

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1348 of 2012

IN

Civil Writ Jurisdiction Case No. 816 of 2008

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1. The Union of India through the Secretary, Ministry of Home Affairs Government of India, New Delhi.
 2. The Secretary, Ministry of Home Affairs Government of India, New Delhi.
 3. The Additional Secretary, Ministry Of Home Affairs Government of India, New Delhi. Appellants.

Versus

1. Smt.Jagdamba Devi, widow of Late Hari Kant Jha, R/O Vill-Gopalpur, P.O.-Pindaruch,P.S.-Kavital, District-Darbhanga, Bihar.
 2. The State of Bihar through the Chief Secretary, Old Secretariat Building , Patna.
 3. The Secretary, Home Department, State of Bihar, Old Secretariat Building, Patna.
 4. The Director-Cum-Additional Secretary, Home (Special) Department Government of Bihar, Patna.
 5. The District Magistrate , Darbhanga.
 6. The Superintendent , District Jail, Darbhanga. Respondents.
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Appearance :

For the Appellants : Mr. Sanjay Kumar, A.S.G.

For the Respondent No.1 : M/s Kamal Nayan Chaubey, Sr. Adv., Ambuj Nayan Chaubey, Ashok Kumar Garg and Dineshwar Pandey, Advocates.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-04-2015

The Union of India in the Ministry of Home Affairs has preferred this Intra-Court appeal against the judgment and order dated 11.01.2011 passed by the Hon'ble Single Judge of this Court in C.W.J.C. No.816 of 2008, whereby he allowed the writ petition filed on behalf of private-respondent no.1 by setting aside the order of the Central Government dated 15.11.2006, declining to grant dependent family pension under Swatantrata Sainik

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Samman Pension Scheme, 1980. The private-respondent no.1 has appeared and has been heard at length.

2. There is delay in filing the appeal. In view of the fact that earlier an appeal was filed in time but because of technical defect the same was permitted to be withdrawn. Thereafter, the present appeal has been filed with the leave of the Court. The delay is condoned in filing the appeal.

3. Heard the parties and with their consent, this appeal is being disposed of at this stage itself.

4. Late Hari Kant Jha, a resident of Darbhanga applied for pension under Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as the 'Pension Scheme') claiming that he had been made accused in a criminal case relating to independence movement in the year 1942. He was arrested in 1944 and released within 30 days. He was thereafter discharged in 1945. While his application was pending, he died and as such Smt. Jagdamba Devi, widow of Late Hari Kant Jha took steps to follow up the same. The Central Government, through the State Government, made enquiries. The State Government did make recommendation but when the matter came to the Central Government, the Central Government rejected the same by order dated 26.07.2000 holding that till 1944, the claimant was

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absconding but his claim, that he was arrested in 1944 and released in 1945, creates a serious doubt about the claim. It was further held that he was in prison for less than six months. This was then challenged by Smt. Jagdamba Devi in C.W.J.C. No.9903 of 2001 before this Court. The writ petition was allowed by judgment and order dated 25.08.2006. This judgment would be very material, the relevant part whereof is quoted hereunder:-

“.....Considering the facts and circumstances of this case as well as the claims of the respective parties and the materials on record, it is quite apparent that the petitioner had been released on bail on 27.10.1944 and had been discharged from the case on 25.01.1945 and hence there is no question of any confusion between the two dates. Furthermore, the Collector after receiving the letter from the Union of India got the matter fully enquired into, which is apparent from the report of the Deputy Collector dated 19.07.1999 (Annexure-6/1). Furthermore, it is quite apparent from the certified copy of the record (Annexure-2), the recommendation of the State Government (Annexure-4), enquiry report of the Deputy Collector (Annexure-6/1) and the letter of the District Magistrate, Darbhanga (Annexure-6/2) that the husband of the petitioner, namely, Hari Kant Jha was an accused in a criminal case lodged with respect to freedom struggle of 09th August, 1942 and remained absconding from 16.08.1942 to 14.10.1944 and hence the said period was more than six

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months as provided in clause 4 (b) of the Swatantrata Sainik Samman Pension Scheme, 1980 and was arrested immediately thereafter on 14.10.1944 and hence the period for which he remained in jail was quite insignificant even if he remained in jail for less than six months in accordance with the provisions of the Scheme, as remaining underground for more than six months was sufficient under the provision of the Scheme to make the person entitled for the pension.

