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UNION OF INDIA

v.

A. ALAGAM PERUMAL KONE & OTHERS

(Civil Appeal No.680 of 2021)

B

FEBRUARY 22, 2021

[ASHOK BHUSHAN AND R. SUBHASH REDDY, JJ.]

Freedom Fighter Pension: Claim for pension under Swatantrata Sainik Samman Pension Scheme – First respondent at first instance had applied for grant of pension in the year 1997 claiming that he was underground during the Quit India Movement of 1942 i.e. during the period from August, 1942 up to a period of more than six months – Non-Availability of Records Certificate (NARC) from the Government was not produced along with the first application and merely a certificate, certified by the C.J.M., Madurai, was produced – The first application, which was forwarded to the appellant, was without any specific recommendation – Claim was considered and rejected – The said order became final and the same was not questioned – Nearly after 13 years of such rejection, first Respondent again claimed pension under the Swatantrata Sainik Samman Pension Scheme on the plea of his imprisonment for more than six months for participating in the Quit India Movement – In the said application, he stated that he was imprisoned for more than six months i.e. from 05.01.1944 to 05.07.1944, which was in variance to the period which he has mentioned in the first application – Without issuing notice and without giving opportunity to the appellant to file counter affidavit, High Court disposed of petition by granting pension – On appeal, held: Claim of the first Respondent was under the scheme, notified by the appellant-Government – The scheme prescribes to file certain documents to authenticate the imprisonment of a claimant as a freedom fighter – Whether the claimant fulfills the criteria or not, it is for the competent authority to examine it – Moreover, when the application of the first Respondent was already rejected in the year 1997, when such rejection order became final, it was not open for the first Respondent to make a claim for second time for pension again by way of fresh application – When such serious factual disputes emerge for consideration, the High Court ought not to have

disposed of the petition filed by the Respondent without even issuing notice and giving opportunity to file counter affidavit to rebut the allegations made by the appellant. A

Allowing the appeal, the Court

HELD: 1. Whether the claimant fulfills the criteria or not, it is for the competent authority to examine it. Even before the application is considered by the competent authority, in exercise of powers of judicial review, the High Court should not have issued any directions for grant of pension. In this case, it is also to be noticed that earlier the claim of the 1st Respondent is already rejected and the said order has become final. After perusal of the order passed by the learned Single Judge and the Division Bench, we are of the view that no valid reasons have been assigned to grant relief to the 1st Respondent for grant of pension. It appears that the 1st Respondent has not disclosed his earlier rejection by producing the earlier orders while making the application for the second time before the appellant and also before the High Court. [Para 25][803-E-G] B C D

2. In any event, when such serious factual disputes emerge for consideration, the High Court ought not to have disposed of the petition filed by the Respondent without even issuing notice and giving opportunity to file counter affidavit to rebut the allegations made by the appellant. [Para 26][803-H; 804-A] E

3. In the instant case, the appellant stands on a better footing, for the reason that although the application made by the 1st Respondent on 10.04.1997 was rejected and the said order has become final, he again approached the appellant with the same request. Even before the Competent Authority considers the application, the 1st Respondent approached the High Court by filing Writ Petition and the High Court, not only entertained the petition, but disposed of the same without even notice and opportunity of filing counter affidavit to the appellant. Even the Division Bench of High Court has not considered various grounds raised by the appellant, while confirming the order of the Single Judge. [Paras 28, 29][804-D-F] F G

4. It may be true that the 1st Respondent is getting pension as per the scheme, mooted by the State, but, at the same time, to H

- A **claim pension under the scheme of 1980, the 1st Respondent has to furnish the required proof as contemplated under the scheme. When the claim is under a particular scheme, unless one fulfills the eligibility criteria for grant of pension, as mentioned in the scheme, no applicant can claim such pensions, as a matter of right. [Para 30][804-G]**

- B *W.B. Freedom Fighters' Organization v. Union of India and Others* **2004 (7) SCC 716 : [2004] 3 Suppl. SCR 665; Union of India v. Bikash R. Bhowmik and Others** **2004 (7) SCC 722; Union of India v. Sitakant S. Dubhashi and Anr.** **2020 (3) SCC 297: [2020] 3 SCR 736 – referred to.**

- | | <u>Case Law Reference</u> | |
|---|--------------------------------|----------------------------|
| | [2004] 3 Suppl. SCR 665 | referred to Para 19 |
| | 2004 (7) SCC 722 | referred to Para 20 |
| D | [2020] 3 SCR 736 | referred to Para 21 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 680 of 2021.

From the Judgment and Order dated 29.08.2018 of the High Court of Madras at Madurai in W.A. (MD) No. 907 of 2018.

