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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2238/2015**

RAJENDRA THAKUR Petitioner
Through: Mr R.S. Sharma, Adv.

versus

**UNDER SECRETARY, GOVERNMENT OF
INDIA & ORS** Respondents
Through: Mr Akshay makhija, CGSC with Mr
Rohitendra Deb, Ms Mahima Bahl & Ms
Sanjugeeta Mokhtan, Advs. for R- 1 & 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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20.04.2015

1. This writ petition is directed against order dated 9/10.12.2013, whereby respondent no.1 rejected the prayer of the petitioner for grant of Swatantrata Sainani Samman Pension Scheme (in short SSS Pension). Notice in this petition was issued on 10.03.2015.

1.1 While issuing notice, it had been observed that the writ petitioner had approached this court on an earlier occasion by way of a writ petition being: WP(C) No. 367/2014. The said writ petition was disposed of on 31.03.2014, and was listed only for compliance on 19.08.2014. Incidentally, the said writ petition had also come up before me. While, disposing of the writ petition, I had, inter alia, directed the Government of Bihar, i.e., respondent no.2 herein, to, once again, furnish a verification report to respondent no.1.

2. On the date when the notice was issued in the captioned writ petition, Mr Amit Mahajan, who appeared for respondent no. 1 & 3, had stated that

the said respondents had not received any communication dated 26.05.2014, sent by the Government of Bihar to the Central Government. He had thus indicated that, therefore, no fresh order was passed.

2.1 In these circumstances, two weeks were granted to the respondents to pass a fresh order based on the communication dated 26.05.2014, dispatched by the Government of Bihar to the Central Government. Since, a stand was taken that the said communication of the Government of Bihar was not received, respondent no. 1 & 2 were directed to pass an appropriate order based on the copy placed with the writ petition.

2.2 It was also made clear that in case respondent no. 1 & 2 were to oppose the writ petition, they would file their counter affidavit within the same time frame.

3. Mr Makhija, who appears today, for respondent no. 1 and 3 (in effect, the Central Government), has drawn my attention to the counter affidavit dated 20.03.2015, filed on behalf of the said respondents. Along with the counter affidavit, a copy of the order dated 13.03.2015 is also appended, which, inter alia, rejects the petitioner's claim for SSS Pension after taking into account the Government of Bihar's communication dated 26.05.2014.

4. Since, this order has been passed pursuant to the directions of this court dated 10.03.2015, on an oral prayer of the petitioner, that the challenge to the said order be also considered, the plea made in that behalf is accepted. The reason for this is, the plea of the learned counsel for the petitioner, that the, grounds of challenge remain the same and, therefore, he need not carry out an amendment in the existing writ petition.

4.1 In any event, in so far as challenge and, consequent relief qua order dated 13.03.2015 is concerned, in the given circumstances, it can be safely

covered in the residuary prayer made in the petition.

5. Briefly, the petitioner's case is that, he took part in the 1942 Movement, which was part of the freedom struggle, and on account of his participation in the Movement, he remained underground between August, 1942 till 31.05.1946, i.e., for a period of about four years.

5.1 The petitioner, avers that because of his participation in the Freedom Movement, he was included as an accused in GR 744/42.

5.2 Based on this fact, the petitioner made an application with the respondents on 06.07.1981, for being granted SSS Pension under the said scheme. The Government of Bihar, i.e., respondent no.2, placed the matter before the Advisory Committee, which, according to the petitioner, vide order dated 21/22.02.1998 recommended the case of the petitioner for release of pension w.e.f. 01.08.1980.

5.3 The petitioner further avers that since SSS Pension was not paid, several requests were made to the respondents, and having lost all hope, he approached this court by way of a writ petition under Article 226 of the Constitution, as indicated above.

6. The first round, in this court, was by way of a writ petition, which was numbered as: WP(C) No. 367/2014. Directions were issued in that writ petition vide order dated 31.03.2014, for re-issuance of a verification report by the Government of Bihar, i.e., respondent no.2.

