

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.13852 of 2010 (O&M)
DATE OF DECISION : April 16, 2012

Malwinder Jit Singh Waraich

PETITIONER

VERSUS

Union of India

RESPONDENT

CORAM : HON'BLE MR.JUSTICE RANJAN GOGOI CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

Present:- Shri Malwinder Jit Singh Waraich, petitioner-in-person.

Shri R.S.Dhull, Advocate (Amicus Curiae).

Shri O.S.Batalvi, Standing Counsel for the U.O.I.

MAHESH GROVER, J.

This Public Interest Litigation has been filed bringing to the notice of the Court the infirmities in the Swatantarata Sainik Samman Pension Scheme, 1980 inhibiting the list of eligible dependents which has the effect of making the scheme unworkable. A further prayer has been made to direct the Union of India to liberalise the procedure and manner of producing supportive material to establish the claim of entitlement to the scheme.

It is not in question that the Swatantarata Sainik Samman Pension Scheme, 1980 (hereinafter known as the Scheme) is in existence and has been modified by the Union of India from time to time.

The grievance of the petitioner is that such a Scheme which was intended to honour and acknowledge the role of the freedom fighters has unnecessarily been made the victim of the hyper-technicalities and therefore, these provisions need to be attuned to the intended purpose of the Scheme. For the purpose of Scheme, the following categories have been defined to be eligible to obtain the benefits of the Scheme :-

- (i) Eligibility : The following categories of freedom fighters are eligible for the Samman Pension under the Scheme :
- * Eligible dependents of martyrs ;
 - * A person who had suffered minimum imprisonment of six months on account of participation in freedom struggle ;
 - * A person who on account of his participation in freedom struggle, remained underground for more than six months.
 - * A person who, on account of participation in the freedom struggle was interned in his home or externed from his district for a minimum period of six months.
 - * A person whose property was confiscated or attached and sold due to participation in the freedom struggle.
 - * A person who on account of participation in the freedom struggle became permanently incapacitated during firing or lathi charges.
 - * A person who lost his government job for participation in freedom struggle ; and
 - * A person who was awarded the punishment of 10

strokes of caning/flogging/whipping due to his participation in freedom struggle.

(ii) Dependents :

Spouses (widow/widower) unmarried and unemployed daughters (upto maximum three) and parents of deceased freedom fighters (as also of martyrs) are eligible for grant of dependent family pension under the scheme.”

The aforesaid Scheme is in existence since 1972 and has been modified from time to time.

We find that the clause defining the dependents does not synchronize with the avowed objective of the Scheme which was to bestow an honour on the freedom fighters and their families who had suffered because of active participation in the freedom struggle of the country. Such honour which is in recognition of a role exemplar in nature, should not be permitted to be made a hostage to a bureaucratic play of words.

If the clause defining the dependent is seen, then it defies a rationale as to why unmarried and unemployed daughters (upto maximum of three) and the parents of the deceased freedom fighters have been included, considering the fact that the persons who would have participated in the freedom struggle, would have done so prior to 1947 and at the time when the Scheme has been formulated or amended, there would hardly be any parent of a deceased freedom fighter living, to claim such a benefit. Likewise, the question of having unmarried and unemployed daughter would also be a remote possibility.

These two categories of dependents therefore, have largely rendered the Scheme illusory. It would have been more logical to say that the dependents

would include the spouses (widow/widower) and the legal heirs of the deceased freedom fighters.

The Hon'ble Supreme Court in Mukand Lal Bhandari & others v. Union of India & others A.I.R. 1993 S.C. 2127 had observed as under :-

“ ... it ill behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it was possible for them to do so, should find out the freedom fighters or their dependents and approach them with pension instead of requiring them to make application for the same.”

The insistence on the aforesaid clause would also render the genuine dependents of the freedom fighters outside the scope of the Scheme and thus, deprive them of their legitimate claims. Thus to our minds the Scheme should contain the clause of legal heirs only rather than creating an artificial limitation on the class of legal heirs.

Another aspect which has been highlighted in the petition and not denied by the respondents is that there are certain movements which have been acknowledged to be recognised under the Scheme. This list along with the records of the persons who had participated would expectedly be available with the Union of India and in such an eventuality, the persons who have been recognised to have participated in this movement, their legal heirs should not ordinarily be asked to get any further proof of their ancestors having participated in the freedom movement. A certificate once issued by the Union of India should be sufficient to enable the dependents of such freedom fighters to lay a claim to the benefits of the Scheme prevalent in the matters of employment or other benefits subject, however, to the condition that they have material to demonstrate their lineage trace to the freedom fighter named.

The Hon'ble Supreme Court had deprecated the approach of the Union of India in adopting a hyper-technical approach when it observed in Gurdial Singh v. Union of India J.T.2001(8) S.C.165 as follows :-

“We have noted with disgust that the respondent authorities have adopted a hyper-technical approach ... with a biased and close mind completely ignoring the verdict of this Court in *Mukand Lal Bhandari's* case.”

The underlying concern expressed by the Hon'ble Supreme Court has obviously not been appreciated by the respondents/Union of India which has still persisted with the mind-set which betrays reluctance to acknowledge the role of the freedom fighters.

We thus, hold that the clause defining the dependents by limiting the legal heirs to unmarried daughters and unemployed daughters (to a maximum of three) to be not in conformity with the object of the Scheme and direct the Union of India to take into consideration the observations made herein and modify the Scheme appropriately. Likewise, we also hold that the procedure for proving the claim should be liberalised and once certain movements have been acknowledge with corresponding records available with the Union of India, such certificates issued by the Union of India shall ordinarily be sufficient to establish a claim of a dependent of such a freedom fighter subject, however, to the condition that there is material to establish the co-relation of the claimant with the said freedom fighter.

With the aforesaid observations, the writ petition stands disposed of.

(RANJAN GOGOI)
CHIEF JUSTICE

(MAHESH GROVER)
JUDGE

April 16, 2012
GD

WHETHER TO BE REFERRED TO REPORTER? YES/NO