

2013 (3) GLR 1988

Before the Hon'ble MR. Z K SAIYED, JUSTICE

NATVARLAL DAHYALAL THAKKAR V. STATE OF GUJARAT

SPECIAL CIVIL APPLICATION No : 11233 of Year : 2009, Decided on :
20/2/2013

(A) Constitution of India, 1950 - Art. 226 - Swatantrya Sainik Samman Pension Scheme, 1980 - Freedom Fighters Pension - Claim for freedom fighters pension under Swatantrya Sainik Samman Pension Scheme - Petitioner producing certificate by freedom fighters associated with him, photographs of injuries, certificate by Doctor - Government though, recognising petitioner as freedom fighter denying pension on ground of non-production of required proof - Held, authority should not take technical view or insist for total compliance - Instead of asking for proof from freedom fighters Government should obtain necessary evidence through State machinery - The Court directing to pay pension to petitioner.

Looking to the judgment of this Court in the case of Manibhai Nathji Pandya v. Chief Secretary, delivered in Special Civil Application No. 9901 of 2000 as confirmed by the Division Bench in Letters Patent Appeal No. 582 of 2002 which is also rendered considering the certificate of Shri B, it can be concluded that the required documents are submitted by the petitioner to prove that he was involved in freedom struggle and he suffered. As per the judgment of this Court in Manibhai Nathji Pandya v. Government of India, 1998 (1) GLR 715 : 1998 (1) GLH 180, Swatantrya Sainik Samman Scheme is a Scheme for benefit and as a token of honour to freedom fighters. The authority should not take technical view. (Para 11)

Authority should not insist for total compliance. Because of long time between freedom struggle and formation of Scheme, it is difficult for a freedom fighter who would be an old man to obtain all the evidence such as Jail certificate, Co-prisoner certificate. Further, it is observed that on account of the nation celebrating 50 years of Independence, a list should be prepared of the freedom fighters and information should be collected by the State machinery regarding their participation in the freedom struggle, to give benefit to the freedom fighters. Regarding pending applications, necessary evidence should be obtained by State machinery from the authorities instead of asking for the same from the freedom fighters. (Para 11)

Even the ground of production of documents is also unsustainable in view of the fact that the petitioner has produced the certificate of Shri B to the petition giving details about the activity carried on by the petitioner in the company of Shri B, relevant documents inviting the petitioner as freedom fighter by the State Government, issuance of certificate, shawl, medal etc., letter regarding recorded interview of the petitioner as freedom fighter. It is indeed a sorry state of affairs that the petitioner is denied his right to claim freedom fighters pension by the State authorities especially when the State Government itself recognised the petitioner as a freedom fighter. Considering the entire facts and circumstances of the case, the petitioner has made out a case of freedom fighter, and therefore, he is entitled to get the pension. (Para 12)

Cases Relied on :

(1) Manibhai Nathji Pandya v. Government of India, 1998 (1) GLR 715 : 1998 (1) GLH 180

N. M. Kapadia, for the Petitioner. Rohan Yagnik, A.G.P., for Respondent No. 1.

ભારતનું બંધારણ, ૧૯૫૦ - આર્ટિ. ૨૨૬ - સ્વાતંત્ર્ય સૈનિક સન્માન પેન્શન યોજના, ૧૯૮૦ - સ્વાતંત્ર્ય વીરોના પેન્શન - સ્વાતંત્ર્ય સૈનિક સન્માન પેન્શન યોજના હેઠળ સ્વાતંત્ર્ય વીરોના પેન્શન માટેનો દાવો - અરજદારે પોતાની સાથે સંકળાયેલા સ્વાતંત્ર્ય વીરોને થયેલી ઈજા તથા તબીબનું પ્રમાણપત્ર રજૂ કર્યા - સરકારે જો કે સ્વાતંત્ર્ય વીર તરીકે ઓળખ સ્વીકારી પણ જોઈતી સાબિતીઓના અભાવના કારણસર પેન્શન આપવાનું નકાર્યું - ઠરાવવામાં આવ્યું કે, સત્તાવાળાઓએ આવી સંકુચિત -ષ્ટિ અથવા સંપૂર્ણ પાલન માટે ભાર મૂકવો જોઈએ નહિ - સ્વાતંત્ર્ય વીર પાસેથી સાબિતી માગવા કરતાં સરકારે રાજ્ય સરકાર પાસેથી જરૂરી વિગતો મેળવી લેવી જોઈએ - અદાલતે અરજદારને પેન્શન ચૂકવવા સૂચના આપી.

Z. K. SAIYED, J. 1. The petitioner has filed this petition under Arts. 226 and 227 of the Constitution of India praying for direction to the respondents to grant freedom fighters pension forthwith to the petitioner under S.S.S. Scheme with effect from the date of his application i.e. 13-2-1991 to the respondent No. 2 with interest at the rate of 12% p.a. from the date of application till the realisation of the amount, in the interest of justice and further prayed for quash and set aside the communication dated 15-6-2009 issued by the respondent No. 1.

2. Heard Mr. N. M. Kapadia, learned Advocate for the petitioner and Mr. Rohan Yagnik, learned A.G.P. for the respondent-State.

3. Mr. N. M. Kapadia, learned Advocate for the petitioner has submitted that the petitioner is a freedom fighter. The petitioner took active part in freedom struggle, Quit India movement. On 9-8-1942 the Quit India movement started. The petitioner actively participated in the freedom struggle and Quit India movement by showing protest, shouting slogans, taking part in Prabhat Pheri, helping in arranging and organising lectures (Sabha), distributing pamphlets, preparing country made bombs. On 9-8-1942, when the petitioner along with others was pasting pamphlets on parabadi, the police fired at the petitioner and he suffered bullet injury on the right leg below ankle as a result of which he sustained permanent disability. His one academic year was also lost. Time and again, the petitioner was arrested and beaten but due to tender age his name did not appear in record. The petitioner also boycotted Government job on the command of Mahatma Gandhiji.

