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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 4888 of 2005**

Ku. Dhaneshwari Thakur, D/o. Late Thakur Ghanshyam Singh,
Aged about 37 years, R/o. Gayatri Bhawan, Stadium Road, Kota,
Raipur (C.G.)

---- **Petitioner****Versus**

1. State of Chhattisgarh, Through: Secretary, General Administration Department, D.K.S. Bhawan, Raipur (C.G.)
2. Collector, Raipur, District Raipur (C.G.)
3. Accountant General, (Lekha & Hakdari), Raipur, Distt. Raipur (C.G.)76

---- **Respondents**

For Petitioner : Shri Manoj Paranjpe, Advocate.
For Respondent No. 5/State : Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/03/2017**

(1) The petitioner's father – Late Thakur Ghanshyam Singh claimed Freedom Fighter Pension for having participated in the freedom fighter movement particularly in the movement of 1942 and Quit India Movement. He was duly recognized as Freedom Fighter by the erstwhile State of Madhya Pradesh vide order dated 2.2.1998; and late Thakur Ghanshyam Singh was granted pension of Rs.1,250/- per month. He submitted declaration form, in which petitioner's name was also included as his dependent in the statutory proforma submitted to the erstwhile State of Madhya Pradesh.

(2) Unfortunately, petitioner's father expired on 24.06.1999. Thereafter, the petitioner, who is unmarried daughter of Late Thakur Ghanshyam Singh and who is covered under the definition of Rule 2(A) of the Madhya Pradesh Swatantrata Sangram Sainik Samman Nidhi Niyam, 1972 (henceforth 'Rules, 1972'), has made an application for grant of Freedom Fighter Pension and other benefits under the Rules. The said application was enquired by the Competent Authority through Collector, Raipur and on 15.10.1999 a report was sent by the Collector, Raipur to the State Government holding her to be dependent daughter of the deceased Freedom Fighter, but the State Government did not take any decision on the report submitted by the Collector, Raipur.

(3) The petitioner preferred writ petition there-against. Pursuant to the order passed by this Court in Writ Petition No.1704/2005 filed by the petitioner, the State Government has passed order on 23.08.2005 holding that though the petitioner's father was granted Freedom Fighter Pension but in view of second proviso to Rule 3(1) of the Rules, 1972, the petitioner is not entitled for Freedom Fighter Pension.

(4) Feeling aggrieved & dissatisfied with the decision so rendered by the State Government, this writ petition has been filed by the petitioner challenging the same.

(5) Learned counsel appearing for the petitioner would submit that the State Government has failed to take into consideration the clarification memo dated 06.09.1995 issued by the then State Government (erstwhile State of Madhya Pradesh), in which it has been clarified that after the death of Freedom Fighter, his dependent

unmarried daughter is also held to be entitled for Freedom Fighter Pension till her marriage and, therefore, the impugned order is liable to be set aside.

(6) On the other hand, Shri Vivek Sharma, learned Govt. Advocate would oppose the writ petition and support the impugned order and submit that the petitioner is not entitled for the freedom fighter pension and, therefore, the writ petition is liable to be dismissed.

(7) I have heard learned counsel appearing for the parties and considered their rival submissions made therein and also gone through the record available with utmost circumspection.

(8) At the outset, it must be noted that the principle behind giving pension and other emoluments to the Freedom Fighter or his son or his daughter by the Government is that on account of involvement of Freedom Fighter in the freedom movement, their children had suffered prejudice and incurred disabilities and to overcome such prejudice or difficulties, such a pension is being given to Freedom Fighters or their children.

(9) It is not in dispute that the petitioner's father was declared Freedom Fighter by the erstwhile State of Madhya Pradesh as he has participated in the Quit India Movement and he was also granted Freedom Fighter Pension under the Rules, 1972 but he expired on 24.06.1999 and her unmarried daughter claimed Freedom Fighter Pension as per the applicable rules. The matter was enquired by the State Government through Collector, Raipur and the Collector had given categorical finding that since the petitioner, who is unmarried

daughter of the deceased Freedom Fighter, is dependent on the deceased Freedom Fighter, therefore, she is entitled/eligible for Freedom Fighter Pension, but the State Government has rejected the same holding that once the Freedom Fighter has been granted Freedom Fighter Pension and he expired, then the unmarried daughter is not entitled for Freedom Fighter Pension.

