

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1070 of 2015
IN
Civil Writ Jurisdiction Case No. 9043 of 2013**

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1. Abdul Quddus S/o Md. Yunus R/o Village Balha, P.S. Raj Nagar, District Madhubani

.... Appellant/s

Versus

1. The State of Bihar through the Under Secretary, Freedom Fighter Cell, Department of Home, Old Secretariat, Patna.
2. The Joint Secretary, Home Special Department, Old Secretariat, Patna.
3. The Deputy Secretary Home (Special) Department, Old Secretariat, Patna.
4. The District Magistrate, Madhubani.
5. The Sub Divisional Officer Sadar, Madhubani.
6. The Block Development Officer, Raj Nagar, District Madhubani.
7. The Central Bank of India through its Branch Manager, Chichari Buzurg, Chichari Road, P.O. Raj Nagar, District Madhubani.
8. The Union of India through the Under Secretary, Home Affairs, Govt. of India, Ne Delhi.
9. Md. Ayub S/o Late Md. Gaddi @ Md. Gada Ali R/o Village Karahia Balha, P.S. Raj Nagar, District Madhubani

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Shankar Das
For the State : Mr. Akhilesh Kumar Sinha, AC to SC 19
For Union of India : Mr Rajesah Kumar Verma, ASG

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 03-08-2017

Heard counsel for the appellant and counsel for the
Union of India as well as the State.

The freedom fighter pension of the private respondent,
namely, Md. Ayub, was cancelled and that cancellation has been held
to be valid in view of the exercise done even by the writ court to
assess the age of the claimant. However, the learned Single Judge did



not allow the authorities to effect recovery from the said beneficiary for the following reason :

“Although it is the contention of Mr. Singh appearing for the State that since the petitioner himself had declared that he would stand responsible for any incorrect statement made by him, in such view of the matter the order of recovery would not require any interference but in my opinion since there is nothing on record nor the State has been able to show that there was any document which was submitted by the petitioner which in any manner reflected fraud on the part of the petitioner at the time of grant, any document obtained subsequently by the complainant to question the grant would not be sufficient to order for recovery.

For my opinion expressed hereinabove, this Court while upholding the order dated 20.6.2014 passed by the Under Secretary to the Government of India impugned at Annexure-21 to the interlocutory application insofar as it seeks to cancel the grant of the Swatantra Senani Samman Pension to the petitioner vide order passed on 2.5.1989, would quash the direction as contained in paragraph-4 thereof whereby he has directed the Joint Secretary, Home Special Department, Government of Bihar to take action for recovery of the pension already paid to the petitioner. The stipulation made in paragraph-4 of the order accordingly stands quashed. The writ petition is allowed in part.”

We are in agreement with the finding of the learned Single Judge for the reasons indicated above that it was a fit case



where recovery should not be made. The present appellant, who has filed the Letters Patent appeal aggrieved by the order of the learned Single Judge not permitting recovery, submits that in a case decided by the Hon'ble Apex Court, which was case of *State of Orissa v. Choudhuri Nayak, reported in (2010) 8 SCC 796*, the Hon'ble Supreme Court had also issued recovery, therefore, even in this case, the same order should be passed or ought to have been passed.

From reading of the order in the case of State of Orissa (supra), it is noted that the set of facts discussed in the said order indicates that forgery and interpolation created in records had formed the basis for obtaining the freedom fighter pension. But from what the learned Single Judge has observed, no such element has emerged in the present case. In view of the same, no interference is required with the order of the learned Single Judge.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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