6.1 This direction was issued by me in order to enable the petitioner to get over the red tape, which was, in effect set up by the Central Government, that had taken a position that the Government of Bihar/ respondent no.2 had not issued a verification report, as required under the SSS Pension Scheme.

6.2 The Central Government, in terms of the said order, was required to

take a decision in the matter with due expedition, though not later than six weeks from receipt of the verification report and recommendation of the Government of Bihar/ respondent no.2. The matter was kept back for compliance and was listed for this purpose on 19.08.2014.

7. In view of the direction issued on 31.03.2014, the matter came up before this court on 19.08.2014, to report for compliance.

7.1 On that date, the learned Judge noted the petitioner's grievance that he had not received a copy of the rejection letter, said to have been issued by respondent no.1, i.e., the Central Government; and that furthermore, he had not received a copy of the communication stated to have been dispatched by Government of Bihar/ respondent no.2. Accordingly, the court directed the Central Government/ respondent no. 1 to furnish a copy of the rejection letter to the petitioner within a period of two weeks.

8. It is in pursuance of the aforesaid direction dated 19.08.2014, that the order dated 09/10.12.2014, was served upon the petitioner.

8.1 As noticed at the very beginning, this order did not take into account the communication dated 26.05.2014, issued by the Government of Bihar.

9. Therefore, what one is required to examine, is the tenability and the legal sustainability of the order dated 13.03.2015, which is, purportedly issued after taking into account the communication dated 26.05.2014 issued by the Government of Bihar/ respondent no.2.

9.1 For the sake of convenience, the grounds on which petitioner's request for grant of SSS Pension has been rejected (as set out in paragraph 5 of the order dated 13.03.2015), are set out hereinbelow:

“....5. After taking into account all the facts available in this case and keeping in view the provisions of the SSS Pension Scheme,

1980 for grant of central Samman pension to a freedom fighter, following shortcomings emerged:

- i) The State Government, vide its letter No. AN/H.S.D/CC/04-04/ 14-340 dated 26/5/2014, has not categorically verified the GR No. 744/42 in the matter of Shri Rajendra Thakur. The State Government has only re-affirmed its earlier recommendation sent vide their letter no. 556 dated 23/5/1998 and No. 267 dated 25/4/2014.
- ii) It is difficult to hold the analogy that since this Ministry has sanctioned pension to Shri Chandra Kant Jha, in GR No. 744/12, then the case of Shri Rajendra Thakur be also considered. The case of Shri Chandra Kant Jha is different than the case of Shri Rajendra Thakur. The State Government's specific recommendation, is not these saying that the person appearing at SI. No. 33 of the GR No. 744/42, is the petitioner himself.
- iii) Moreover, there are 55 number of accused appearing in the GR No. 744/42. This Ministry has not sanctioned pension to all of them just because GR No. 744/42 was verified by the State Government in the matter of Shri Chandra Kant Jha. If the Ministry agrees to this contention, then many cases belonging to GR No. 744/42 may come up.
- iv) The State Government was required to clearly certify that petitioner indeed is the one mentioned in the said GR No. 744/42. Therefore, this is not the case of primary evidence.
- v) In the absence of primary evidence, NARC by the State Government was to be provided but the State Government has not given the same in this case. The NARC, given by the State Government, was, in respect of non-availability of records of Shri Bhagirath Jha and not of Shri Rajendra Thakur.
- vi) PKC is acceptable only when the same is accompanied with the jail certificate of certifier and in this case, Shri Bhagirath Jha, while giving the PKC, did not include his jail certificate.
- vii) The central samman pension was sanction in the case of Shri Baidyanath Mahto and Shri Rajdhar Jha not on the basis of

acceptance of PKC of Shri Bhagirath Jha....”

(emphasis is mine)

9.2 As would be noticed, main thrust of the order dated 13.03.2015, is that, the Government of Bihar/ respondent no.2 has not made a specific recommendation, to the effect, that petitioner, was the person whose name appeared at serial no. 33 in GR 744/42.

