

Court No. - 40

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Case :- WRIT - C No. - 28621 of 2021

Petitioner :- Azad Khan

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shyam Sunder Maurya

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Vikram D. Chauhan,J.

Petitioner is aged 61 years and has approached this Court for issuing a writ of mandamus directing the respondents to give freedom fighter pension to petitioner, in accordance with law. For the purposes of such claim, counsel for the petitioner has placed reliance upon the provisions of 'The Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993'. The definition of "dependent" contained in Section 2(b) of the aforesaid Act No. 4 of 1993 is relied upon for such purposes.

Sri Shubhranshu Shekhar, learned Additional Chief Standing Counsel appearing for the State respondents points out that the Act of 1993 provides for reservation in employment to the dependents of freedom fighters and does not contemplate payment of any pensionary benefits to such dependents. It is pointed out that pension scheme to dependents of freedom fighters has been introduced by the Government of India, Ministry of Home Affairs, known as "Swatantrata Sainik Samman Pension Scheme, 1980". The eligibility for payment of pension has been specified. So far as the eligible dependents are concerned, it is pointed out that after the death of freedom fighter eligible dependents for family pension are Spouse/Unmarried and Unemployed Daughters/Mother or Father. Submission is that petitioner does not fall in any of the category and, therefore, his claim for payment of pension is not sustainable.

We have heard learned counsel for the parties. Petitioner herein is 61 years of age and has instituted the present petition after death of his mother in the year 2010, who was receiving freedom fighters pension under the scheme. Petitioner claims to be the son of late Mohd. Husain, who was a freedom fighter.

It is stated that petitioner is unemployed and, therefore, he is entitled to payment of freedom fighter pension. We are afraid that the claim of petitioner is too far fetched to be entertained by a court of law. He has already passed the retirement age and, therefore, the contention that he is unemployed is of no consequence. Even otherwise, if the petitioner has managed to survive till the age of 60 years, it is difficult to entertain a claim now at the age of 61

years. We find substance in the contention advanced on behalf of the respondents, as per which, petitioner's claim for payment of pension is not covered under the scheme and, therefore, no such direction can be issued.

Writ petition lacks merit and is, accordingly, dismissed.

Before parting, we would like to observe that series of enactments and schemes have been introduced by the Government of India and also the State Government to honour the contribution of freedom fighters in securing independence for the country. These schemes/enactments convey the sentiments of gratitude by the grateful nation towards its heroes and are indeed laudable.

We may, however, note that sacrifice made by the freedom fighters although needs to be remembered and cherished but the benefits extended to family members by providing reservations in employment and other benefits ought not to be continued in perpetuity nor such privileges can be claimed as a matter of right. Their contribution can never be quantified in terms of the reliefs which are to be granted to their heirs now after more than 70 years. It is to be noted that this benefit was granted only because the families of freedom fighters had to suffer greatly on account of contribution made by the freedom fighters which adversely affected the family members and in order to provide necessary support, reservation, etc. was given to them in employment. Such considerations existed at the time when the country became free or in proximate point of time, thereafter. The considerations in that regard cannot be stretched for an indefinite period.

The concessions which are granted for specific purpose and object to achieve these considerations would not remain relevant after inordinate period of time. We would, therefore, like to observe that it is high time when the governments have a re-look for providing concessions to dependents of freedom fighters and examine as to whether it remains desirable to allow such facilities to continue any further. The matter being one of policy, we would not like to express any definite opinion, but we hope and trust that the governments of the day take note of above concerns and formulate appropriate policy measures consistent with the constitutional ethos.

Copy of this order shall be forwarded to the Secretary Home, Government of India as also the Additional Chief Secretary, Department of Home, State of Uttar Pradesh.

Order Date :- 1.12.2021
Ranjeet Sahu