

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.214 of 2012

In

Civil Writ Jurisdiction Case No.3913 of 2010

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1. The Union Of India through the Secretary, Department Of Home Affairs, New Delhi.
 2. Secretary, Department of Home Affairs, Freedom Fighter Section, Government of India, Lok Nayak Bhawan, Khan Market, New Delhi – 110003.
 3. Under Secretary, Department of Home Affairs, Freedom Fighter Section, Government of India, Lok Nayak Bhawan, Khan Market, New Delhi – 110003.
 4. Chief Controller of Accounts, Pay and Accounts Officer (PENSION & Miscellaneous), Ministry of Home Affairs, 10/2 Jam Nagar House, New Delhi – 110011.

... .. Appellant/s

Versus

1. Hardeo Prasad Singh, S/O Late Janakdhari Singh, R/O Village- Singariawan, P.S.- Fatuha (at Present Sahjahanpur), District-Patna.
2. The State of Bihar through the Home Secretary, Government of Bihar, Patna.
3. The Joint Secretary, Department Of Home (special), Government Of Bihar, Patna.
4. The District Magistrate, Patna.

.... Petitioner/Respondent

... ..Respondents/Performa Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kr. Sharan, A. S. G. Mr. Manoj Kr. Singh, CGC
For the Respondent/s	:	Mr. Ajay Thakur, Advocate Mr. Md.Imteyaz Ahmad, Advocate Mr. Amit Kumar, Advocate Mr. Rituraj Raman, Advocate
For the State	:	Mr. S. D. Yadav, AAG IX Mr. Anil Kumar Verma, Mr. Prem Ranjan Kumar, AC to AAG 9

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 07-12-2017

Seeking exception to an order dated 09.08.2011 passed by the Writ Court in CWJC No.3913 of 2010, this appeal has been filed by the Union of India.

By the impugned judgment, the learned Writ Court has quashed an order dated 11.09.2009 passed by the Ministry of Home Affairs, Government of India, whereby the pension granted to the respondent-writ petitioner Sri Hardeo Prasad Singh under the Swantantrata Senani Samman Pension Scheme, 1980 (hereinafter referred to as the Scheme) was cancelled. The learned Writ Court found that the cancellation was not proper and having restored the pension, this appeal by the Union of India.

The facts, in brief, go to show that the respondent-petitioner claimed to have participated in the 1942 Freedom Movement and it was his contention that he remained underground for certain periods between 1942 to 1945, had participated in the freedom movement and that is between 16.08.1942 to September, 1945 and after his retirement from the State Government Service, he claimed pension under the Scheme on 22.06.1981. Initially, his claim was recommended by the State Advisory Committee in its meeting held on 23.02.1985. It was rejected by the Government of India. Thereafter, on reconsideration, the State Government again



recommended on 20th of October, 1989. This was again rejected by the Government of India, but it seems that due to intervention of this Court, on reconsideration, pension was granted after long correspondence on 23.07.1998. However, initially, a public interest litigation was filed before this Court being CWJC No.10638 of 2001 and in the detailed enquiry conducted in this PIL, it was found that 251 persons, including the petitioner, certain irregularities had been committed and, therefore, the District Magistrate, Patna was directed to hold enquiry in all the cases and submit a report to the Government. Accordingly, the District Magistrate, Patna submitted the report and in the case of the respondent-petitioner, it was found that in the year 1942, he was only 11 years of age, there was no record with regard to participating in the freedom movement, the documents pertaining to the case which was given by the petitioner were not available in the Court records and finding that on the age of 11, the petitioner would not have participated in the freedom movement and in the absence of any record, the claim was rejected. The Union of India having accepted the enquiry report and having rejected the claim, the writ petition in question was filed and the Writ Court after examining various aspects of the matter found that in the school leaving certificate produced by the respondent-petitioner, his date



of birth is shown as 05.01.1929 and if that be so, he would be at least 13 years of age during the freedom movement in 1942 and possibility of 13 years old boy participating in the freedom movement is possible and taking note of a certificate issued by one Rai Mahendra Prasad, a freedom fighter, indicating that the petitioner had participated in the movement with him, the writ petition was allowed.

