

Dinkar Vs. Union of India

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Court : Delhi

Decided On : Jan-31-1995

Reported in : AIR1995Delhi276

Judge : Anil Dev Singh, J.

Acts : [Constitution of India](#) - Article 226; defense of Hyderabad Rules - Sections 33, 37 and 58

Appeal No. : C.W.P. No. 686 of 1994

Appellant : Dinkar

Respondent : Union of India

Advocate for Def. : Mr. Madan Lokur and ; Ms. Nandini Ramchandran, Adv.

Advocate for Pet/Ap. : Mr. R.K. Kapoor, Adv

Judgement :

ORDER

1. This is a writ petition whereby the petitioner claims payment of Freedom Fighters Pension w.e.f. August 1, 1980 or from the date of the filing of the writ petition. The facts giving rise to this petition are as follows :

The Government of India framed a scheme known as the Freedom Fighters Pension Scheme for awarding pension to the freedom fighters who had made

sacrifices during the freedom struggle. Subsequently in the year 1980 the scheme was revised and was renamed as Swatantrata Sainik Samman Pension Scheme, 1980 (for short 'the Scheme'). Pursuant to the scheme the petitioner applied to the Government for the grant of Freedom Fighters Pension to him. However, he did not succeed in getting the same which has resulted in filing the present writ petition on the grounds, inter alia, that the petitioner took part in the freedom struggle and because of his various activities he had to undergo sufferings and hardships.

2. It is pointed out by the learned counsel for the petitioner that the petitioner was convicted under Ss. 33, 37 and 58(a)(b) of the defense of Hyderabad Rules and sentenced to two years' RI by the Munsiff Magistrate at Nanded Suba Aurangabad on 15th Rehmān 1357 Fasli for raising the slogans, namely, 'State Congress Zindabad', 'Hyderabad Cannot Be Independent State', 'It Has To Merge Into Union Of India', 'Kala Raj Khatam Karo Lokraj Kayam Karo and Swamy Ramanand Tirth Ki Jai'. The petitioner was, however, released after a period of 37 days by the order of the Government, as is apparent from the imprisonment certificate (Annexure P-5 to the writ petition). In view of these facts, learned counsel for the petitioner submits that the petitioner is entitled to Freedom Fighters Pension as laid down in the decision of the Surja v. Union of India, : (1991)4SCC366 . Learned counsel for the petitioner specifically refers to the following observations of the Supreme Court :

'7. Freedom Fighters' Pension Scheme of 1972 was renamed as 'Swatantrata Sainik Samman Pension Scheme, 1980'. The brochure published by the Union of India indicates: 'A person who had suffered a minimum imprisonment for six months in the mainland jails before independence is eligible to be admitted to the benefits of the pension'. It has already been indicated that each of the petitioners had been convicted and was ordered to suffer imprisonment of more than six months. The petitioners' assertion that they did not claim remission has not been doubted or disputed. In the facts of the case, it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period of beyond six months remission had been granted and they were let off earlier would not take

away their right to earn pension. Learned Attorney General appearing for the respondents has accepted this construction of the entitlement clause.'

3. The upshot of the decision of the Supreme Court is that if a freedom fighter, who was convicted for a period beyond six months, was released before the expiry of the said period, he would still be entitled to pension provided he did not seek remission of the sentence.

4. Mr. Lokur, learned counsel for the respondents contended that the petitioner is not eligible for grant of pension as he had furnished bail bond for his release. In support of the plea, the learned counsel produced a copy of the letter from the Superintendent, Aurangabad Central Prison addressed to the Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi which reads as under :

'With reference to above, I have to submit that the true copy of the certificate in respect of the above person has been verified from the original record of this office and found as under :--

It is seen from the record that Shri Vaneker (and not 'Dinkar' as mentioned in the true copy) s/o Tukaram was admitted into this Prison on 5th Azur 57 Fasli under S. 33/37/ 164 and was convicted for a period of two years' S.I. and fine Rs. 200/- if not paid, 3 months more imprisonment on 2nd Azur 57 Fasli by the Nazumsaheb Adalat, Nanded.

It is seen from the record that the said has been released as per letter No. 990 dated 9 Dai 57 Fasli Sader Adalat after submitting Zamanat and Muchalaka.

The above certificate was issued to the incumbent on the basis of the translation made by the Language Officer (Urdu), Directorate of Language Office, Aurangabad.'

5. Mr. Lokur submitted that the letter clearly shows that the petitioner was released on furnishing Zamanat and Muchalaka and therefore the petitioner is not entitled to Freedom Fighters Pension in terms of Cl. (c) of Circular No. 58 of 1974 dated June 6, 1974.

