

GAHC020005662020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/18/2020

DR.ER. VEKHO SWURO
CHAIRMAN OF NETAJI SUBHASH CHANDRA BOSE MEMORIAL
DEVELOPMENT SOCIETY HAVING ITS HEAD OFFICE AT NEW
MINISTERS HILL, NEAR BOTANICAL GARDEN, KOHIMA,
NAGALAND, PERMANENT R/O RUZAZHO VILLAGE, P.O/P.S
CHOZUBA, PHEK, NAGALAND

VERSUS

THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY, BHARAT SARKAR,
GRIHMANTRALAYA
(FREEDOM FIGHTER AND REHABILITATION DIVISION - FFR
DIVISION), 2ND FLOOR, NDCC - II BUILDING, JAI SINGH ROAD,
NEW DELHI

2:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND
NAGALAND
KOHIMA

3:THE HOME DEPARTMENT

POLITICAL BRANCH
GOVT. OF NAGALAND REPRESENTED BY THE COMMISSIONER
NAGALAND
KOHIMA

4:THE HOME COMMISSIONER

NAGALAND

KOHIMA

5:THE DEPUTY COMMISSIONER

O/O THE DEPUTY COMMISSIONER
PHEK
NAGALAN

Advocate for the Petitioner : NUKSUNG TILA

Advocate for the Respondent : YANGER WATI

Date of hearing and judgment : **22.05.2024**

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT & ORDER (ORAL)

(S.K. Medhi, J)

Heard Ms. Nuksungtila, learned counsel for the petitioner. Also heard Mr. Yangerwati, learned CGC and Ms. Livika, learned State counsel.

2. The present writ petition instituted as PIL is by one Dr. Er. Vekho Swuro, who is the Chairman of the Netaji Subhash Chandra Bose Memorial Development Society having its head Office at Kohima. The prayer in the PIL is as follows:-

"Under these circumstances hereinabove stated your petition most humbly and respectfully prays that your Lordships may graciously be pleased to issue:-

(1) A writ in the nature of Mandamus/Certiorari directing the respondent authorities for an order/direction/relief in the form of special status, recognition, pension benefits/family pension/arrears (w.e.f. the date of INA Freedom Fighters started receiving the said

Pension Scheme) or one time grant or a rehabilitation package/supplementary financial assist so as to enable the families to run small business or to undertake scientific farming, livestock or other land-based activities which can provide the brave patriot families some assured and sustained earning to the INA Freedom Fighters of Nagaland and its dependents in accordance;

(a) *As guaranteed under Article 14 and 21 of the Constitution of India and other Constitutional and legal rights.*

(b) *And allow the benefits of Swatantrata Sainik Samman Yojana, 2017-2020.*

3. It is submitted on behalf of the petitioner that the Freedom Fighters and their beneficiaries in the State of Nagaland are not getting proper recognition and consequent benefits unlike those in the rest of the country. They have also not got the benefits of the *Swatantrata Sainik Samman Yojana* which is being given in the form of a regular pension to the Freedom Fighters or their families in the rest of the country. In this regard, the learned counsel for the petitioner has drawn the attention of this Court to a detailed representation dated 28.11.2018 submitted to the Home Department, State of Nagaland, which is yet to be responded by way of a formal communication. The learned counsel has also informed that in the meantime, the State Government has formulated a package for disbursement of token amounts to the affected family and in connection with the said process, biometrics are going on. It is submitted that the aforesaid action of the State would be a clear indication of the *bonafide* of the claim raised in this writ petition.

4. Ms. Livika, learned State counsel has submitted that though there is a package for release of certain amounts there is no clear instructions as

to the objective and basis of the aforesaid package, and therefore, it cannot be assumed that such package would be a recognition for being entitled to be a recipient under the *Swatantrata Sainik Samman Yojana*. As regards the representation dated 28.11.2018 is concerned, the learned State counsel has informed that the decision is of the Central Government and accordingly the application was duly forwarded to the Central Government. The learned counsel has also submitted that to be entitled for pension under the *Swatantrata Sainik Samman Yojana*, certain criteria are laid down which requires facing of a trial and/or punishment inflicted on the Freedom Fighter and there is nothing on record to show that any of the members connected with this petition had fulfilled the aforesaid criteria.

5. Supporting the submission of the learned State counsel, Mr. Yangerwati, learned CGC has submitted that there is no discrimination so far as the grant of pension under *Swatantrata Sainik Samman Pension Scheme* which is uniformly applicable for the entire country. He reiterates that the only requirement is to have the criteria fulfilled by the Freedom Fighter which is clearly mentioned in the Scheme and those are verified by the competent authorities in the State Government. The learned CGC has reiterated that the aforesaid criteria are not claimed to have been fulfilled by any of the members connected in this petition. He has also drawn the attention of this Court to Annexure-I of the writ petition which is one of the application appended. Under Part-II are the particulars of suffering undergone during the freedom struggle, the details which are to be given are:- (i) imprisonment, (ii) underground, (iii) externment, (iv) internment, (v) loss of job/means of livelihood, (vi) loss of property-confiscation, (vii)

permanent incapacitation, (viii) martyrdom. It is submitted that none of the aforesaid criterion are fulfilled by any of the members who claim to have been engaged as labours to carry the ration, clothing etc. to the INA temporary Camps. It is submitted that the aforesaid work would not entitle such member to claim pension under the Scheme, and therefore, no case for interference is made out. So far as the prayer to grant special status/recognition and pension, it is submitted that the subject is covered by the aforesaid Scheme which none of the members connected with this PIL are eligible on their own disclosure. He further submits that so far as the prayer for one time grant of package, the learned counsel for the petitioner has already informed this Court regarding such a package of the State.

6. In her rejoinder, the learned counsel for the petitioner has submitted that though certain averments have been made in the pleadings exchanged, there is no formal response either to the representation dated 28.11.2018 or any order of rejection of the application for such pension.

7. The rival submissions have been duly considered.

8. So far as the prayer for allowing the benefits of *Swatantrata Sainik Samman* Pension Scheme, it is seen that the said Pension Scheme is a uniform scheme for the entire country. The Scheme requires fulfillment of the person claiming to be a Freedom Fighter in any of the 8 (eight) heads which have been mentioned above. One of the application which has been annexed to the writ petition would itself show that none of the 8 (eight) requirements are fulfilled by the members connected with this petition. There is no provision for payment of such pension for labourers or porters who had carried ration, clothing etc. to the INA temporary Camps.

Therefore, the claim for pension under the aforesaid Scheme does not appear to have any substance.

9. Having said that, it is a different matter if either the State Government or the Central Government, in its discretion takes up any Scheme to identify persons who had rendered their selfless service in the freedom struggle and give them adequate benefit. However, such action would be within the discretion and domain of the Government and cannot be a part of a writ of mandamus.

10. This Court has also been apprised that the State Government has recognized the sacrifice of the respective families who had a Freedom Fighter by giving them a token amount in terms of a package. Though the State counsel has submitted that the objective of such package is not readily known to her, it can be assumed that if such package is meant for only those families who had a Freedom Fighter, the aforesaid factor may be taken into consideration if the appropriate authority, in its discretion decides to have any other Scheme for giving the benefits to the families of those persons who had rendered their selfless service in the freedom struggle of the country.

11. In terms of the aforesaid discussions, this PIL is closed.

JUDGE

JUDGE

Comparing Assistant