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R. NARAYANAN
v.
UNION OF INDIA AND ANR.

OCTOBER 25, 1989

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[S. NATARAJAN AND N.D. OJHA, JJ.]

Freedom Fighters Pension Scheme: Para 4, Cl. 3(e)—Freedom Fighter—Permanent loss of vision of one eye—Denial of pension—Validity of.

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Words and Phrases: 'Permanent incapacitation'—Interpretation of—Para 4, Cl. 3(e), Freedom Fighters Pension Scheme.

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Clause 3(e) of Para 4 of the Swatantrata Sainik Samman Pension Scheme of the Government of India entitles a freedom fighter to pension for having become permanently incapacitated during firing or lathi charge in the freedom struggle.

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The appellant applied for grant of pension on the ground that he had suffered permanent loss of vision in his left eye due to brutal lathi charge by the police against freedom fighters. His claim of permanent loss of vision in the left eye was duly certified by Government doctors. The District Collector after making a detailed enquiry, certified the claim of the appellant as a *bona fide* one and recommended his case for grant of pension. The State Government also appended their recommendation. The Ministry of Home Affairs, however, declined to grant pension on the view that loss of vision in one eye did not amount to permanent incapacitation.

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A single Judge of the High Court dismissed appellant's writ petition and a writ appeal against the said order was also dismissed by a Division Bench.

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In this appeal by special leave, it was contended for the respondents that the incapacitation under clause 3(e) must not only be permanent but it must also be a total one, and since the appellant had not lost vision in both the eyes the incapacitation, though permanent, was only partial and not total; and that the petitioner had not been able to produce any documentary evidence from official records of the relevant period in support of his claim.

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Allowing the appeal,

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HELD: 1.1 The words used in clause 3(e) of Para 4 of the Pension Scheme are “permanently incapacitated” and not ‘permanently totally incapacitated’. The measure of test thus laid down by the clause is the permanent nature of the incapacitation and not the total nature of the incapacitation. If clause (e) were to be interpreted to include total incapacitation then a freedom fighter who has lost a leg or an arm cannot claim payment of pension on the basis of permanent incapacitation inasmuch as the incapacitation suffered by him is not of both the legs or both the arms. It would be height of injustice to freedom fighters to construe clause (e) in the said manner. [724F; 725A-B]

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1.2 In view of the certificate issued to him by the Government doctors that the appellant had suffered permanent incapacitation of his left eye due to lathi blows received by him during the freedom struggle and the State Government authorities having, after due enquiry, accepted the *bona fides* of the appellant’s claim and recommended his case for grant of pension the respondents were not justified in refusing to grant him pension under clause (e) of the Scheme. [724G, 726C, 725E]

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2. No one can really expect official records to have been preserved for a period of 40 years to prove the treatment given to a freedom fighter for the injuries sustained by him during the freedom struggle. Hence, the objection relating to non-production of official records of the relevant period by the appellant to prove the sustainment of injury by him deserves outright rejection as well as outright condemnation. [726B-C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4496 of 1989.

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From the Judgment and Order dated 15.4.1986 of the Madras High Court in Writ Appeal No. 411 of 1986.

C.K. Sucharita for the Appellant.

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B. Dutta, Additional Solicitor General, (N.P.), P.P. Singh and Mrs. Sushma Suri for the Respondents.

The following Order of the Court was delivered:

Delay condoned.

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A Leave granted. Heard counsel for the parties. The appellant, who is a freedom fighter was refused the grant of pension under the Swatantrata Sainik Samman Scheme by the Ministry of Home Affairs, Union of India and hence the appellant approached the High Court for the issue of a writ of certiorarified mandamus. The appellant's writ petition was dismissed by a learned single Judge and the writ appeal B against the said order was also dismissed by a Division Bench. Hence the present appeal by special leave.

