

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8562 of 2013

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1. Ramchandra Yadav S/O Late Ravi Yadav Resident Of Village - Navtoli,
P.O. Bishanpur, Block And Anchal - Rajnagar, P.S. Rajnagar, District -
Madhubani

.... Petitioner/s

Versus

1. The Union Of India Through Its The Secretary Ministry Of Home Affairs
Govt. Of India, New Delhi
2. The Secretary, Ministry Of Home Affairs, Govt. Of India, New Delhi
3. Under Secretary, Ministry Of Home Affairs (Ffr Division) New Delhi
4. The Principal Secretary, Home, Govt. Of Bihar, Patna
5. The Secretary, Home (Special) Department, Govt. Of Bihar, Patna
6. The Additional Secretary, Home (Special) Department, Govt. Of Bihar,
Patna
7. The District Magistrate, Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Mallick
Mr. Gagandeo Yadav
For respondent nos. 4 to 7 : Mr. Anjani Kumar
For the U.O.I : Mr. Anshuman Singh

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL ORDER

4 27-08-2015 Heard learned counsel for the petitioner and the

learned counsel for the Union of India.

The petitioner seeks quashing of the order dated
17.02.2012 issued under the signature of Under Secretary,
Ministry of Home Affairs, Govt. of India, by which the claim of
the father of the petitioner, Rabbi Yadav, for grant of Swantratrata
Sainik Samman Pension (hereinafter referred to SSS Pension) has
been rejected on the ground that he has not furnished record based
primary evidence, duly verified by the State Government.



The case of the petitioner, in short, is that his father Rabbi Yadav, had participated in 1942 movement and consequently a criminal case, bearing G.R.No. 671/ 1942 was instituted. It is the further case of the petitioner that Rabbi Yadav remained underground for a period from 13.08.1942 to 27.04.1946 , which is evident from the certificate dated 02.09.1989, contained in letter under Memo No. 1269 dated 02.09.1989, issued by the Joint Secretary, Home (Special) Department, Govt. of Bihar addressed to the Additional Secretary, Govt. of Bihar Freedom Fighter Cell, New Delhi. The further case of the petitioner is that the State Government had considered and recommended the case of the father of the petitioner for Freedom Fighter Pension to the Central Government belatedly in 1989.

A counter affidavit has been filed on behalf of the State wherein in para 5 it has been stated that the State Advisory Committee in its meeting, dated 02.04.1983 recommended for SSS Pension to Rabbi Yadav. Accordingly, the Home (Special) Department, Bihar, Patna, vide letter no,. 1269/C, dated 02.09.1989 had sent the copy of the application with supporting evidence received from Sri Rabbi Yadav along with recommendation of the State Government to the Ministry of Home Affairs, Government of India, New Delhi, for consideration, but no decision of Central Government was received in the

department. The State Government again vide its letter no. 25, dated 04.01.2012 sent the required documents to Ministry of Home Affairs, Govt. of India, New Delhi in respect to the father of the petitioner for grant of SSS Pension.

The Central Government has rejected his case on the ground that there was no document showing that he was a proclaimed offender, or an award for arrest/head was announced on him, or his detention orders were issued but not served on him. It was further observed in the impugned order that the claim of Shri Rabbi Yadav does not meet the eligibility criteria and evidentiary requirements of the Swatantrata Sainil Samman Pension Scheme, 1980.

The provisions of the Code of Criminal Procedure make it clear that it is only after warrant of arrest is not executed and serve on the accused in a substantive case, he is declared as an absconder by the Court and then only his name is entered into the records as an absconder. Section 82 of the Code of Criminal Procedure Code provides for proclamation for person absconding. The letter of Under Secretary has not doubted the genuineness of the extract of photo copy of G.R. No. 761 of 1042. In such circumstances, the entry of the name of the accused in the list of absconders would substantially meet the requisite requirement.

Learned counsel for Union of India submits that the

petitioner has stated that his father died on 03.03.2012, whereas as per letter dated 15/07/2013 (Annexure-F to the counter affidavit) of the District Magistrate on enquiry it transpired that Rabbi Yadav had died five years ago i.e. in the year 2008. The District Magistrate has further observed that the petitioner has submitted representation dated 29/02/2012 in the name of his father, Shri Rabbi Yadav by forging his signature to gain the benefits of SSS Pension Scheme, 1980.

In my view, the petitioner should first absolve himself of the allegation before the District Magistrate, Madhubani, that his father has not died in the year 2008, but subsequently in the year 2012.

With the aforesaid liberty, this writ application is disposed of.

If the petitioner files an application, the concerned authority would submit his report to the State Government and to the Central Government within a period of three months from the date of receipt/production of a copy of this order.

(Samarendra Pratap Singh, J)

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