

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.311 of 2016
IN
Civil Writ Jurisdiction Case No. 7136 of 2004**

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Ram Dutt Yadav, son of Late Bhulan Gope, resident of village - Dhanraj Chhapra,
P.O. - Saidabad, Police Station - Rani Talab Kanpa, District - Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary, Home, Govt. of Bihar, Secretariat, Patna.
2. The Chairman, Freedom Fighter Advisory Committee, Patna.
3. The Joint Secretary, In-charge Freedom Fighter Division, Department of Home, Government of Bihar, Patna.
4. Mr. J.C. Ban, The Under Secretary, Freedom Fighter Division, Ministry of Home Affairs, Lok Nayak Bhawan, Khan Market, New Delhi.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Pradip Kumar, Advocate
Mr. Rajib Ranjan Jha, Advocate
Mr. Sanjay Kumar Sinha, Advocate

For the State : Mr. Sunil Kumar, AC to GA-12

For the Union of India: Mr. A. K. Pandey, Sr. C.G.C.
Mr. Ravinder Kumar Sharma, C.G.C.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-05-2017

Seeking exception to an order dated 14.07.2015 passed by the Writ Court in CWJC No.7136 of 2004 dismissing a writ petition filed by the petitioner in the matter of cancelling the Freedom Fighter Samman Pension (for short, 'the pension') granted to the petitioner, this appeal has been filed under Clause X of the Letters Patent.

It is the case of the petitioner that he had participated in



the Freedom Fighting Movement in the year 1942 and based on an application submitted by him and after due enquiry he was awarded the benefit of Pension under the Scheme formulated by the Government of India. During the 50th Anniversary of India's Independence, he was granted pension and subsequently on the basis of a direction issued by a Division Bench of this Court in a public interest writ petition, vide order dated 13th October, 2003 when the benefit of pension granted was cancelled, he filed the writ petition.

It is seen from the records that in the matter of grant of pension in question, *suo motu* proceedings were initiated by the Patna High Court in CWJC No.10638 of 2001 and on an order was passed in the aforesaid case, wherein a direction was issued to cause an enquiry by the respective District Magistrates with regard to grant of pension to 56 persons, enquiry was conducted into the matter and a report was submitted by the District Magistrate on 12.02.2002 recommending the cancellation of pension of various persons, including the present petitioner. Based on the aforesaid, a show cause notice dated 07.03.2002 was issued to the petitioner and thereafter, when the benefit was withdrawn and cancelled on 13.10.2003, the writ petition was filed.

Learned counsel for the petitioner took us through various documents and materials available on record, particularly an FIR lodged in the matter of petitioner being made an accused person in connection with a case registered against him, a photo copy of a



certified copy of the Charge-sheet said to have been filed on 04.09.1942 by Police Station Bikram in FIR case No.29 dated 18.03.1942 where the petitioner is shown to be accused no.1. That apart, certificates issued by two other persons, namely one Harinandan Singh and Ram Briksh Singh are referred to say that these persons were the Freedom Fighters, who had issued the Personal Knowledge Certificate and ignoring all these aspects, the claim of the petitioner is rejected. That apart, it is stated that an inference is drawn to say that in the year 1942, petitioner was only between 12 to 16 years of age and, therefore, it would not be possible that he had participated in the Freedom Movement.

Learned counsel for the petitioner invites our attention to certain Circulars issued by the Government in this regard to say that no presumption in this regard can be drawn merely because the person is between 12 to 16 years of age. Annexure-10 dated 19th June, 1976 issued by the Secretary to the Government of Bihar, Home Department is relied upon to say that the grounds on which the claim of the petitioner is rejected, is unsustainable.