C Initially, the appellant sought the grant of pension on the ground that as a freedom fighter he was kept in police custody for fifteen days and after conviction he underwent imprisonment for three and a half months. Since under the Freedom Fighters Pension Scheme, a freedom fighter must have undergone a minimum period of imprisonment for six months for his participation in the freedom struggle in order to get pension under that head, the appellant was refused pension. Thereupon, he applied for grant of pension on another ground viz. that he had suffered permanent loss of vision in his left eye due to brutal D lathi charge by the police against freedom fighters. The appellant's claim of permanent loss of vision in the left eye was duly certified by Government doctors. The District Collector, after making a detailed enquiry, certified the claim of the appellant as a *bona fide* one and recommended his case for grant of pension by letter dated 13.9.84.

E Accepting the report of the Collector, the Deputy Secretary to the Government of Tamil Nadu addressed respondent No. 2 as under:

F "It is seen from the verification report that Thiru R. Narayanan, the freedom fighter has been permanently physically handicapped due to his involvement in the freedom struggle of the nation. In the circumstances stated above. I am directed to request that the Government of India may kindly be moved to sanction Swatantrata Sainik Samman Pension to Thiru R. Narayanan of Salem District."

G In spite of the medical certificates issued by Government doctors and the recommendations of the District Collector and the State Government for grant of pension under the S.S.S. Pension Scheme, the Ministry of Home Affairs declined to grant pension to the appellant on the ground that "it is not possible to grant Samman Pension in terms of permanent incapacitation, hence your case stands rejected" by communication dated 30.4.85. It was in such circumstances the appellant H

moved the High Court of Madras for the issue of a writ of certiorari-fied mandamus but failed to meet with success.

On notice being issued to the respondents, a counter affidavit has been filed on behalf of the Union of India by Shri Kishan Chand, Under Secretary, Ministry of Home Affairs. In the counter-affidavit it has been stated as follows:

“The alleged incapacity of his losing vision of one eye as a result of lathi blow during the freedom struggle is not considered as permanent incapacitation as contemplated under clause 3(e) under para 4 of the Scheme under the heading ‘who is eligible’. A person is eligible for the pension under the Scheme if he became permanently incapacitated during firing or lathi charge which would mean a person, in such a case, who has suffered complete loss of eye sight.”

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“The case of the petitioner has been considered and correctly rejected as per the terms of Scheme, the petitioner not being eligible for pension. Moreover, the petitioner has not been able to produce any documentary evidence from official records of the relevant period in support of his claim of loss of vision in one eye. In any case, the Government having decided as a policy in not treating loss of one eye as permanent incapacitation, a discriminatory decision cannot be taken in favour of the petitioner.”

Learned counsel for the appellant urged before us that the respondents are not justified in construing clause 3(e) of Para 4 of the Pensions Scheme to mean that the incapacity, besides being permanent should also be of a total nature, and as such the denial of pension to the appellant under clause (e) is unjust. Under the Scheme a freedom fighter is eligible to receive pension if he satisfies one of the following clauses viz.

- (a) Had suffered a minimum imprisonment of six months (three months in the case of women);
- (b) Had remained underground for more than six months provided
 - (i) he was a proclaimed offender; or

A (ii) he was a person on whom an award for arrest had been announced or;

(iii) he was a person against whom detention order had been issued but not served.

B (c) Had been interned in his home or extermited from his district provided the period of internment/externment was for six months or more.

(d) Had his property confiscated or attached and sold due to participation in the freedom struggle;

C (e) Had become permanently incapacitated during firing or lathi charge;

(f) Had lost his job (Central or State Government) and been thus deprived of his means of livelihood on account of his participation in the National movement."

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We are now concerned only with the interpretation of clause (e) of the Scheme. The clause only refers to permanent incapacitation due to firing or lathi charge and not to total incapacitation. The respondents would however take the stand that the incapacitation must not only be permanent but it must also be a total one. Hence according to them, since the appellant has not lost vision in both the eyes, the incapacitation, though permanent is only partial and not total and as such he is not eligible to grant of pension under clause (e) of the Scheme.