- E Ms. Madhvi Divan, ASG, B. V. Balaram Das, Ms. Diksha Rai, Ms. Nupur Sharma, Samjyor Lepcha, Advs. for the Appellant.

Divyanshu Srivastav, Ms. Garima Bajaj, Nikhil Bamal, Advs. for the Respondents.

- F The Judgment of the Court was delivered by
R. SUBHASH REDDY, J.

1. Leave granted.

- G 2. This appeal is filed by the Union of India, aggrieved by the judgment and order dated 29.08.2018 passed in W.A.(MD) NO. 907 of 2018 by Madras High Court (Madurai Bench), whereby, the appeal of the appellant is dismissed confirming the order of the learned Single Judge, passed in W.P.(MD) NO. 17290 of 2017.

- H 3. By Order dated 26.10.2017, passed in W.P.(MD) No.17290 of 2017, filed by the 1st Respondent herein, while disposing of the writ petition, directions were issued to the appellant herein, to grant Freedom

Fighter's Pension to the 1st Respondent under Swatantrata Sainik Samman Pension Scheme and pass suitable orders within a period of four weeks from the date of receipt of the order. A

4. Aggrieved by the order of the learned Single Judge, the appellant herein, preferred writ appeal under Clause 15 of the Letters Patent and the same is dismissed by the impugned order. B

5. The Respondent No.1 herein, has submitted his first application for grant of pension under Swatantrata Sainik Samman Pension Scheme on 10.04.1997, which was forwarded by the 2nd Respondent through 3rd Respondent. In the said communication, which was received by the appellant on 26.07.2001, it was observed that the application was not properly filled up and the certificate issued by one of the certifiers was vague. Non-Availability of Records Certificate (NARC) was not produced from the competent authority, as per the scheme. In absence of any categorical recommendation made by the 2nd Respondent, the application made by the 1st Respondent, at first instance, on 10.04.1997, was rejected by the appellant vide its letter dated 27.02.2004. Thereafter, for about a period of 13 years, no steps have been taken by the 1st Respondent and on 29.08.2017, he again sent a communication to the appellant herein, for grant of pension from 2011 under Swatantrata Sainik Samman Pension Scheme, stating that he was imprisoned for more than six months from 05.01.1944 to 05.07.1944 during Quit India Movement. C
D
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6. It is the case of the appellant that as the said communication was not supported by any documents, the appellant herein, sent a letter dated 27.10.2017 which is addressed to the 2nd Respondent with a copy to the 1st Respondent to send the claim application by completing all the required formalities as per Swatantrata Sainik Samman Pension Scheme. At that stage, the 1st Respondent herein, has filed the Writ Petition before Madras High Court (Madurai Bench), seeking directions by way of *mandamus* to direct the appellant herein, to grant Freedom Fighter's Pension under the Swatantrata Sainik Samman Pension Scheme. F

7. It is the case of the appellant that writ petition was heard and disposed of by order dated 26.10.2017, without issuing a notice and without giving any opportunity to file counter affidavit to rebut the allegations, made in the petition. G

8. Learned Single Judge, referring to certain communications made by the 1st Respondent, by recording a finding that the certificate issued by an approved certifier is sufficient for grant of pension, has disposed H

A of the petition by directing the appellant to grant pension under Swatantrata Sainik Samman Pension Scheme and to pass suitable orders, in respect thereof.

9. It is the case of the appellant that even in the appeal, though specific grounds are raised before the Division Bench, inter alia, stating that no notice was issued in the writ petition; the application by the 1st Respondent for grant of freedom fighters' pension was not supported by required documents; and non-disclosure of the rejection of the first application for grant of pension, the High Court has dismissed the appeal without assigning valid reasons and without considering any of the grounds raised in the appeal.

10. Before this Court, the counter affidavit is filed by the 1st Respondent. While denying various allegations made by the appellant, it is stated that as the appellant has not complied with the directions issued by the High Court, he has already moved contempt petition and without disclosing the same, the Special Leave Petition is filed before this Court. With reference to allegations made in the appeal, it is stated that being a veteran freedom fighter in Indian freedom struggle, he had suffered various losses and hardships including imprisonment (not limited to imprisonment of six months in 1944). Moreover, he had to go underground for more than a year in 1942 (August, 1942 to December, 1943), as he was facing detention orders.

11. Further, it is stated that as he has actively participated in Quit India Movement, as a consequence of his participation, he was sentenced and was lodged in Alipuram Central Prison, for more than six months from 05.01.1944 to 05.07.1944.

