

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

W.P.A 4865 of 2022

Dipak Kumar Giri

vs.

Union of India & Ors.

For the petitioner : Mr. Sabyasachi Chaudhury, Adv.
Mr. Rittick Chowdhury, Adv.
Ms. Akansha Mukherjee, Adv.
Mr. Shounak Mukhopadhyay, Adv.

For the respondent Bank : Mr. Om Narayan Rai, Adv.

For the U.O.I. : Mr. Dilip Kumar Chatterjee, Adv

Last Heard on : 01.05.2023.

Delivered on : 11.05.2023.

Moushumi Bhattacharya, J.

1. The petitioner is the son of a deceased freedom fighter, who used to draw pension under the Swatantra Sainik Samman Pension Scheme (SSS Pension

Scheme). The petitioner's father died on 21.4.2014 and the petitioner's mother pre-deceased the petitioner's father. The petitioner claims setting aside of the letters dated 19.8.2015 and 10.7.2018 issued by the Ministry of Home Affairs with regard to cancellation of the SSS Pension Scheme. The petitioner also prays for a mandamus commanding the respondent no. 1 to transfer the pension entitlements of the petitioner's father / beneficiary of the Scheme from June, 2011 till his father's death on 21.4.2014 and disburse such payments in favour of the petitioner.

2. The reasons given in the letter dated 10.7.2018 is that vide paragraph 2.3 of the Revised Policy Guidelines dated 6.8.2014 the pensioner is required to submit his Life Certificate by 30th November every year and if this is not done till next 31st October, the pension shall be deemed to have been cancelled. In such cases, the Bank should return the disbursing portion of the pension payment order to the pension authority.

3. Paragraph 2.3 of the Revised Policy Guidelines introduced by the Ministry of Home Affairs on 6.8.2014 has been set out in the impugned letter dated 10.7.2018 and is reproduced below :

“If a pensioner does not submit his Life Certificate by 30th November and thereafter does not submit it even till next 31st October, then the pension is deemed to have been cancelled and in such cases, the bank should return the disbursing portion of the PPO to the CPAO. After the said deemed cancellation, if the pensioner re-appears either at the bank or at the Ministry, the pension shall only be resumed after a fresh sanction order is issued by the Ministry followed by an issuance of fresh PPO. In such cases, no arrears shall be paid.”

4. Admittedly, the Revised Policy Guidelines was brought out by the Home Ministry after the death of the petitioner's father on 21.4.2014. The Revised Policy Guidelines cannot be deemed to have retrospective effect. Hence, the "*deemed cancellation*" referred to in Para 2.3 of the Revised Policy Guidelines will not apply in the present case.

5. Para 2.3 which is the reason given by the Ministry for refusing to disburse the arrear pension to the petitioner would also not be applicable since the petitioner's father furnished Life Certificate only until 2008. The pension was however auto-credited to the petitioner's father's account till 2011. Surprisingly, however, the pension amount of Rs. 5,69,119/- was returned by the respondent Bank to the Ministry on 27.6.2011 which would appear from the reply given by the Indian Bank on 19.5.2021 to an RTI application made by the petitioner. The amount returned consisted of the petitioner's father's pension from May, 2008 to May, 2011. The amount also consisted of the pension paid by the Government of West Bengal of Rs. 1,23,500/-. An amount of Rs. 1,04,339/- was proposed to be refunded to the petitioner by the Ministry by way of a letter dated 30.6.2021.

6. The LC is in the nature of evidence and its purpose is to demonstrate that the pensioner is still alive. The petitioner's father was able to furnish the Life Certificate until 2008. The fact that the petitioner's father lived till 6 years after 2008 and died on 21.4.2014 is recorded in the impugned letter issued by the Ministry of Home Affairs on 10.7.2018. Hence, there is no conceivable reason as to why the pension rightfully due to the petitioner's father from

2008-2011 was returned by the Bank to the Ministry. There is also no tenable reason indicated in the letters issued by the Ministry as to the reason why the petitioner's father's pension under the SSS Pension Scheme would be withheld from June, 2011 till 21.4.2014, that is after the Ministry stopped auto-crediting the pension to the petitioner's father's account. The fact of the petitioner's father's death on 21.4.2014 is recorded in the letters issued by the Ministry of Home Affairs which further corroborates the pensioner's entitlements to the pension under the Scheme. As stated above, there is no question of any "*deemed cancellation*" of the pension by reason of para 2.3 of the Revised Policy Guidelines since the Revised Guidelines came after the petitioner's father's death and the pension had been auto-credited to the petitioner's father's account from 2008 – 2011 even without the furnishing of the Life Certificate.

7. The petitioner is the only surviving legal heir of his father who was the beneficiary of the SSS Pension Scheme. The petitioner was also made a nominee during the life of his father. The documents on record bear testimony to the aforesaid.

8. The above reasons reinforce the petitioner's right to the amount of pension which was due to his father and was credited under the Scheme but was later returned to the Ministry. The return of the pension was sought to be justified by the respondents on an incorrect premise and on the presumption of a retrospective application of a Revised Policy Guidelines. Thus, the reason to

deny the petitioner his right to the amounts as the sole surviving heir of his freedom fighter father is baseless.

9. WPA 4865 of 2022 is accordingly allowed and disposed of by setting aside the letters dated 19.8.2015 and 10.7.2018. The respondent no. 1 is directed to transfer the pension entitlements of Radhakanta Giri, since deceased, to the petitioner from June, 2011 to 21.4.2014. The amount should be disbursed to the petitioner's account with the respondent no. 5 or as the petitioner may choose to be intimated to the Bank and the Ministry within 7 days from date. The Ministry shall also refund the amount of Rs. 5,69,119/- to the petitioner in the stated account number within a period of 6 weeks from the date on which the petitioner intimates the account details to the Bank and the Ministry.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)