Furthermore, from the impugned order of the Union of India dated 26.07.2000 it is apparent that it has not been stated anywhere that the report of District Magistrate, Darbhanga dated 27.12.1999 was found not satisfactory nor there is any indication that if the said report is found to be unsatisfactory any other report was sought for. Hence, assumption of the authority concerned that the entire matter appears to be doubtful is absolutely baseless and frivolous in the light of the specific report of the Collector, the recommendation of the State Government, the records of the case etc.

In the said circumstances, the impugned order dated 26.07.2000 (Annexure-7) passed by the Home Ministry, under the signature of Under Secretary, Union of India is hereby quashed and the authority concerned is directed to pass a fresh order in accordance with law considering the aforesaid documents within a period of two months from the date of receipt/production of a copy of this order.....”

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5. The matter was, thus, remitted to the Central Government for fresh consideration of the documents available on record and pass appropriate orders. The matter was then again considered and once again, by order dated 15.11.2006, the Central Government rejected the claim. This time, the Central Government clearly pointed out that the applicant had claimed that he was made an accused in 1942 and was arrested in 1944. He was, thus, absconding for two years. He was then arrested and then released on bail within 30 days. The Central Government found that as per the scheme, the eligibility was that a person had to be underground for six months or more. Underground had to be established by three independent facts either he ought to have been declared a proclaimed offender or there had to be a prize put on his arrest or orders of detention had been issued but could not be served. The Central Government pointed out that none of these three conditions were applicable and, as admittedly, the arrest and detention was of 30 days that is less than six months, the applicant was ineligible. Again Smt. Jagdamba Devi filed a writ petition challenging this order being C.W.J.C. No.816 of 2008. The said writ petition was taken up and allowed by the judgment and order dated 11.01.2011 which is impugned in this Intra-Court appeal.

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The learned Single Judge has held that the findings arrived at by the learned Single Judge in the earlier writ petition, being C.W.J.C. No.9903 of 2001 allowed on 25.08.2006 (relevant part quoted above), operated as res judicata/constructive res judicata and that order not having been challenged, the findings were binding on the parties and in that view of the matter, the Central Government should grant dependent pension to the petitioner within two months. It is the correctness or otherwise of the view taken by the learned Single Judge in the second case, that is under challenge.

6. Mr. K.N Chaubey, learned senior counsel for the applicant (private-respondent no.1) submitted that in view of the findings as recorded by the learned Single Judge at the first instance in the first writ petition, the matter not having been challenged, it operated as res judicata and it was not open to the Central Government to reconsider the matter and reject the claim.

7. We are unable to accept this contention. From the relevant part of the judgment as quoted above in respect of the first round of litigation before this Court, two things would be evident. Firstly, the learned Single Judge clearly came to a finding that the applicant was absconding for more than six months. There was neither any document nor any report that the

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applicant had been “underground” for more than six months. Let it be noted that being underground is not synonymous to be an absconder. Underground has been defined under the pension scheme and none of those conditions undisputedly are complied with by the applicant. Therefore, the finding of the learned Single Judge was that the applicant was absconding and thus would be underground. This was without reference to the scheme. The second important thing to be noted is that when the learned Single Judge remanded the matter to the Central Government for reconsideration, it clearly gave liberty to the Government to reappraise the documents. If the learned Single Judge had intended to give findings about the eligibility then it would have been a simple remand to pass consequential orders with no right to reappraise the evidence.

8. In our view, the Central Government was authorized to reappraise the evidence and come to a finding. Pursuant to the aforesaid remand order, the Central Government has clearly pointed out that the applicant did not meet the eligibility criteria of either being an underground within the meaning of the scheme for more than six months nor did he claimed to be in custody for more than six months and as such he was ineligible.

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9. Res judicata or constructive res judicata would not apply for the simple reason that liberty as granted by the learned Single Judge, authorized the Central Government to reappraise the evidence and come to a finding afresh. Therefore, the learned Single Judge at the second instance that is in the second writ petition was not correct in holding that the principles of res judicata would apply and the Central Government was bound to give pension. We are unable to persuade ourselves to accept the view either in fact or in law. As the applicant has failed to satisfy the eligibility conditions no fault can be found with the Central Government in disallowing the claim.

10. In the result, this appeal is allowed and the order dated 11.01.2011 passed by the learned Single Judge in C.W.J.C. No.816 of 2008 is set aside.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

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