12. While referring to his first application made in the year 1997, it is alleged that such application made by him was not dealt with due care by the appellant and the appellant adopted a lethargic approach in considering the application of the 1st Respondent. While referring to his earlier rejection, it is stated that such a rejection made by the appellant, on his first application, was whimsical and arbitrary.

13. In response to the letter dated 30.08.2017, addressed by the appellant, it is stated that he has replied vide letter dated 07.09.2017, stating that all other veteran freedom fighters had passed away and except one Mr. A. M. Lakshmanan whose Co-Prisoner Certificate has already been submitted along with the certificate of one Mr. A. C.

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Periasamy, thus, he has complied with all the requirements as contemplated under the scheme, as such, there are no grounds to interfere with the orders passed by the High Court. A

14. We have heard Ms. Madhavi Divan, learned Additional Solicitor General, appearing for the Union of India and Mr. Divyanshu Srivastav, Advocate, appearing for the respondent / writ petitioner. B

15. It is contended by the learned Additional Solicitor General, appearing for the Union of India that the learned Single Judge of the High Court has disposed of the petition without issuing any notice and without giving any opportunity of filing counter affidavit to rebut the allegations, made in the writ petition. It is submitted that while exercising powers of judicial review under Article 226 of the Constitution of India, the High Court has committed error in issuing positive directions for grant of pension. C

16. It is submitted that when the scheme is prepared for grant of pension with certain conditions, unless compliance of such conditions is examined by the competent authority, no directions ought to have been issued, directing grant of pension. D

17. It is submitted that at the first instance, the 1st Respondent has applied for grant of pension in the year 1997 and the same was forwarded by the 2nd Respondent through 3rd Respondent without making any specific recommendations and the same was rejected, after lapse of several years, again, application is made for grant of pension. Even before the same is considered by the competent authority, the 1st Respondent has approached the High Court and the High Court has disposed of the petition without giving opportunity of filing counter affidavit. E

18. It is submitted that in spite of raising several grounds, the Division Bench also failed to consider the same, and confirmed the order of the learned Single Judge by dismissing the appeal filed by the appellant herein. F

19. Learned counsel in support of her arguments relied on judgment of this Court in the case of *W.B. Freedom Fighters' Organization v. Union of India and Others*¹ and also the judgment in the case of *Union of India v. Bikash R. Bhowmik and Others*². G

1. 2004(7)SCC 716

2. 2004(7)SCC 722

A 20. On the other hand, Mr. Divyanshu Srivastav, appearing for
the 1st Respondent while refuting the submissions made by the learned
counsel appearing for the appellant, has contended that though the
respondent has participated in the freedom struggle and suffered losses
B apart from his imprisonment during the period of Quit India Movement,
he is unduly deprived of the pension, which he is entitled to, as per the
scheme prepared.

21. While drawing our attention to the Order dated 26.04.2019,
passed in Special Leave Petition (C) No.11132 of 2019 (Diary No.2923
of 2019), it is submitted that similar petition is already dismissed by this
C Court and further, relying on the judgment of this Court in the case of
*Union of India v. Sitakant S. Dubhashi and Anr.*³, learned Counsel
has submitted that there is no illegality in the impugned order passed by
the High Court and there are no grounds to interfere with the same.

22. It is, further, submitted that the documents which are already
D filed, are sufficient to grant pension as per the Swatantrata Sainik Samman
Pension Scheme and as the appellant was not considering his application
for grant of pension, the learned Single Judge of the High Court has
rightly issued directions for grant of pension. There are no grounds to
interfere with the same.

23. It is not in dispute that at first instance, the 1st Respondent
E herein, has applied for grant of pension in the year 1997 and the
application dated 10.04.1997, submitted by the 1st Respondent is placed
on record. In the said application, the 1st Respondent has stated that he
was underground during the Quit India Movement of 1942 i.e. during
the period from August, 1942 up to a period of more than six months. At
F that time, along with the first application, the Non - Availability of Records
Certificate (NARC) obtained from the Government, was not produced
and merely a certificate, certified by the C.J.M., Madurai, was produced.

24. The first application, which was forwarded to the appellant,
was without any specific recommendation. On receipt of such
G communication from the 2nd respondent, the claim of the 1st Respondent
was considered and rejected. The said order has become final and the
same was not questioned. Nearly after 13 years of such rejection, on
29.08.2017, the 1st Respondent has again claimed pension under the
Swatantrata Sainik Samman Pension Scheme on the plea of his

H 3. 2020(3)SCC 297

imprisonment for more than six months for participating in the Quit India Movement. The application, which is made for the second time, is also placed on record as **Annexure “P-5”**. In the said application, he has stated that he was imprisoned for more than six months i.e. from 05.01.1944 to 05.07.1944, which is clearly in variance to the period which he has mentioned in the first application. Though, earlier rejection has become final and the particulars mentioned in the claim made by the 1st Respondent are in variance to the particulars mentioned at first instance, without issuing notice and without giving opportunity to the appellant to file counter affidavit, the learned Single Judge has disposed of the petition by granting a positive direction to grant pension. The claim of the 1st Respondent is under the scheme, notified by the appellant-Government. The scheme prescribes to file certain documents to authenticate the imprisonment of a claimant as a freedom fighter.

