

D. Damayanthi and Others Vs Secretary, Ministry of Home Affairs, Government of India, Freedom Fighters Division and Others

Court: Andhra Pradesh High Court

Date of Decision: Jan. 23, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 22 Rule 10

Constitution of India, 1950 â€" Article 14, 19, 200A, 21

Contempt of Courts Act, 1971 â€" Section 10, 11, 12

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: T. Ramakrishna Rao, for the Appellant; I. Koti Reddy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

This Court issued Rule Nisi on 9.8.2005. W.P.M.P. No. 29653 of 2007, L.R. Application was ordered on

20.11.2007. Implead Application WPMP No. 19811 of 2007 was ordered on 20.11.2007. Applications WPMP Nos. 33696, 33697 of 2007

were ordered on 14.12.2007.

2. This Writ Petition is filed with a prayer to call for the records in respect of the letter F. No. 52/Contempt Case /03/2002-FF(INA) dated

16.10.2003 addressed to the petitioner and subsequent letter F. No. 52/Contempt Case /03/2002-FF(INA) dated 2nd July 2004 of the

Government of India, Ministry of Home Affairs, Freedom Fighters Division, New Delhi issued by the Deputy Secretary-second respondent on

behalf of the respondent No. 1 addressed to the petitioners" advocate and issue a writ of mandamus or any other appropriate writ or order or

direction in the nature of writ of Mandamus directing the first and second respondents to sanction family pension to the petitioner from 2.1.1999 to

the date of the death of petitioner"s husband up to 14.10.2003 and also the Freedom Fighters Pension payable to the petitioner"s husband late D.

Ramulu from the date of his representation dated 8.8.1994 to 2.1.1999 the date of death of D. Ramulu to the petitioner with interest at 12% per

annum and pas such other order or orders as this Court may deem fit and proper in the circumstances of the case.

3. Sri T. Ramakrishna Rao, learned Counsel representing the writ petitioners had taken this Court through the contents of the affidavit filed in

support of the Writ Petition and would maintain that as per the scheme of Swatantrata Sainik Samman Pension (SSSP) Scheme 1980, unmarried

daughter steps into the shoes of the first petitioner Smt. D. Damayanthi. The counsel also would submit that even the date from which the pension

had been sanctioned is not in accordance with law. Hence, for that period also the pension to be granted that too with interest. The learned

Counsel placed reliance on several decisions to substantiate his submissions. The learned Counsel also pointed out the memo filed under Order 22

Rule 10 of the CPC and would maintain that unmarried daughter of the petitioner by name D. Pydithalli D/o late Ramulu, is brought on record as

5th petitioner, as legal representative of the first petitioner and she being the dependent, she is eligible for family pension under SSSP Scheme,

1980.

4. Sri I. Koti Reddy, learned Standing Counsel representing the respondents had taken this Court through the contents of the counter affidavit and

would maintain that the Writ Petition is liable to be dismissed.

5. Heard the counsel.

6. In the affidavit filed in support of the Writ Petition by the first petitioner, who is no more, it is stated that her husband served in the Indian Army

for about nine years from 23.3.1937 to 1.3.1946 during the II World War in the Burma Sector, as Naik No. 17128 and he had undergone

imprisonment by the Japanese while serving with the Indian Army.

7. It is averred that her husband late D. Ramulu was taken as a prisoner of War by the Japanese on 15.2.1942 and while he was in jail he opted to

join in the Indian National Army at the call of Netaji Subhas Chandra Bose and worked in the Indian National Army.

8. It is further averred that during the life time of late D. Ramulu he made representations to the Collector, Vizianagaram District on 8.8.1994 and

22.2.1997 for grant of freedom fighters" pension under Swathantrata Sainik Samman Pension Scheme, 1980. Petitioner"s husband died on

2.1.1999 at Sundarada Village leaving behind her and her unmarried daughter Bayamma and two widowed daughters Bharathi and Sumathi and

two sons D. Satyam and D. Sankar Rao. The two sons are living separately. She had no source of income to maintain herself and her daughters

except the amount of Rs. 200/- per month being paid by the District Soldier Board after the death of her husband. They are living in a miserable

and poor condition in the said village.

