
(2022) 12 TEL CK 0045

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 13236 Of 2022

Yadavalli Bathukamma

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: Dec. 12, 2022

Acts Referred:

- Code Of Civil Procedure, 1908 - Section 11

Hon'ble Judges: K.Lakshman, J

Bench: Single Bench

Advocate: Ganesh Bhujanga Rao Vadduri, Kalvala Sanjeev

Final Decision: Dismissed

Judgement

1. Heard Mr. Ganesh Bhujanga Rao Vadduri, learned counsel for the petitioner and Mr. Kalvala Sanjeev, learned Standing Counsel for respondent

Nos.1 and 2 and learned Government Pleader for Revenue appearing on behalf of respondent Nos.3 and 4.

2. This writ petition is filed to declare the inaction of respondent Nos.2 to 4 in considering the grant of pension to the petitioner from 02.02.2008 as

illegal and for a consequential direction to the respondents to release pension under freedom fighters pension w.e.f. 02.02.2008 and 28.04.2014.

3. FACTS:

i) According to the petitioner, her husband late Edavalli Guravaiah was a freedom fighter. He died on 14.08.2007. During his life time, he had applied

for freedom fighters pension and his claim was not considered.

ii) The petitioner has made an application on 02.02.2008 with respondents with a request to pay pension to her under Swatantrata Sainik Samman

Pension (SSSP) Scheme, 1980 since she is widow of freedom fighter. She has also submitted a representation dated 28.01.2014, the same was not considered.

iii) Vide proceedings, dated 27.02.2014, respondent No.2 informed the petitioner that she is not entitled for pension as per revised policy and guidelines

issued by the Ministry under letter No.45/03/2014-FF(P), dated 06.08.2014. Therefore, on the said ground, the request made by the petitioner for grant

of pension under SSSP Scheme, 1980 was rejected. Therefore, the present writ petition.

4. CONTENTIONS OF RESPONDENT Nos.1 & 2:

i) Respondent Nos.1 and 2 have filed counter contending that the present writ petition is hit by doctrine of res judicata. The earlier writ petition vide

W.P. 10303 of 2015 filed by the petitioner seeking pension under the aforesaid Scheme was dismissed on merits on 26.11.2018. The petitioner herein

had filed the present writ petition seeking the very same relief and, therefore, the lis involved in the present writ petition is hit by doctrine of res

judicata. The petitioner has no locus to claim pension under the aforesaid Scheme.

ii) SSS Yojana is in existence since 1972. The husband of the petitioner, who died on 14.08.2007, never applied for grant of pension under the said SSS

Yojana. After the death of her husband, the petitioner cannot seek to substitute herself in place of her husband who never applied for the same.

iii) As per Clause 1.5 of the revised policy guidelines of SSS Yojana, dated 06.08.2014, the petitioner is not entitled for pension under the Scheme.

iv) The respondents have also relied upon decisions in Issac Sam v. Union of India Order dated 19.06.2018 in W.P. No.27687 of 2012 and Deivanai v.

Union of India Judgment dated 16.06.2021 in W.A. (MD) No.1233 of 2021 rendered by the Madras High Court and also Smt. Yashodabai Balwant

Adhav v. Union of India Order dated 23.01.2020 in W.P.No.7121 of 2019 rendered by the Bombay High Court at Aurangabad Bench.

v) With the aforesaid submissions, the respondents sought to dismiss the writ petition.

5. ANALYSIS AND FINDING OF THE COURT:

i) The above said rival submissions would reveal that though the petitioner herein is claiming that her husband, a freedom fighter, made an application

seeking pension under the SSS Yojana, the same was not granted, she did not file any document in support of the same. On the other hand, it is

specifically contended by the respondents that the said Scheme is in existence since 1972, and the husband of the petitioner never applied for grant of

pension under the said Scheme. The petitioner did not file any reply to the said counter denying the said fact. Therefore, the contention of the

petitioner that her husband applied for grant of pension and the same was not considered by the respondents cannot be accepted.

ii) The husband of the petitioner died on 14.08.2007. The petitioner made an application on 02.02.2008, but she has not filed copy of the same.

However, according to the respondents, the petitioner submitted application only on 28.01.2014 seeking grant of pension under the aforesaid Scheme.

They have considered the said application and rejected the request made by her by referring to the revised policy guidelines issued by the Ministry

vide letter No.45/03/2014-FF(P), dated 06.08.2014. The respondents have filed copy of the aforesaid policy guidelines.

iii) As per Clause - 1.5 of the revised policy guidelines, no pension shall be sanctioned in the name of the freedom fighter after his/her death even if

his/her matter was under examination. This also entails that no life time arrears or dependent pension shall be sanctioned to his/her spouse/daughter

after the death of the freedom fighter.

iv) The Madras High Court in Issac Sam Order dated 19.06.2018 in W.P. No.27687 of 2012, held that son of freedom fighter is not entitled for

pension under SSSP Scheme, after the death of his father. The Bombay High Court also took the same view. A Division Bench of Madras High

Court at Madurai Bench in Deivanai Judgment dated 16.06.2021 in W.A. (MD) No.1233 of 2021 held that "the appellant herein cannot seek to

substitute herself in the place of her husband and pursue the claim after the demise of appellant husband.

v) It is also relevant to note that in Jagadamba Devi v. Union of India (2017) 3 SCC 688, the Apex Court categorically held that SSSP Scheme, 1980

is a document based Scheme and the documents required for eligibility for Samman Pension as mentioned in the Scheme has to be produced by the

applicant in support of his claim duly verified and recommended by the concerned State Governments. Due to the discrepancies and ambiguities

relating to the documents and due to non-production of requisite certificate, benefit of the Scheme could not be extended. It is not possible for the

Court to scrutinize the documents as to its sufficiency or otherwise.

vi) It is also relevant to note that the petitioner had filed a writ petition vide W.P. No.10303 of 2015 to declare the action of the respondents in

rejecting the case of the petitioner for freedom fighter pension dated 27.02.2014 on the ground that the revised policy guidelines issued under letter

dated 27.02.2013 as illegal and for a consequential direction to the respondents to consider the application of the petitioner for claim of the freedom

fighters pension irrespective of the guidelines dated 06.08.2014. The said writ petition was dismissed on merits and on consideration of the contentions

of both sides. The petitioner herein did not file any appeal challenging the said order. She filed the present writ petition, to consider grant of pension to

her from 02.02.2008.

vii) Section - 11 of the Code of Civil Procedure, 1908, deals with res judicata, and it says that no Court shall try any suit or issue in which the matter

directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom

they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been

subsequently raised, and has been heard and finally decided by such Court.

viii) Explanation - IV to Section - 11 of the C.P.C., says that any matter which might and ought to have been made ground of defence or attack in

such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

ix) Explanation - V says that any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

6. CONCLUSION:

i) As discussed above, the petitioner herein had filed W.P. No.10303 of 2015 challenging the rejection order 27.02.2014 and for a consequential

direction to grant pension to the petitioner. The said writ petition was dismissed on 26.11.2018 on merits, considering the contentions of both sides. The

petitioner did not prefer appeal challenging the said order and on the other hand filed the present writ petition with the very same relief. Therefore,

according to this Court, the present writ petition is hit by the doctrine of res judicata. Therefore, viewed from any angle, the petitioner is not entitled for

any relief, much less the relief sought in the present writ petition. The writ petition is devoid of merits and the same is liable to be dismissed.

ii) The present Writ Petition is accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall also stand closed.