(10) The State Government, vide its order dated 23.08.2005 while rejecting the application has recorded the following findings, which state as under:-

“माननीय उच्च न्यायालय के आदेश के पालन में प्रकरण के विधिक परीक्षण से यह निष्कर्ष निकला है, कि आप स्वतंत्रता संग्राम के “परिवार” में अविवाहित पुत्री होने के कारण स्व. श्री चौहान के परिवार में शामिल अवश्य होती है, किन्तु स्वतंत्रता संग्राम सैनिक सम्मान निधि नियम, 1972 (दिनांक 1/7/89 तक संशोधित) के नियम 3(1)(ख) के अधीन “परिवार” के सदस्य के रूप में आप उक्त राशि तभी प्राप्त करने की हकदार होती, जब आपके पिता द्वारा उक्त राशि नहीं ली गई होती और स्वतंत्रता संग्राम के दौरान या अन्यथा वे कालकवलित हुए होते ।

स्व. ठाकुर श्री घनश्याम सिंह चौहान को उक्त सम्मान निधि नियम 3(1)(क) के द्वितीय परन्तुक के अधीन, उनकी मृत्यु पश्चात् उनकी विधवा पत्नी मात्र ही पेंशन पाने की पात्रता रखती थी, और चूंकि उनकी पत्नी पूर्व में ही स्वर्गवासी हो चुकी है, अतः ऐसी स्थिति में आपको उक्त पेंशन की पात्रता नहीं रह जाती।

नियम 3(1) क एवं ख के प्रावधानों से स्पष्ट है कि सम्मान निधि स्वतंत्रता संग्राम सैनिक को देय होगा किन्तु यदि पेंशन स्वीकृति आदेश के दिनांक को स्वतंत्रता संग्राम सैनिक मृत हो चुके हों तो उनके परिवार के सदस्य को सम्मान निधि (पेंशन) स्वीकृत किया जा सकता । अतः आप स्वतंत्रता संग्राम सेनानी के परिवार के सदस्य होने की दशा में भी नियम 3(1) द्वितीय परन्तुक के प्रावधान के फलस्वरूप उक्त सम्मान निधि पाने की पात्रता नहीं रखती।

नियम में “पिता” की मृत्यु पश्चात् उनकी पत्नी को

छोड़ परिवार के किसी अन्य सदस्य को उक्त निधि हस्तांतरित की जायेगी ऐसी कोई व्यवस्था नहीं है।

उल्लेखित स्थिति में उक्त सम्मान निधि आपको स्वीकार किया जाना नियमानुकूल नहीं होगा। अतः आपके द्वारा प्रस्तुत आवेदन पत्र दिनांक 19/05/2005 पूर्ण विचारोपरांत अमान्य किया जाता है।”

(11) After promulgation of the Rules, clarification of the Rules has been issued by the erstwhile State of Madhya Pradesh on 6.9.1995. Paragraph No. 2 is relevant for the present purpose, which is being reproduced as under:-

“(2) आश्रित विधवा सदस्य को उनके जीवनपर्यन्त अथवा पुनर्विवाह होने तक उसमें जो भी पहले हो, प्रचलित दर से राज्य सम्मान निधि का भुगतान किया जा सकेगा। आश्रित अविवाहित पुत्रियों को बेरोजगार होने की दशा में उनके विवाह होने तक प्रचलित दर से (एक से अधिक आश्रित अविवाहित पुत्रियों की दशा में, मृत स्वतंत्रता संग्राम सेनानी को प्राप्त राशि बराबर विभाजित कर) दी जा सकेगी।”

(12) A careful perusal of the aforesaid clarification would show that petitioner being the dependent unmarried daughter of freedom fighter is clearly entitled for the Freedom Fighter Pension till her marriage and this fact has been ignored by the State Government while passing the impugned order. Thus, it is held that petitioner is entitled for Freedom Fighter Pension as per Rule 2 of the order dated 6.9.1995 till her marriage.

(13) Accordingly, impugned order is set aside and the State Government is directed to grant Freedom Fighter Pension from the date of petitioner's entitlement till her marriage and pay the arrears amount of the Freedom Fighter Pension within a period of four weeks

from the date of production of a copy of this order along with interest @ 8% per annum till the date of actual payment.

(14) Accordingly, the writ petition is allowed to the extent indicated hereinabove with cost of ₹ 10,000/-.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 4888 of 2005

Ku. Dhaneshwari Thakur

Versus

State of Chhattisgarh & others.

English

Petitioner, who is unmarried daughter of freedom fighter (Quit India Movement) is entitled for freedom fighter pension.

Hindi

याचिकाकर्ता, जो कि स्वतंत्रता सेनानी (भारत छोड़ो आंदोलन) की अविवाहित पुत्री है, को स्वतंत्रता सेनानी पेंशन की पात्रता है।