9. It is further averred that on 6.10.2000 the first petitioner made a representation to the President of India, New Delhi to sanction family pension

and also for assignment of land for herself. The President's Secretariat by letter dated 11.10.2000 had forwarded her representation to the

Secretary, Government of India, Ministry of Defence for appropriate action. But there was no follow up action from the Ministry of Defence. She

again made another representation dated 9.5.2001 to the Deputy Secretary, Ministry of Home Affairs, Freedom Fighters" Division, New Delhi-

second respondent herein, by registered post requesting for sanction of Freedom Fighter's Pension to her husband late D. Ramulu and also family

pension to her under Swathantrata Sainik Samman Pension Scheme, 1980 with a copy addressed to Chief Secretary, GAD, Government of

Andhra Pradesh, Hyderabad. She stated in the said representation that her husband late D. Ramulu was an Ex-Indian National Army Personnel

and therefore, she is entitled to the Freedom Fighters" Pension. In proof of the same, she furnished the certificate given by the Record Office,

Madras Engineering Group, Bangalore dated 21st September 1957 to show that her husband was a prisoner of War from 5.2.1942 and served in

the Indian National Army, as INA Personnel. Her husband was discharged from the Army as Naik on 1st March, 1946 and there was no

response from the second respondent to her representation dated 9.5.2001. Therefore, she filed a Writ Petition No. 24117 of 2001 against the

respondents 1 and 2 for issuance of writ of mandamus or any other appropriate writ directing the respondents to consider the representation of late

D. Ramulu, the petitioner's husband dated 8.8.1994 and 22.12.1997 and also her representations dated 6.10.2000 and 9.5.2001 for sanction of

the freedom fighters" pension and by an order dated 23.11.2001 after hearing both sides this Court passed orders directing the respondents to

consider and dispose of her representations dated 6.10.2000 and 9.5.2001 in terms of guidelines enumerated by the Supreme Court in Mukund

Lal Bhandari and others Vs. Union of India and others, for grant of freedom fighters" pension under the Swathantrata Sainik Samman Pension

Scheme, 1980.

10. It is further averred that as the respondents 1 and 2 had not considered her representations and also not passed any orders as per the

directions of the Court in W.P. NO. 24117 of 2001, she filed Contempt Case No. 912 of 2003 to punish the respondents for the willful

disobedience of the judgment of this Court under Sections 10 - 12 of the Contempt of Court Act, 1971. It is further averred that during pendency

of the contempt case the first respondent had passed orders No. 52/CC/03/2002/FF(INA) dated 16th October 2003 to grant Swathantrata

Sainik Samman Pension, in compliance with the judgment of this Court in W.P. No. 24117 of 2001 and directed her to furnish certain documents

as mentioned in the said order. On complying with the said formalities, the Pay and Accounts Officer, New Delhi had sent the PPO MHA 77040

7332 dated 16.3.2004 to her sanctioning payment of family pension from 14.10.2003. Subsequently, the contempt case came up for hearing on

28th August 2004 before this Court and this Court disposed of the same observing that the petitioner who was aggrieved by the orders passed by

the respondents, had to pursue the remedies available to her.

11. Further it is averred that her advocate made representation dated 11.6.2004 to the second respondent stating that she had to be paid family

pension from the date of death of her husband and also the freedom fighters' pension payable to her husband late D. Ramulu had to be paid from

8.9.1994 up to the date of his death to her as per the guidelines laid down by the Supreme Court in Mukund Lal Bhandari and others Vs. Union of

India and others, . To that the first respondent sent a reply dated 2.7.2004 to her advocate stating that pension can be sanctioned only from the

date of approval of the competent authority in the case of petitioner by giving benefit of doubt and therefore, it was not possible to sanction

pension to her from the entire date. Aggrieved by the said letters dated 16.10.2003 and 2.7.2004 of the first respondent she filed the present Writ

Petition with the following grounds:

1. the said letters dated 16.10.2003 and 2nd July 2004 of the first respondent are arbitrary, capricious and discriminatory, and violative of the

fundamental rights of the petitioner under Articles 14, 19, 21, 200-A of the Constitution of India.

2. The impugned letter issued by the first respondent is violative of the guidelines issued by the Supreme Court of India in the decision reported in

Mukund Lal Bhandari and others Vs. Union of India and others, that Freedom Fighters Pension should be sanctioned from the date of the

petitioner's application and the petitioner's husband's application and not from 16.10.2003 the date of approval of the competent authority.

3. The impugned letters dated 16.10.2003 and 2.7.2004 are violative of the petitioner's fundamental right under Article 21 of Constitution of

India, as declared by the Supreme Court in the decision reported in JT 2002 SC PAGE 50 that the petitioner is entitled for grant of family pension

from the date of death of her husband and the denial of the family pension to the petitioner from the date of death of the petitioner's husband is in

violation of her fundamental rights to life guaranteed under Article 21 of the Constitution of India.