25. It is the case of the appellant that the documentary evidence filed by the 1st Respondent is not in compliance of the scheme. It is a matter which is to be left to the competent authority to consider. When the application of the 1st Respondent is already rejected in the year 1997, when such rejection order has become final, it is not open for the 1st Respondent to make a claim for second time for pension again by way of fresh application. The 1st Respondent would be entitled to the benefits of this scheme, if he produces the relevant material in support of his claim. As regards the sufficiency of proof, the scheme itself mentions the documents which are required to be produced along with the application. Whether the claimant fulfills the criteria or not, it is for the competent authority to examine it. Even before the application is considered by the competent authority, in exercise of powers of judicial review, the High Court should not have issued any directions for grant of pension. In this case, it is also to be noticed that earlier the claim of the 1st Respondent is already rejected and the said order has become final. After perusal of the order passed by the learned Single Judge and the Division Bench, we are of the view that no valid reasons have been assigned to grant relief to the 1st Respondent for grant of pension. It appears that the 1st Respondent has not disclosed his earlier rejection by producing the earlier orders while making the application for the second time before the appellant and also before the High Court.

26. In any event, when such serious factual disputes emerge for consideration, the High Court ought not to have disposed of the petition

A filed by the Respondent without even issuing notice and giving opportunity to file counter affidavit to rebut the allegations made by the appellant. The judgments of this Court, relied on by the learned Additional Solicitor General in the case of *W.B. Freedom Fighters' Organization v. Union of India and Others*¹ and in the case of *Union of India v. Bikash R. Bhowmik and Others*² will support the plea of the appellant. In the case of *W.B. Freedom Fighters' Organization v. Union of India and Others*, this Court has held that when the competent committee has considered and opined that the applications were not supported by required documents and rejected the application, this Court cannot interfere with the same and such findings cannot be said to be perverse or unreasonable.

C 27. Further, in the case of *Union of India vs. Bikash R. Bhowmik and Others*², this Court has held that the pension under Swatantrata Sainik Samman Pension Scheme of 1980 can be sanctioned as per the proof required under the scheme and in no other manner. In the said judgment, this Court has reversed the order passed by the High Court.

D 28. In the instant case, the appellant stands on a better footing, for the reason that although the application made by the 1st Respondent on 10.04.1997 was rejected and the said order has become final, he again approached the appellant with the same request. Even before the Competent Authority considers the application, the 1st Respondent approached the High Court by filing Writ Petition and the High Court, not only entertained the petition, but disposed of the same without even notice and opportunity of filing counter affidavit to the appellant.

F 29. We have also perused the order passed by the Division Bench. Even the Division Bench of High Court has not considered various grounds raised by the appellant, while confirming the order of the learned Single Judge.

G 30. It may be true that the 1st Respondent is getting pension as per the scheme, mooted by the State, but, at the same time, to claim pension under the scheme of 1980, the 1st Respondent has to furnish the required proof as contemplated under the scheme. When the claim is under a particular scheme, unless one fulfills the eligibility criteria for grant of pension, as mentioned in the scheme, no applicant can claim such pensions, as a matter of right.

H 31. Though, the learned Counsel appearing for the respondent – Writ Petitioner has placed reliance on the order passed by this Court in

rejecting the Special Leave Petition *in limine* and also, further, judgment of this Court in the case of ***Union of India v. Sitakant S. Dubhashi and Anr.***³, we are of the view that the order passed by this Court and also the judgment in the case of ***Union of India v. Sitakant S. Dubhashi and Anr.*** would not render any assistance in support of his claim. Whether a particular applicant is entitled for pension under the Swatantrata Sainik Samman Pension Scheme of 1980, is a matter which is required to be considered having regard to facts and documentary evidence produced in each case, as such, the judgment relied on by the learned counsel is of no assistance to support his case.

32. In view of the reasons, stated supra, we allow this appeal and set aside the judgment dated 29.08.2018 passed in W.A.(MD) No.907 of 2018 by the Madras High Court (Madurai Bench) and consequently, the Writ Petition filed in Writ Petition (MD) No.17290 of 2017 stands dismissed, with no order as to costs.

Devika Gujral

Appeal allowed.