried with no source of income.

b. She has to apply within six months from the date of death of the freedom fighter.

c. A declaration that she is not employed nor receiving pension from any other sources.

d. If employed, she is not earning in excess of Rs. 20,000/- per month.

14. The issue raised by the appellant as to the definition or meaning of the term "otherwise eligible" is that such heir of the freedom fighter qualifies as an eligible candidate for grant of pension in terms of the parameters set forth in the scheme and the subsequent guidelines thereto. These parameters as set forth hereinbefore are clear and unequivocal. The appellant, having waited for a

period of 11 years at the first instance to apply and thereafter for a period of a further 11 years to approach this Hon'ble Court, upon rejection of a representation in 2012, is clearly not eligible under any circumstances.

15. These are not alternative conditions but conditions which have to be fulfilled by the applicant in aggregate. All conditions are to be met by the applicant to entitle her to get the pension which was being paid to the freedom fighter.

16. The applicant had made an application for pension for the first time only in June 2007, more than 11 years after the death of her father, the freedom fighter, Krishna Pada Bera, on February 18, 1996. This application was immediately sent to the concerned Ministry of Home Affairs with a request to take a decision in the matter.

17. Since the concerned ministry had not acted, the writ petition WPA No. 2991 of 2009 was disposed of by directing the government to decide the appellant's claim and her right to get pension in terms of such order. By an order of August 6, 2012, the said application was rejected primarily on the ground of long lapses of time, as well as the fact that she was gainfully employed between 1979 and 2007.

18. These findings in the order of rejection dated August 6, 2012 were never challenged. In fact a second representation on the very same lines was made before the same authority, in December 2016, which was also rejected in line

with the earlier rejection of August 2012. Thus, the findings on the basis of which the rejection was made have attained finality and have now become binding on the appellant.

19. It was only thereafter on August 6, 2014 that a fresh set of modifications were introduced which contained stricter guidelines regarding the transfer (within six months from the date of death of the pensioner) along with other benchmark parameters as contained in Clause 6.1.2.

20. The appellant has argued that the honorarium that she received from her place of employment from 1979 to 2007 was a meagre Rs. 7000/- while clause (ii) of 6.1.2 of 2014 amendment set a benchmark quantum of Rs. 20,000/- per month thus not having the requisite income of Rs. 20,000/- per month, the appellant is entitled to obtain the pension.

21. This issue has been clarified in the office memorandum bearing no. F No. 45/03/2014-FF(P) dated February 23, 2017. It relates to the disbursement of the arrears which had been stopped to the spouse/daughter, provided they gave requisite undertaking. Thus, a person getting pension prior to 2017, whose pension had been stopped on the ground that she was drawing a sum less than Rs. 20,000/- a month would be rejuvenated. It did not give a fresh right to an applicant, who had otherwise not been granted pension. Thus, the appellant would not be covered under this clause.

22. Even if pension was to be construed as a right, it is not an unbridled right, but one which comes with some amount of restrictions or qualifications. Timelines do not constrict a right but merely discipline the mode and manner of applying for such right.

23. The appellant has to explain at least three sets of timelines.

24. First the period of 11 years from the date of death of the father in 1996 till she made the first application for pension in 2007.

25. Second the rejection of the representation of 2007 and 2012, which was never challenged.

26. Third from 2012 till 2023 when she made the second writ petition.

27. There is no explanation to the first default between 1996 and 2007. Ostensibly she was in service during the period and retired in 2007, whereupon she immediately made a representation to obtain the pension on the ground that she was unmarried and dependent on her father.

28. The rejection of 2012 had not been challenged, but a reiteration of such representation was made in December 2016 which was rejected a second time by the same authority in line with the earlier rejection in 2012. Even the second rejection was never challenged by the appellant. There is no explanation to this indifferent approach either.

29. The third limb of delay, even if we were to assume that the representation was rejected in 2017, stems therefrom till the filing of the writ petition in 2023, for a period of more than 6 years. There is absolutely no explanation to this timeline either.

30. The writ petition does not challenge any of the clauses in the 1972 scheme or the scheme modifications thereafter of 1981 or 1992 or the amendments of 2014. There is no pleading challenging such scheme or its amendments and is clearly a reiteration of her claim for pension on a very basic ground.

31. The decision relied upon by Mr. Manna, primarily on Alaka Bera (supra) and Kanchan Barman (supra) were on a completely different issues. The issues concerned therein related to the date of application made by the petitioner. The said issues were far more restricted as the petitioner stood on a better footing than the appellant herein.

32. The decision relied upon by Mr. Chakraborty, Ld. A.S.G.I., for the Union of India is clear and unambiguous that a monetary claim made in a writ petition, even if there is no specified timeline, will have to be explained if it has been made beyond a period of 3 years. In fact the decision relied upon by him reported in 2017 4 WBLR (Cal) 491 of the co-ordinate bench is clear.

33. The question of whether the petitioner was receiving an honorarium equivalent to Rs. 20,000/- per month or not could be considered only if the appellant

overcame the threshold hurdle for her application, relating to timelines. The appellant was unable to overcome such hurdle as there was no explanation for any of the three delayed timelines, as discussed herein before.

34. We thus hold that the appellant is not entitled to the pensionary benefits which were given to her father under the scheme of 1972 and 1980 in view of the following findings:

a. On the date of death of the father on February 18, 1996, the appellant was not a dependent as she was regularly employed and was drawing a salary.

b. There is no explanation to any of the delayed timelines especially as to how from 1996 till 2007 she had not applied.

c. Not having challenged the rejection dated August 6, 2012 of her representation, she cannot challenge the grounds of rejection, presently, as the same has attained finality.

d. She has not challenged the rejection made on January 9, 2017, which has also attained finality.

e. She has not challenged the scheme or its amendments in the writ petition and will have to abide by the same to be qualified for grant of pension. Particularly, the fact that she has not given any explanation for the delay in pursuing her remedies. Thus, the appellant was unable to cross the threshold parameter of stipulated timelines in the scheme and the guidelines.

f. Since she has not crossed any of the hurdles as stipulated in the scheme and amendments thereto, she is not entitled to any pension under the Scheme of 1980.

35. In view of the aforesaid findings which have been sufficiently dealt with by the learned single Judge, we do not find any reason to interfere with the impugned judgement and order of October 4, 2023.

36. Appeal and pending applications, if any, are dismissed. There shall be no order as to costs.

37. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Reetobroto Kumar Mitra, J.) **(Tapabrata Chakraborty, J.)**