12. In the counter affidavit filed by the respondents it is averred that Smt. Damayanthi had earlier filed a Writ Petition No. 24117 of 2001 before

this Court for grant of freedom fighters' pension to her late husband and dependent family pension to her on account of sufferings of her late

husband for his association with INA. This Ministry could not file a counter affidavit as the High Court had passed order dated 23.11.2001

directed the respondent do consider and dispose of the representation of the petitioner dated 6.10.2000 and 9.5.2001 in terms of the guidelines

enumerated by the Supreme Court in the case of Mukund Lal Bhandari v. UOI. The third respondent i.e., D.C Vijayanagaram was directed to

forward the representations of the petitioner forthwith to the first and second respondents (Secretary Ministry of Home Affairs and Secretary, M/o

Defence respectively) who were in turn required to take appropriate action. This exercise was to be completed within a period of three months

from the date of receipt of a copy of the order.

13. Further it is averred that in the light of the above stated direction of this Court, a provisional dependent family pension was sanctioned to Smt.

D. Damayanthi vide letter dated 19.2.2004 from 14.10.2003 i.e., the date of approval of the competent authority by giving her benefit of doubt.

The crucial certificate/information about detention/imprisonment of late Ramulu as a member of INA is still not available. Further it is stated that the

present Writ Petition is for grant of pension with retrospective effect from 8.8.1994 i.e., the date of representation made by her late husband. In

this connection, it is stated that a provisional family pension had been sanctioned to the petitioner by giving her benefit of doubt, as during the

course of scrutiny of the pension application, it was observed that the duration of the detention suffering, which is normally taken as the period

between the date of recovery from INA (also termed as surrender) to the date of discharge from the Army, is not available in the case of the

petitioner's late husband. Army authorities had indicated that the Sheet Role and Dossier in respect of late Ramulu had been destroyed. In the

circumstances, based on the facts available with this Ministry, claim of late Ramulu for pension was admitted by extending the benefit of doubt. In

such a case pension is granted only from the date of approval by the competent authority. It is, therefore, not possible to sanction pension to her

from an earlier date. It is further averred that this position was also made known to the advocate of the petitioner vide this Ministry's letter dated

2.7.2004.

14. Further it is averred that the applicant had failed to submit required evidence to establish beyond doubt the claim of her late husband's suffering

during the freedom movement for his association with INA. Further it is averred that no such representations either from the late husband of the

petitioner or from the petitioner herself are available with this Ministry.

15. It is also stated that Writ Petition No. 24117 of 2001 was filed by the petitioner was decided by this Court at the admission stage and this

Ministry could not file its objections to the petition. A provisional dependent family pension was sanctioned to the petitioner w.e.f. 14.10.2003 by

giving her benefit of doubt, as she had not furnished the required evidentiary documents in support of her claim. In reply to paragraphs 8 & 9 it is

submitted that her case was considered as per the guidelines laid down by the Supreme Court in Mukund Lal Bhandari and others Vs. Union of

India and others, . The relevant paragraph reads as under:

(c) The pension should be paid to the applicant from the date on which the original application is received whether the application is filed with or

without the requisite evidence. The sanction of the pension would, however, be subject to the requisite proof in support of the claim.

16. It is averred that in the petitioner's case the duration of her late husband's detention is not available. Army authorities have indicated that the

Sheet Role and Dossier in respect of late Ramulu had been destroyed. In the circumstances, claim of the petitioner was admitted by giving him the

benefit of doubt. In such a case pension is granted only from the date of approval of the competent authority.

17. The grounds raised in the affidavit filed in support of the Writ Petition also had been denied.

18. The counsel for the petitioners had taken this Court to the relevant portions of the Swathantrata Sainik Samman Pension Scheme, 1980 and

would maintain that the unmarried daughter would be entitled to reliefs which had been provided for. The learned Counsel fairly drawn reliance on

Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and also on Mohinder Singh Gill and Another Vs. The Chief Election Commissioner,

New Delhi and Others, , and made elaborate submissions. He also placed strong reliance on Mukund Lal Bhandari and others Vs. Union of India

and others, , wherein the Apex Court observed at paragraphs 4 and 5 as under:

(4) AS regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government.

