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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

KUNTA DEVI — Appellant

Vs.

UNION OF INDIA AND OTHERS — Respondent

(Before : Pradeep Kant, J and Shri Narayan Shukla, J)

Writ Petition No.6129 (M/B) of 2003

Decided on : 29-03-2008

A. Freedom Fighters' Pension Scheme — Central Government Scheme vs. State Government Scheme — Criteria for Grant of Pension — Standard of Proof — Central government cannot refuse pension for a freedom fighter's widow when the State Government has already granted it based on the same facts and conditions, unless the Central Government's scheme has explicitly different, unfulfilled criteria. (Paras 1, 5)

B. Freedom Fighters' Pension Scheme — Standard of Proof — Criminal Trial vs. Pension Claim — The standard of proof for claiming freedom fighter's pension is not as stringent as in a criminal trial; a liberal and non-technical approach is required, acknowledging the difficulty of obtaining documents after many decades. (Para 6)

C. Freedom Fighters' Pension Scheme — Presumption in Favour of Claimant — Once there is a probability, based on evidence, that the claimant suffered imprisonment for the freedom struggle, a strong presumption in their favor should be drawn, rebuttable only by clear, reasonable evidence. (Para 6)

D. Freedom Fighters' Pension Scheme — Destruction of Records — Non-availability of Jail Records — Secondary Evidence — If primary evidence like jail records are unavailable due to destruction or weeding out, secondary evidence (District Magistrate's certificate, co-prisoner affidavits) must be

considered. Pension cannot be denied solely due to the absence of such records when other credible evidence exists. (Paras 9, 10)

E. Freedom Fighters' Pension Scheme — Hypertechnical Approach — Authorities cannot adopt a hypertechnical approach, ignoring the scheme's purpose to benefit honest claimants, especially when the State has already recognized the entitlement. (Paras 7, 8, 9)

F. Freedom Fighters' Pension Scheme — Judicial Intervention — When overwhelming evidence supports the claim and the denial is based on hypertechnical grounds, courts may directly order the grant of pension, especially considering the advanced age of the petitioner and previous recognition by the State. (Paras 11, 12, 13)

JUDGMENT

1. By this petition, Smt. Kunta Devi, who is the widow of late Shri Jagesar Maurya resident of village Baghaura post office Bhoja Mau, District Pratapgarh, has approached this Court claiming pension as widow of freedom fighter, which has been refused by the Central Government though the State Government had paid the same under the Pension Scheme. The petitioner is a lady of aged about 96 years. Admittedly, her husband, Shri Jagesar Maurya was treated as freedom fighter by the State Government and he was being given the pension, which is evident by the order dated 26.11.1975 issued by the Government awarding pension of Rs.70/ per month as freedom fighter to him. The aforesaid order of awarding pension by the State Government says that the pension is being given to Shri Jagesar Maurya as recognition of his services, sacrifice and for going to jail and bearing torture during the freedom struggle. The petitioner has also been awarded the pension as widow of the aforesaid freedom fighter by the State Government, but the Central Government has rejected the award of such pension on the ground that though the certificate of District Magistrate certifies that her husband was arrested on 28.8.1942 and was acquitted by the Court on 26th of March, 1943, but the records of District Jail, Pratapgarh do not show the name of the petitioner's husband and therefore it does not stand proved that her husband has suffered torture and the other ground is that the State Government has not recommended for the award of pension.

2. Shri H.N. Srivastava, appearing for the Central Government submitted that criteria for award of freedom fighter's pension is different in the Central Government as against the criteria which is prevalent in the State Government. However, he has not been able to show any difference nor has placed before us the scheme of the State Government.

3. Shri D.K. Upadhyay, learned Chief Standing Counsel clarifies that the main difference between the two schemes is that in the State Government scheme the period of detention in jail is only two months, whereas in the Central Government scheme it is for six months.

4. It is not in dispute that in matters where pension is claimed by the freedom fighters or their heirs, necessary documents are to be supplied by such claimant and the Central Government or the State Government as the case may be, has to consider about the eligibility of the award of such pension. The District Magistrate in the instant case placing reliance upon Register No.8 in Police Station GRP, Pratapgarh has certified and verified that Shri Jagesar Maurya was challaned on 18th of August, 1942 in Crime No.29, under Section 395, 436 and 435 IPC and was acquitted by the Court on 26th of March, 1943 for want of evidence. There is another case registered as Case No.49/42, under Section 395, 436, 435 IPC, wherein also he was arrested on 18th of August, 1942 and acquitted on the same very date i.e. 26th of March, 1943 for want of evidence.