6. I have considered the submissions of the learned counsel for the parties. It is surprising to note that in the case of one Dattatraya, who was convicted along with the petitioner for the same offence and who was released after 19 days of imprisonment, the respondent has conceded his claim for Freedom Fighters Pension. This is evident from the order of this Court dated October 28, 1994 in Civil Writ Petn. No. 10 of 1994, Shri Dattatraya v. Union of India which in so far as it is relevant reads as under :

'Mr. Shall states that the respondents have decided to give Freedom Fighters Pension to petitioner from 9-7-81'.

7. At this stage it will be appropriate to extract the order of the Munsif Magistrate at Nanded Suba Aurangabad in so far as it concerns the petitioner and Dattatraya :

'SerialNo. (1). Date of offence. 1st Azur1357 Fasli. Date of filing of the case. 2nd Azur1357 Fasli. Name of the complainant. The Station through Police, Nanded. Name of the accused. Babu s/o Devidas. Offence charged.

-----Objection and statement of accused, if any, recorded. i) Babu s/o Devidas Jain aged 19 years, occupation: business r/o Loha Taluka Kandhar stated on 1st Azur I have raised the slogans 'State Congress Zindabad', 'Hyderabad Cannot be Independent State', 'It Has To Merge Into Union of India', 'Kala Raj Khatam Karo Lokraj Kayam Karo, Swamy Ramanand Tirath Ki Jai'. Also hoisted flag of Indian Union..... 2) Dattatraya Shankar Rao Vaishya aged 18 years, occupation: business r/o Nanded. I have raised the slogans on 1st Azur which have been stated as above in between Hospital to Police Station House and also hoisted the flags. Statement of accused has been fully and correctly recorded. He admitted correctness having read it out to him..... 7) Dinkar Tukaram Shastry age 11 years, Brahmin occupation: student r/o Nanded. Stated that I have raised the above slogans through speaker. Statement of the accused has been fully and correctly recorded. He admitted the correctness having read over to him. sd/- Accused, sd/- Munsif Magistrate. 9) Final Order : For the offences charged the accused Babu Devidas and Dattatraya Shankar Rao are convicted and sentenced to Rao a Convicted and sentenced to R.I. for two years each. The other six accused persons name Ramrao Narshingh Rao, Shivanand Shankarrao,

Laxmikant Rajeshwarrao, VasantMadha Dinkar Tukaram Shastry and Narayan Madhav are sentenced to S.I. for two years because they all are young. The accused Babu to pay fine of Rs.1000/- and the other accused persons pay Rs. 200/- each. In default of payment of fine they should suffer further imprisonment 3 months each. After the lapse of appeal period the Muddamal property be destroyed. The signatures of the accused persons be obtained in taken of information'.

8. It is not denied by the learned counsel for the respondent that Dattatraya was released after 19 days of his imprisonment. He has not been able to throw any light how Dattatraya was released, whether Dattatraya had given any bail bond for his release is not known. It appears that both Dattatraya and the petitioner were released under the orders of the State Government, the former was, released after serving 19 days imprisonment while the latter was released after 37 days. The one who was released earlier gets the pension while the one who is released later does not. This is queer logic. It seems to me that both must have been released under the same conditions.

9. Learned counsel for the respondent produced the relevant file to show that the screening committee considered the claim of the petitioner on June 25, 1986 but rejected the same on the basis that there were no sufficient grounds for accepting the petitioner as eligible for Freedom Fighters Pension. It needs to be noted that at the time of consideration of the case of the petitioner in the year 1986, the screening committee did not have the benefit of the decision of the Supreme Court in Surja : (1991)4SCC366 (supra) as that decision was rendered on September 13, 1991.

10. The learned counsel for the respondent also submitted that possibly the screening committee rejected the case of the petitioner as he had given Zamanat and Muchalaka for securing his release. Assumption of the learned counsel for the respondent does not appear to be correct as according to the letter dated January 20, 1995, which was placed before me, a query appears to have been made from the Superintendent, Aurangabad Central Prison about the claim of the petitioner and it was only on January 20, 1995 that respondent came to know that the

petitioner had allegedly submitted Zamanat and Muchalaka for securing his release. thereforee the screening committee could not have rejected the case of the petitioner on that ground. Besides the prison certificate (Annexure P-5 to the petition) states that petitioner was released under the orders of the Government.

11. Having regard to the aforesaid discussion, I would direct the respondent to consider and decide the case of the petitioner afresh for the grant of Freedom Fighters Pension in the light of the observations made hereinabove within a period of six weeks. I order accordingly.

12. In the result, the rule is made absolute and the writ petition succeeds to the extent indicated above. There will be no order as to costs.

13. Order accordingly.

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