It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and

pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly. AS regards the

contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not

justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State,

are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them

must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to

prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been

introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it, illbehoves the Government

to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or

their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of

working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its

object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they

made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus

otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the

benefit should be made available to them. The date proscribed in any past or future notice inviting the claims, should be regarded more as a matter

of administrative convenience than as a rigid time-limit. COMING now to the last contention advanced on behalf of the Government, viz., that the

benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the

view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their

applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and

their dependents would be readily in possession of the required documents. In the very nature of things, such documents have to be secured either

from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third

parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the

claimants would be in a position to produce documents within a fixed time limit. What is necessary in matters of such claims is to ascertain the

factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement

in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the

date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the

application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the

preferment of the claim whatever the date on which the proof of eligibility is furnished.

(5) That leaves us with the question as to whether, notwithstanding the date on which the application itself is made, the claimant should be entitled

to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with

retrospective effect, reliance is placed on the two cases cited earlier where the benefit is given with effect from 1/08/1980. We have given our

anxious consideration to the question and are of the view that for reasons more than one, the benefit should flow only from the date of the

application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospectively of the

benefit was neither raised nor answered. We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to

benefit the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the

true spirit and the object of the Scheme would itself probably not support such straight-jacket formula. As has been pointed out above, the

Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom

fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those

who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs. 5,000.

00. It is only later, i.e., from 1/08/1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation

was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to

mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient

income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in

the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would

be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be

given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should

not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since

we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be

advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom

fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and

kin etc. are also the other benefits which have been made available to them for quite sometime now. HENCE we are of the view that the pension

under the Scheme should be made payable only from the date on which the application is made whether the application is accompanied by the

necessary proof of eligibility or not. The pension should, of course, be sanctioned only after the required proof is produced.

19. Further reliance was placed on S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another, , Gurdial Singh Vs. Union of

India and Others, , R. Narayanan Vs. Union of India and another, , Panjala Rajaiah Vs. Government of India, and Ram Sumiran Pandey Vs. State

of U.P. and others, .

20. In the facts and circumstances, it is no doubt true that the relief can not be granted as prayed for and no doubt elaborate submissions were

made for not only the pension to be granted under Swathantrata Sainik Samman Pension Scheme, 1980, from the date of representation made by

the husband of the first petitioner or from the date of representation made by the first petitioner, and also further submissions were made that on

such pension payable, interest also to be paid. It is also stated that this is just a pathetic case, which requires consideration at the hands of this

Court.

21. The Apex Court in Union of India (UOI) Vs. M.S. Mohammed Rawther, observed at paragraphs 5 and 6 as under:

5. The Division Bench was hearing an appeal against the order passed by the learned Single Judge whereby the learned Single Judge had given a

direction to the Union of India to consider and pass an appropriate order on the petitioners' application for grant of SSS Pension to the writ

petitioner. The learned Single Judge quashed Ex. P-6 and Ex. P-8 (the orders passed by the Union of India rejecting the petitioners prayer for

pension) and remitted the matter back to the Union of India to consider the matter afresh after providing a necessary opportunity to the respondent

for considering his prayer for grant of the SSS pension. Aggrieved by this order, the matter was taken up by the appellant before the Division Bench

on which the Division Bench passed the impugned order. Hence, the present appeal by the Union of India.

6. We have heard learned Counsel for the parties and perused the record. We are of the opinion that the course adopted by the learned Single

Judge was the correct course and the matter should have been remitted back to the Union of India to decide the question of grant of freedom

fighter's pension afresh. It required necessary investigation of facts as to whether the incumbent was entitled to SSS Pension or not. The courts

cannot encroach into the executive or legislative domain, and cannot assume the role of investigation of fact. It is the duty of the State and the

Union of India to have considered all the material on the subject and consider whether it is a case worth granting pension as per the SSS Pension

Scheme, 1980. The court has only judicial power to review that executive order on Wednesbury Principles, but it cannot arrogate to itself the

power of the executive. If the order passed by the Union of India is not justifiable on Wednesbury Principles the court can only set it aside and

remit the matter back to the executive for a fresh decision, but the court cannot assume the power of the union of India. The Court must exercise

judicial restraint in such matters. There is broad separation of powers under the Constitution, and one organ of the State should not ordinarily

encroach into the domain of another. Montesquieu's theory broadly applies in India too.

22. In the light of the view expressed by the Apex Court specified supra, this Court is of the considered opinion that the case of the petitioners,

now no doubt the legal representatives of the first petitioner, would require re-consideration at the hands of the respondents.

23. In the light of the peculiar facts and circumstances of the case, and also the decisions referred to supra, let the respondents re-consider the

case of the petitioners and pass appropriate orders, within a period of six weeks from the date of receipt of a copy of this order. Except making

these directions, no positive directions, as such, can be granted.

24. Thus, the Writ Petition is allowed to the extent indicated above. No order as to Costs.