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UNION OF INDIA

v.

KRISHNA MODI & ANR.

(Civil Appeal No. 909 of 2022)

B

FEBRUARY 03, 2022

**[VINEET SARAN AND ANIRUDDHA BOSE, JJ.]**

- Freedom Fighters – Pension – Scheme – Eligibility – Swatantrata Sainik Samman Pension Scheme, 1980 – Claim for pension under – Validity – Held: Claim of respondent no. 1 was, for the first time, made on 27.12.1982, whereas the Freedom Fighters Pension Scheme existed in year 1972, which was only amended in the year 1980 – Hence, it cannot be said that the respondent filed his claim promptly – Under the said scheme, a person eligible for the benefit should have remained underground for more than six months – It is not understood as to how respondent no. 1 could be categorised as a person who remained underground for a period of six months or more, merely on the basis of certificates issued by certain freedom fighters, who were themselves in jail during the period when they certified that respondent no. 1 had remained underground – Even assuming that the certificate issued by the school authorities is authentic, simply because respondent no. 1 did not attend the school during a particular period, when he was merely about 12 years of age, would not amount to respondent no. 1 having remained underground because of his participation in the freedom struggle – Further, there was no recommendation of the State Government but the application of respondent no. 1 was merely forwarded by the State Government – Mere fact that the State Government granted pension under some freedom fighters pension scheme of the State Government would not, by itself, entitle respondent no. 1 to claim under the scheme of the Central Government, unless respondent no. 1 fulfilled the conditions of the Central Government Scheme, which in the present case is SSS Pension Scheme, 1980 – On facts, the High Court overlooked the various requirements under the SSS Pension Scheme, 1980, which were to be fulfilled by respondent no. 1 for grant of benefits of the Scheme, and allowed grant of pension to respondent no. 1 merely on basis of sympathy, and because the State Government had granted*

*benefit under a separate scheme of the State Government, and on certain presumption of respondent no.1 having remained underground for a certain period without there being proper authentication as required under the Scheme in question – Judgment of High Court set aside.*

*Union of India v. Aytar Singh, (2006) 6 SCC 493 : [2006]*

### **3 Suppl. SCR 666 – referred to.**

## **Case Law Reference**

[2006] 3 Suppl. SCR 666 referred to Para 14

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 909 of 2022 C

From the Judgment and Order dated 17.02.2020 of the High Court of Madhya Pradesh at Jabalpur Bench in W.A. No.1971 of 2019.

Jayant K. Sud, ASG, Merusagar Samantray, Ms. Preeti Rani, Om Prakash Shukla, Raghav Sharma, Ms. Garima Prasad, A. K. Sharma, B. V. Balaram Das, Adys. for the Appellant. D

Rajeev Kumar Bansal, Ganesh Barowalia, Girish Patel, Advs. for the Respondents.

The following Order of the Court was passed :

## ORDER

1. Leave granted.
  2. The present matter relates to grant of pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (for short ‘SSS Pension Scheme’) introduced by the Central Government on 15.08.1981.
  3. The brief facts of this case are that in response to the SSS Pension Scheme, 1980, the respondent no. 1 submitted an application before the Central Government on 27.12.1982 claiming freedom fighter’s pension on the ground that he suffered eight months confinement in the freedom movement in the year 1942, in the form of being underground for such period. It is the case of the respondent no. 1 that from the period of 21.11.1942 to 20.08.1943 (during which he did not attend the school), he remained underground and hence, would be entitled for pension under the said SSS Pension Scheme. Since the application of the respondent no. 1 was not considered, he filed a writ petition before the

- A Madhya Pradesh High Court, which was disposed of by giving a direction to the appellant/Union of India herein to decide the claim of the respondent no. 1. The matter travelled to the High Court on several occasions and ultimately, on 03.02.2009, the application of the respondent was rejected by the appellant.
- B 4. Aggrieved by the said order, the respondent no. 1 filed a writ petition before the Single Judge of the Madhya Pradesh High Court, which was allowed on 14.02.2019 and after setting aside the order dated 03.02.2009 passed by the appellant, the appellant was directed to grant pension to the respondent no. 1 along with 6% interest per annum.
- C Challenging the said order the appellant filed an intra court appeal before the Division Bench of the High Court, which was dismissed on 17.02.2020. Aggrieved by the same, this appeal by way of special leave petition has been filed.
  - 5. The submission of Mr. Jayant K. Sud, learned Additional Solicitor General appearing for the appellant, is that the respondent no. 1 was born on 05.07.1930 and was only about 12 years of age when he claims to be underground during the freedom movement of 1942. It is contended that there is no specific proof of the respondent no. 1 having remained underground during the period which is being claimed by him, except for the fact that the School certificate obtained after about 40 years indicates
  - D that the respondent no. 1 had attended school from 13.7.1942 to 20.11.1942 and from 21.08.1943 to 13.09.1947. Learned ASG has submitted that merely because the respondent no. 1 did not attend the school during the intervening period would not, by itself, mean that respondent no. 1 remained underground because of his participation in the freedom movement. He has, however, also disputed the issuance of school certificate issued by the school authorities. On merits, it has been submitted that the freedom fighters pension scheme was there in the year 1972 and the SSS Pension Scheme, 1980 was nothing but amendment of the said scheme to the extent of raising eligibility to all the freedom fighters as token of ‘Samman’ to them, by deleting the provision in the earlier
  - E scheme with regard to ceiling on annual income for being eligible for getting such pension. It is, thus, contended that the application filed by the respondent no. 1 was with a delay of twenty years.
  - F 6. It is further contended that for being eligible, what was required was that a person should have remained underground for more than six months, provided he was a proclaimed offender; or one on whom an

