

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 4373 of 2016 (O&M)

Date of Decision: August 10, 2016.

H.C. Arora, Advocate

....Petitioner.

Versus

State of Punjab and others

..... Respondents.

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. H.C. Arora, Advocate - petitioner-in-person.

Mr. Kamal Sehgal, Additional Advocate General, Punjab.

Mr. Rajeev Kawatra, Advocate for respondent No.3.

S.S. SARON, J.

Mr. Kamal Sehgal, Additional Advocate General, Punjab has submitted a copy of the revised criterion dated 05.08.2016 issued by the State Government, Department of General Administration (Freedom Fighter Branch) for the purpose of grant of financial benefits to those who participated in the 'Punjabi Suba Movement' and who agitated against the proclamation of emergency from 26.06.1975 to 21.03.1977. The revised criterion is taken on record subject to just exceptions.

Heard learned counsel for the parties.

The petition has been filed seeking quashing of the Scheme granting pension and other financial benefits to those who participated in the 'Punjabi Suba Movement' and also to those who participated in the agitation against the proclamation of emergency during the period from 26.06.1975 to 21.03.1977.

The Punjab State Government issued a Scheme dated 08.12.2015 (Annexure P1) granting pension and other financial benefits to those who participated in the 'Punjabi Suba Movement' and also to those who participated in the agitation against the proclamation of emergency. The Scheme (Annexure P1) envisages the grant of facilities to 'Sangarshi Yodhas', who participated against the emergency that was imposed during the period from 26.06.1975 to 21.03.1977 and also the 'Punjabi Suba' agitation from 1955 to 1965. It is provided in terms of the Scheme that every such 'Sangarshi Yodhas' and in case of death, his wife/her husband or after them, a member of his/her family be given financial assistance to the extent of Rs.1,000/- per month.

During the course of hearing, the petitioner has primarily alleged that there is complete highhandedness in the manner by which the benefits of the Scheme are to be disbursed. According to him, the certification and verification for entitlement for grant of financial benefits, which was earlier quite high has now been lowered vide memo dated 10.05.2016 (Annexure P5). The powers to implement the aforesaid Scheme in terms of memo dated 10.05.2016 (Annexure P5) have been conferred upon the Deputy Commissioners by the State Government. Besides, the procedure for grant of benefits, it has been decided by the State Government to get a certificate only from Ex.MP/Ex.MLA/MP/MLA/Chairman Zila Parishad/Member Zila Parishad/ Member Block Samiti/Chairman, Panchayat Samiti or Sarpanch of the village. Similarly, in the urban areas, President Municipal Committee, Councillor and Mayor were to certify that the applicant had participated in 'Punjabi Suba Morcha' or against the emergency and he would be entitled for

pension for that purpose.

Mr. Kamal Sehgal, Additional Advocate General, Punjab supported the validity of the Scheme and referred to the case of **Ravi Shankar Kumar Akela v. The State of Bihar and others** AIR 2014 Patna 61 (DB). In terms of the said judgment, a criterion for grant of monthly pension of Rs.2,500/- was restricted to those who had remained in custody for a period of up to six months or were injured in police firing, besides, Rs.5,000/- to the widow of those who may have died in police firing or during custody under the Maintenance of Internal Security Act and the Defence of India Rules.

In terms of order dated 03.06.2016 passed by this Court, it was noticed that there was no such similar criterion in the present Scheme and the conditions for entitlement for the grant of financial assistance which were earlier restricted to those who could produce a copy of the FIR, copy of Daily Diary Report (DDR), copy of jail certificate, copy of order issued by the Judicial Court and order passed by the Deputy Commissioner/Sub Divisional Magistrate/Tehsildar/Magistrate had been lowered to that of obtaining a mere certificate from Ex-MP/Ex-MLA/MP/MLA/Chairman, Zila Parishad/Member, Zila Parishad/Member, Block Samiti/Chairman, Panchayat Samiti or Sarpanch of the village. Similarly, in urban areas, a certificate only from President Municipal Committee, Councillor and Mayor certifying that the applicant had participated in 'Punjabi Suba Morcha'/'Morcha' against emergency was to be taken as sufficient. This has been the sole grievance that has been raised by the petitioner.

In terms of memo dated 05.08.2016, that has been filed in Court

today, it has, *inter alia*, been mentioned that in respect of the ‘Sangarshi Yodhas’ who struggled for the rights of Punjab and for their protection had participated in the ‘morcha’ (movement) for ‘Punjabi Suba’ and against the emergency, for giving benefits and to give more benefits had been implemented from 08.12.2015. Necessary powers to implement the Scheme had been given to all the Deputy Commissioners and at the district level, Committees had been constituted. The procedure for implementing the Scheme for the beneficiaries had been simplified and intimated vide letter dated 10.05.2016. A reference has been made to the order dated 03.06.2016 passed in the present petition and in terms of the same it has been decided by the Government that the ‘Sangarshi Yodhas’ who were beneficiaries of the Scheme and had participated in the ‘Punjabi Suba Movement’ or the Movement against Emergency be given benefits on the basis of the following criteria:-

- (i) Rs.1,000/- per month for those who remained in jail for three months,
- (ii) Rs.1,500/- per month for those who remained in jail from three to six months,
- (iii) Rs.2,000/- per month for those who remained in jail for six months onwards.

The revised criterion set out in para 4 of the Scheme provides that the beneficiaries who are entitled to the Scheme would have to give proof in respect of one of the following:-

- (i) Proof of having undergone the imprisonment during emergency/agitation; or

(ii) Certificate from two co-prisoners that the claimant was with them in the emergency/agitation and had undergone imprisonment. The co-prisoners who give such a certificate must have concrete proof of himself having undergone the imprisonment; or

(iii) Unanimous resolution from the Gram Panchayat in case the claimant is from a village area and unanimous resolution from the Municipal Committee in case the claimant is from the urban area as to for how long the claimant had spent jail term.

The government also decided that those 'Sangarshi Yodhas' who were earlier getting pension, their pension be restored.

The petitioner-in-person submits that clause (iii) would give a room for manipulation. However, we find that the Gram Panchayat/Municipal Committee is a statutory body and it cannot be *per se* said or expected that they would pass a false resolution on mere asking of a claimant; besides, the resolution that is to be passed by the Panchayat or the Municipal Committee, as the case may be, is to be unanimous. Therefore, *per se* it cannot be said that there would be room for manipulation by either the Gram Panchayat in respect of village area or the Municipal Committee in respect of urban area.

It is then suggested by the petitioner that the criterion for the grant of benefits that has been fixed should be in the alternative and only if the first proof is not available, the second proof be given and in case, second proof is not available then the third proof be given.

We have given thoughtful consideration to the contention.

It is to be kept in mind that the Courts do not substitute the decisions that are taken by the Government for the grant of any benefit. It is only if the Scheme is unreasonable or perverse that the Court may interfere with the same and invalidate it. The Scheme by itself as framed, even according to the petitioner, is not unreasonable or perverse and his grievance all along has been that the criterion be made stringent so that undeserving persons do not get the benefit of the same. This, of course, the State would also not want that any person, who is not entitled for such benefits, should get the benefits of the Scheme as that would defeat the very purpose of the Scheme.

Therefore, we leave it for the State to implement the criteria and grant benefits of the Scheme to genuine claimants in accordance with the criteria fixed by the Scheme as has been modified.

With the said observation, the writ petition is disposed of.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

August 10, 2016.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No