10. This observation/ finding of respondent no. 1 & 3 is clearly wrong. Paragraph 1 of the State Government’s communication dated 26.05.2014, in no uncertain terms, records that the petitioner is the accused, whose name stands mentioned at serial no. 33 in GR 744/42. The relevant portion of the said communication is extracted hereinafter:

“..... It is clarified that the name of Chandra Kant Jha accused is recorded at the serial no. 11 of the said G.R. No. 744/42 and the said G.R. No. 744/42 has been verified by the letter No. 258 dated 14.10.1984 of Additional District Magistrate, Madhubani. The freedom fighter pension of Shri Jha is approved by the Ministry of Home. Shri Thakur is also accused at serial no. 33 of the said G.R. No. 744/42.....”

(emphasis is mine)

11. The other tertiary ground, on which, the petitioner’s request for grant of SSS Pension has been rejected, is that, Bhagirath Jha, who provided a certificate to the petitioner, evidencing the fact that he remained underground for the period claimed, did not include with the certificate, so issued, his own jail certificate.

11.1 What is not disputed before me by Mr Makhija, is that, Mr Bhagirath Jha was a recipient of pension under the SSS Pension Scheme. Therefore, I fail to appreciate this stand taken by respondent no. 1 and 3, that Bhagirath

Jha's certificate, issued in favour of the petitioner, was not accompanied by his own jail certificate.

11.2 Mr Makhija also attempted to buttress this objection by submitting that the certificate issued by Mr Bhagirath Jha, was verified by his son, Mr Ashok Chandra Jha. In other words, the stance taken was that, there was no independent verification of the certificate issued by Mr Bhagirath Jha.

11.3 To be noted, on the date when Mr Ashok Chandra Jha verified the personal knowledge certificate issued by his father, Mr Bhagirath Jha, he had already expired.

11.4 To my mind, there could be no better person who could establish the veracity of the certificate issued by Mr Bhagirath Jha.

12. In these circumstances, I find that the stand taken by respondent no.1 and 3 to reject the claim of the petitioner, as unsustainable, both on facts and in law. Accordingly, the order dated 13.03.2015, is set aside.

13. I may also note, in the passing, that despite various orders of the courts, respondents have been taking recourse to, at times, hyper-technical grounds while dealing with pension claims under the SSS Pension Scheme as if, the applicant before them are required to produce evidence, which should bear a standard of proof equivalent to one which is required in a criminal case, that is, proof beyond reasonable doubt. The standard of proof, which is required, in these cases, ought to be the one of preponderance of probability.

13.1 If the test of preponderance of probability is applied, and if, what the petitioner says is right, the respondents should have, given the material set out above, accepted the claim of the petitioner. The petitioner is 93 years old. I doubt, based on the material placed before me by respondent no. 1

and 3, that he would, at this stage in his life, make a dishonest claim. The stand of respondent no. 1 and 3, in a sense, dilutes the very purpose and object for which the SSS Pension scheme was formulated, in the first instance. For most applicants, it is more about the honour and less about money.

14. Accordingly, respondent no. 1 & 3 are directed to pay the requisite pension to the petitioner as stipulated under the SSS Pension scheme, from the date when the application in this case was made, i.e., on 06.07.1981. [See observations of the Supreme Court in *Mukund Lal Bhandari & Ors. vs Union of India & Ors. 1993 Supp. (3) SCC 2* in paragraph 10 at page 8].

14.1 Arrears will be paid, accordingly. The arrears will be paid with interest, calculated at a simple rate of interest pegged at 12% per annum. [See *judgment dated 29.01.2015, passed in WP(C) 7155/2014, titled : Dev Narayan Mishra Vs. Union of India and Anr.; and judgment dated 24.02.2015, passed in WP(C) 6950/2014, titled : Radha Krishan Vs. Union of India and Anr.*].

15. Since, the petitioner has succeeded, after having had to approach the court twice over, he will also be entitled to costs. Respondent no. 1 & 3 will pay costs, in the sum of Rs. 5000, to the petitioner, within two weeks from today.

16. The petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

APRIL 20, 2015

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