4. He has submitted that on 13-2-1991 the petitioner applied for grant of Freedom Fighters Pension which came to be rejected on 8-5-1992 without assigning any reason. Thereafter, the petitioner again on 6-9-1991 submitted an application for grant of Freedom Fighters Pension, but no response. On 17-11-1998 the petitioner applied for getting Freedom Fighters Pension to respondent No. 2 with whatever documentary proof he was having. The petitioner produced certificate issued by freedom fighters associated with the petitioner, produced photographs of injuries, certificate of doctor etc. However, the said application also came to be rejected in the year 1999.

5. He has submitted that it is pertinent to note that on the occasion of Golden Jubilee Celebrations of Independence, the petitioner was invited and honoured. On other occasions also, the petitioner was invited, he has been awarded shawl, certificate, medal etc. Thus, as a freedom fighter the petitioner is being invited by the Government of Gujarat. However, when the petitioner applied for getting pension as freedom fighter, instead of appreciating the same in true spirit, routine reply is given that the application is not supported by evidence.

6. He has submitted that the petitioner again on 1-12-2006 applied for grant of F.F. pension. On 11-5-2006 the application of the petitioner came to be rejected on the ground that the application is not supported by the evidence as per the requirement of the Scheme.

7. He has submitted that the petitioner is aged above 80 years and at the fag-end of his life having all age-old ailments. The petitioner has given his valuable years of youth in freedom struggle and his one year of Standard-VI was also ruined because of that.

8. He has submitted that there are three circumstances under which according to the Scheme of the State Government the Freedom Fighter Pension can be granted :

- (i) If the person has suffered in any way due to involvement in freedom struggle.
- (ii) If the person was jailed.
- (iii) If the person has remained underground.

The petitioner has claimed entitlement in category No. (i). As the petitioner has not claimed pension regarding category No. (ii) and (iii), as per the scheme, he is not required to produce certificate of co-prisoner or arrest warrant. Under the scheme of the State Government called Discretionary Fund, for category No. (i), it is not at all clarified which minimum documents are required to be submitted.

9. Mr. Rohan Yagnik, learned A.G.P. for the respondent-State has submitted that the petitioner applied for freedom fighters pension under the State scheme vide application dated 17-11-1998 wherein he himself has mentioned that he has never applied before for State pension. He has submitted that the Ahmedabad District Committee in its meeting dated 12-1-1999 verified the claim of the petitioner along with the documents produced and found him not eligible for the freedom fighters pension under the State Government scheme as various certificates produced by the petitioner were not as per requirement under the State scheme. He has submitted that at the time of Quit India Movement, 1942, the age of the petitioner was 12 years old.

10. I have heard the learned Advocates for the respective parties and gone through the averments made in the petition as well as affidavit-in-reply and documents produced on record. The claim of the petitioner for freedom fighters pension is rejected on the ground that the petitioner has not produced the documentary evidence acceptable under the Scheme in support of his claim for pension.

11. Looking to the judgment of this Court in the case of Manibhai Nathji Pandya v. Chief Secretary, delivered in Special Civil Application No. 9901 of 2000 as confirmed by the Division

Bench in Letters Patent Appeal No. 582 of 2002 which is also rendered considering the certificate of Shri Brahmakumar Bhatt, it can be concluded that the required documents are submitted by the petitioner to prove that he was involved in freedom struggle and he suffered. As per the judgment of this Court in Manibhai Nathji Pandya v. Government of India, reported in 1998 (1) GLH 180 : [1998 (1) GLR 715], Swatantrya Sainik Samman Scheme is a scheme for benefit and as a token of honour to freedom fighters. The authority should not take technical view. If substantial evidence is produced, authority should not insist for total compliance. Because of long time between freedom struggle and formation of scheme, it is difficult for a freedom fighter who would be an old man to obtain all the evidence such as Jail certificate, co-prisoner certificate. Further, it is observed that on account of the Nation celebrating 50 years of Independence, a list should be prepared of the freedom fighters and information should be collected by the State machinery regarding their participation in the freedom struggle, to give benefit to the freedom fighters. Regarding pending applications, necessary evidence should be obtained by State machinery from the authorities instead of asking for the same from the freedom fighters.

12. In my opinion, even the ground of production of documents is also unsustainable in view of the fact that the petitioner has produced the certificate of Shri Brahmakumar Bhatt to the petition giving details about the activity carried on by the petitioner in the company of Shri Brahmakumar Bhatt, relevant documents inviting the petitioner as freedom fighter by the State Government, issuance of certificate, shawl, medal etc., letter regarding recorded interview of the petitioner as freedom fighter. It is indeed a sorry state of affairs that the petitioner is denied his right to claim freedom fighters pension by the State authorities especially when the State Government itself recognised the petitioner as a freedom fighter. Considering the entire facts and circumstances of the case, I am clearly of the opinion that the petitioner has made out a case of freedom fighter, and therefore, he is entitled to get the pension.

13. In the result, this petition is allowed. The respondents are directed to pay the freedom fighters pension to the petitioner from the date of the application and shall continue to pay the same in accordance with the same. The respondents are directed to carry out these directions within eight weeks from the date of receipt of the writ. Rule is made absolute.

Petition allowed.