Now in these proceedings, the Union of India points out that there was no document pertaining to the respondent- petitioner's participating in the freedom movement and in the documents and records produced by the respondent -writ petitioner, it was found that he was working in the Social Education Organization under the Gramin Vikash Yojna, in the service record, his date of birth was 01.02.1931, he retired on attaining the age of superannuation from this post on 01.02.1989 treating his birth as 01.02.1931 and as there was no record or documents to show that he had participated in the freedom movement, on due enquiry, his claim was rejected.

Having heard the rival contentions, we find that the learned Writ Court has allowed the writ petition only on the ground that the petitioner's date of birth in the School Leaving Certificate indicates that it is 05.01.1929, he was 13 years in the 1942 and,



therefore, his petition was allowed. However, while doing so, the learned Writ Court lost sight of the fact that the enquiry in the matter was ordered by a Division Bench of this Court in a public interest litigation, as indicated hereinabove, cases of 251, persons were enquired into and in the enquiry, it had transpired that the petitioner was claiming different date of birth for the sake of claiming benefit under the Scheme, he was putting forth that his date of birth is 05.01.1929, whereas in the service record and in the service document, his date of birth is shown as 01.02.1931 and treating him to be so, he retired on attaining the age of 58 years on 01.02.1989. If the petitioner's date of birth was 01.02.1931 and that was official date of birth in the service record, the learned Writ Court should not have accepted the date of birth as correct and proceeded in the matter when the overwhelming evidence that has come on record, it is clear that when the petitioner's case was considered by the appropriate Advisory Committee on 23.02.1985, the Committee had recommended his case without recording any reason. In fact, the Committee recommended cases of more than 219 persons in one meeting held on 23.02.1985 as is evident from Annexure-E filed by the State Government along with its counter affidavit on 09.11.2017 and on going through the minutes of the Committee's meeting held on 23.2.1985, we find that except for



submitting a list of 219 persons and recommending their cases for grant of pension, there is no reason indicated as to what is the basis for grant of benefit. From the documents that have come on record, we find that except for the certificate issued to the petitioner by Sri Rai Mahendra Prasad, there is no other document available on record to show that the petitioner had participated in the freedom fighting movement. The reports of the Collector and the other authorities indicate that no court record indicating the name of the petitioner as a person against whom criminal cases were instituted for participating in the freedom movement are available, the date of birth of the petitioner is shown to be 05.01.1929 and it is doubtful whether 11 years old boy could participate in the freedom movement. That apart, in the documents that are available on record, we find that there are certain overwriting and correction which are not clarified.

It is a case where on the basis of a direction issued by the Court a detailed enquiry was conducted by the competent authority, the competent authority recorded its finding by holding that no documentary evidence based on the affidavit filed by the respondent-writ petitioner are available to show that he had participated in the freedom movement. He was only 11 years of age in the year 1942 and there being no evidence to show that he



had participated in the freedom movement, his claim was rejected. In our considered view, once this Court in a public interest writ petition found that there are various irregularities in the grant of freedom fighter pension to 251 persons, which included the petitioner and when based on the *prima facie* opinion expressed by this Court, the District Magistrate, Patna conducted a detailed enquiry and found that the petitioner's claim is not tenable, learned Writ Court should not have interfered into the matter by substituting its decision to that of the competent statutory authority, particularly, when the documents pertaining to date of birth and age of the petitioner himself were doubtful. Accordingly, in our considered view, in interfering into a reasonable order passed by the authorities concerned, the learned Writ Court has committed a grave error which cannot be approved by us.

Accordingly, we allow this appeal, quashing the orders passed by the learned Writ Court and dismiss the writ petition.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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