5. We fail to appreciate that when the State Government under the same conditions, wherein Shri Jagesar Maurya was found to have undergone torture in freedom struggle by going to jail for more than six months, has awarded the pension during his life time and after his death to the widow of the freedom fighter then how the pension can be refused by the Central Government. It would had been a different matter if the conditions prescribed by the Central Government for the award of pension were different as against the conditions in which the pension was awarded by the State Government and of course in the absence of fulfillment of such conditions as laid down by the Central Government the pension can be refused to her. Here is a case where the only doubt which has been raised by the Central Government is regarding the fact as to whether Shri Jagesar Maurya was arrested and sent to jail in connection with freedom struggle and that his period of detention in jail was more than six months or not.

6. It is true that for claiming pension as freedom fighters or heirs of freedom fighters the person who claims such pension has to provide all the documents and the material which is scrutinized by the Central Government as well as the State Government as the case may be, but the burden of proof or the standard of proof required for the purpose is not of that like a criminal trial. The schemes floated by the Central Government as well as by the State Government itself take care of this fact being alive to the fact that after such a long time it may not be possible to have any document to verify the sacrifice in freedom struggle or a person who has undergone severe torture/tortures by going to jail for the prescribed period, therefore, alternatives have been suggested and provided in such schemes. One such alternative is that the District Magistrate may give a certificate after verifying the record as may be necessary and available about the fact that the person has remained in jail or has undergone sentence, or has been acquitted because of lack of evidence. The other alternative is that the freedom fighter who claims pension can get this fact verified by two coprisoners who were in jail alongwith him when he was under detention. In the case of *Gurdial Singh v. Union of India and others*, reported in 2002 (1) UPLBEC 217 the Supreme Court considering the question of standard of proof required for grant of pension, observed as under:

7. The standard of proof required in such cases is not such standard which is required in a

criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to however such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters re expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of 'beyond reasonable doubt' Once on the basis of the evidence it is probabilist that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

7. The Hon'ble Supreme Court further made the following observation:

8. We have noticed with disgust that the respondent authorities have adopted a hypertechnical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the scheme intended to give the benefit to the sufferers in the freedom movement. The contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the scheme. The impugned order also appears to have been passed with a biased and close mind completely ignoring the verdict this Court in Mukund Lal Bhandari's case. We further feel that after granting the pension to the appellant, the respondents were not justified to reject his claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High Court has completely ignored its earlier judgments in CWP No.3790 of 1994 entitled Mohan Singh v. Union of India, decided on 1.6.1995 and CWP 14442 of 1995 decided on 11.12.1995.

8. In the instant case the Central Government says that in jail record the name of the petitioner's husband does not find place and the State Government has not recommended in favour of grant of pension.

9. The District Magistrate having verified from the record of the police station giving the exact crime number as well as reason for acquittal, merely because in the jail record his name was not found, in the facts and circumstances of the case, could not deprive the petitioner, the pension to which she is otherwise entitled. The observation by the Central Government that in the District jail record his name is not available, may not be sufficient to deny the pension particularly when on the basis of same detention in jail, the State Government has treated the husband of the petitioner as freedom fighter and has awarded

pension, but since the pension scheme of the Central Government had come into force in the year 1980, the pension under the said scheme could not be awarded, to him.

10. Shri D.K. Upadhyay, learned Chief Standing Counsel also brought to our notice that the report sent by the Superintendent of Police, Pratapgarh shows that though the name of the petitioner's husband did not find place in the record of the jail, but it is also a fact that considerable bulk of record was destroyed. The record of the jail and the entries made therein, may be of relevant consideration and it must also be verified that the person claiming pension under freedom fighter quota was actually in jail or not, for the required period, in connection with the freedom movement, but if the record is not available either for being weeded out or having been destroyed or not available for any other reason, secondary evidence can be led and the Government concerned would be under an obligation to consider the claim in that light. Merely because the jail records are not available since they stand destroyed, the benefit of pension cannot be denied to such a person, in such circumstances. Jail records having been destroyed, it can not be conclusively presumed that the husband of the petitioner did not remain in jail, particularly when there is admissible evidence to the contrary.

11. On the basis of facts admitted/established, we are of the view that there cannot be any possible reason for not allowing the pension by the Central Government to the petitioner. We accordingly, set aside the order dated 27.6.2001.

12. Normally, in such cases, a direction is issued for reconsideration of the matter by the authority concerned, but in the peculiar facts of the case where the petitioner is 96 years of age and her husband was declared by the State Government a freedom fighter, who was being paid pension since the year 1975 and after his death, the said pension is being paid to the petitioner also, being his widow and on being satisfied that the certificate issued by the District Magistrate verifying that the petitioner's husband has remained in jail in freedom struggle at the time when the 'Quit India Movement' was continuing, for a period of more than six months, we direct that she should be awarded the freedom fighter pension being widow of Shir Jageshar Maurya, as per rules by the Central Government.

13. The writ petition is allowed. The pension shall be calculated within a maximum period of two months from the date of receipt of a certified copy of this order and the arrears shall be paid within next one month. The pension so fixed shall be paid regularly.

(Petition allowed)