award for arrest/head was announced; or one for whom detention order was issued but not served, which, according to the learned ASG, was not so in the case of the respondent no.1. He also submitted that in the absence of the respondent no. 1 having furnished the Non-availability of Record Certificate (NARC), the case of the respondent no. 1 could not have been considered merely on the basis of certificate issued by the freedom fighters who had undergone imprisonment for five years or more. Learned counsel has submitted that the freedom fighters, who had allegedly issued the certificate, were themselves in custody during the period in question when the respondent no. 1 claims to have remained underground, and since the persons issuing the certificate were themselves in jail, they could not have certified that the respondent no. 1 was underground during such period.

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7. The further contention is that the applicant/respondent no.1 was required to provide the exact period of underground suffering which, according to the learned counsel, has not been provided by the respondent no. 1. It is submitted by learned ASG that in the absence of any recommendation by the State Government, which was mandatorily required, the application of the respondent no. 1 was rightly rejected, as the State Government had merely forwarded the application of the respondent no. 1 without any recommendation.

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8. Per contra, Mr. Rajeev Kumar Bansal, learned counsel appearing for the respondent no. 1 contended, that the learned Single Judge as well as the Division Bench of the High Court have given a categorical finding of fact that the requirement as per the SSS Pension Scheme, 1980 is fulfilled by the respondent no. 1 and, thus, the claim of respondent no. 1 has rightly been allowed under the said scheme.

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9. It has been stated that under a similar scheme of the State Government (though the same is not on record) the respondent no. 1 has been receiving the freedom fighter's pension and, thus, there is no reason why the same benefits be not accorded to him under the Central Government SSS Pension Scheme. He, thus, contended that the judgments of the High Court do not call for any interference and this appeal deserves to be dismissed.

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10. We have heard learned counsel for the parties at length and have perused the record.

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- A        11. There is no denial of the fact that the claim of the respondent no. 1 was, for the first time, made on 27.12.1982, whereas the Freedom Fighters Pension Scheme existed in year 1972, which was only amended in the year 1980. Hence, it cannot be said that the respondent filed his claim promptly. Under the said scheme, a person eligible for the benefit should have remained underground for more than six months, provided he was a proclaimed offender; or one on whom an award for arrest/head was announced; or one for whom detention order was issued but not served. In the present case, there is no order by which the respondent no. 1 was declared as a proclaimed offender. Further it was not the claim of the respondent no. 1 that an award for arrest of the respondent no. 1 was ever announced, nor is it the case that any detention order was issued but not served on the respondent no. 1. Hence, it is not understood as to how the respondent no. 1 could be categorised as a person who remained underground for a period of six months or more, merely on the basis of certificates issued by certain freedom fighters, who were themselves in jail during the period when they certified that the respondent no. 1 had remained underground.
- B        12. Even assuming that the certificate issued by the school authorities is authentic, simply because the respondent no. 1 did not attend the school during a particular period, when he was merely about 12 years of age, would not amount to respondent no. 1 having remained underground because of his participation in the freedom struggle. Further, if the law or the pension scheme in question requires an application to be accompanied by NARC, then in absence of the same, the application of the respondent no. 1, if not considered, cannot be faulted.
- C        13. Further, the scheme requires the State Government to not merely forward the application but recommend such application for grant of pension. In the present case, it is not disputed that there was no recommendation of the State Government but the application of the respondent no. 1 was merely forwarded by the State Government. The mere fact that the State Government has granted pension under some freedom fighters pension scheme of the State Government would not, by itself, entitle the respondent no. 1 to claim under the scheme of the Central Government, unless the respondent no. 1 fulfills the conditions of the Central Government Scheme, which in the present case is SSS Pension Scheme, 1980.
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14. We are conscious of the fact that those persons who had participated in the freedom struggle of our country, because of which we got independence, should certainly be honoured and if they are entitled to any benefits, which includes pension, they should definitely be provided such benefit. However, such benefits should be awarded only to those persons who are entitled for the same under any Scheme of the Government. This Court in the case of "Union of India Versus Avtar Singh" (2006) 6 SCC 493, has in paragraph no. 8 of the said judgment held as under:

“8. ....The genuine freedom fighters deserve to be treated with reverence, respect and honour. But at the same time it cannot be lost sight of that people who had no role to play in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in the case of the freedom fighters, most of whom in the normal course are septuagenarians and octogenarians.”

15. In view of the aforesaid facts, where the Single Judge, as well as the Division Bench of the High Court, have overlooked the various requirements under the SSS Pension Scheme, 1980, which were to be fulfilled by the respondent no. 1 for grant of benefits of the Scheme, and have allowed the grant of pension to respondent no. 1 merely on the basis of sympathy, and because the State Government has granted a benefit under a separate scheme of the State Government, and on certain presumption of the respondent no. 1 having remained underground for a certain period without there being proper authentication as required under the Scheme in question, we are of the opinion that the said judgments deserve to be quashed.

16. Accordingly, this appeal is allowed and the judgments of the High Court dated 14.02.2019 and 17.02.2020 are set aside.

17. No order as to costs.

18. Before parting with the case, we record our appreciation for the assistance provided by Mr. Rajeev Kumar Bansal, who has appeared as the counsel appointed by the Supreme Court Legal Services Committee for the respondent no. 1.