F The interpretation given by the respondents to clause 3(e) of Para 4 cannot be sustained because the words used in the clause are 'permanently incapacitated' and not 'permanently totally incapacitated.' If the stand of the respondents is to be accepted, it would be opposed to the plain meaning of the words and result in addition of more conditions to the clause what the framers of the Scheme have laid down. It cannot be disputed, in view of the certificates issued to him by the Government doctors that the appellant has suffered permanent incapacitation of his left eye due to lathi blows received by him during the freedom struggle. The question would then be whether that incapacity would satisfy the requirement of clause (e) or not. As already stated, clause (e) refers only to permanent incapacitation and not total incapacitation of a permanent nature. It therefore follows

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that the measure of test laid down by the clause is the permanent nature of the incapacitation and not the total nature of the incapacitation. If clause (e) is to be interpreted in the manner set out in the counter-affidavit, it would follow that a freedom fighter who has lost a leg or an arm cannot claim payment of pension on the basis of permanent incapacitation inasmuch as the incapacitation suffered by him is not of both the legs or both the arms. It would be the height of injustice to freedom fighters, who are a diminishing lot, to construe clause (e) in the said manner. Highly inequitable therefore it would be for the appellant to be denied pension under the Scheme because he has suffered loss of vision only in one eye and not in both the eyes. The respondents have failed to see that under the Scheme if a freedom fighter had undergone imprisonment or had been underground for a minimum period of six months he can be granted pension. In such circumstances can it be contended that a person who has permanently lost his power of vision in one eye due to firing or lathi charge cannot be granted pension unlike a person who has been in prison for six months or had remained underground for six months in order to evade arrest.

The Scheme has been formulated with a view to acknowledge the services rendered to the country by patriotic citizens during the freedom movement and who had suffered at the hands of the British Rulers in one way or the other and to compensate them in some measure for their sacrifices for the sake of the country. The respondents are therefore not justified in refusing to grant pension to the appellant under clause (e) of the Scheme on the ground that the permanent incapacitation suffered by him does not satisfy the requirements of clause (e) of the Scheme. The learned Single Judge and the Division Bench of the High Court, while rejecting the Writ Petition and Writ Appeal filed by the appellant, have only taken into account the period of imprisonment undergone by the appellant and the said period falling short of the prescribed minimum of six months and have not considered the appellant's claim for pension under clause (e).

Before concluding the judgment we may also refer to two other objections that have been raised by the respondents in their counter-affidavits. The first one is that the appellant's claim for pension under clause (e) is an after thought since he had put forth such a claim only after his claim for pension on the ground of incarceration had been rejected. The second objection put forth is that:

“the petitioner has not been able to produce any docu-

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A mentary evidence from official records of the relevant period in support of his claim of loss of vision in one eye."

E There is neither justice nor grace in the respondent's putting forth such objections. No one can really expect official records to have been preserved for a period of 40 years to prove the treatment given to the petitioner for the injuries sustained by him during the freedom struggle. Hence the objection relating to non-production of official records of the relevant period by the appellant to prove the sustainment of injury by him deserves outright rejection as well as outright condemnation. As regards the criticism that the appellant's claim under clause (e) appears to be an after thought, this too merits instantaneous rejection.

C As we have already pointed out, the government doctors who have examined the appellant have found his claim of permanent incapacitation of the left eye to be true and the State Government authorities have, after due enquiry, accepted the *bona fides* of the appellant's claim and recommended his case for grant of pension under the S.S.S. Scheme by the respondents. Consequently, merely because the appellant, perhaps out of ignorance of the several heads under which the claim of pension could be made, had applied initially for grant of pension under clause (e), it can never be said that the present claim of the appellant is an after thought.

E For all the aforesaid reasons, we allow the appeal with costs of Rs.2,000 and quash the impugned order of the respondents dated 30.4.1985, set aside the judgment of the High Court and issue a rule absolute in favour of the appellant as prayed for.

P.S.S.

Appeal allowed.