Refuting the aforesaid contentions, learned counsel for the State Government and the Union of India argued that based on the direction issued by this Court in the Public Interest Writ Petition, it was found that the petitioner was not entitled for the benefit. If his contention were accepted, in the year 1942, he would be 12-16 years of



age and it would not be possible to participate in the Freedom Fighting Movement at that point of time. Non-availability of the records certificate issued cannot be verified after such a long period of time and the Personal Knowledge Certificate issued from a prominent freedom fighter, namely Sri Harinandan Singh cannot be relied upon because Sri Harinandan Singh was also undergoing imprisonment for two years during the period when the petitioner is said to have absconded and, therefore, it is held that Sri Harinandan Singh cannot have knowledge of petitioner's participation in the Freedom Movement as he was in jail during that period. It is argued that as a decision is taken on the basis of subjective satisfaction of the competent authority, no interference can be made.

We have heard learned counsel for the parties and we have considered the rival contentions. According to the scheme formulated by the Government of India for the purpose of grant of Freedom Fighter Samman Pension, the pension is granted to the persons, who, on account of his participation in freedom struggle, remained underground for six months or more; they have to be a proclaimed offender, some award has to be declared for their arrest or there has to be a detention order. The documentary evidence to be produced includes the Government's order proclaiming the person to be an offender or the document evidencing announcing of the award etc. and in the absence of these certificates, a Non-Availability of Records Certificate (NARC)



along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter.

When after the orders were passed in the public interest writ petition and when after enquiry was conducted, it was found that if the petitioner's contention were accepted, he would be between 12 to 16 years of age in the year 1942, therefore, a presumption is drawn that on this standard age, he would not have participated in the freedom fighting movement. The second was that the Non-Availability of Records Certificate cannot be verified now and the only PKC given by Sri Harinandan Singh has been rejected because Sri Harinandan Singh was himself in jail during that period and he cannot give any certificate with regard to the petitioner being absconding. The learned Writ Court examined all these aspects and found that the decision taken by the competent authority is proper and no interference has been made.

We also see no reason to make any indulgence into the matter. The learned Writ Court has rightly held that even if one of the reasons that weighed with the authorities is found to be correct, the pension can be denied. Admittedly, even if it is assumed that the petitioner on the tender age of 12-16 years participated in the movement, the fact remains that the Non-Availability of Records Certificate could not be verified and the Personal Knowledge Certificate produced by the petitioner originally was issued by Sri Harinandan Singh, who claims to have been in prison for a period of



two years between 11.11.1940 to 03.05.1943 and he issues a certificate to say that the petitioner was absconding and undergone absconding from 06.09.1942. If Sri Harinandan Singh was himself in jail from 1940 up to May, 1943, it is not known as to how he could give a certificate about the absconding of the petitioner on 06.09.1942. On such ground, this certificate is disbelieved.

The other certificate produced by the petitioner of Sri Ram Briksh Singh is itself issued on 30th of July, 2002, i.e. much after the original certificate was granted to him and if this certificate was granted in the year 2002 and was available with the petitioner, he should have filed it along with the original petition and made a pleading with regard to that. This certificate has been produced for the first time along with his supplementary affidavit which has been filed on 13.04.2015 and it is for the first time that this certificate is produced. That being so, this certificate cannot be relied upon for considering the case of the petitioner.

From the averments and the facts, as are detailed hereinabove, it is clear that based on an enquiry conducted and for the reasons, as are indicated hereinabove, the authorities have rejected the claim of the petitioner after proper enquiry and we see no illegality or perversity of the same warranting reconsideration. The grant of Freedom Fighter Samman Pension is based on enquiry into the factual aspect of the matter and in the fact finding inquiry conducted with



regard to participation of the petitioner in the freedom fighting movement, the subjective satisfaction arrived at by the competent authority is based on due consideration of various aspects of the matter and material, interference can be made only if it is found wholly perverse and unsustainable. The present is not a case of the said nature and, therefore, in rejecting the claim of the petitioner, the authorities and the Writ Court have not committed any error warranting reconsideration.

Accordingly, finding no ground, the appeal stands dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	NAFR
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