

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.631 of 2012
IN
Civil Writ Jurisdiction Case No. 1112 of 2010**

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1. The Union of India through Secretary, Ministry of Home Affairs, Government of India, New Delhi
 2. The Joint Secretary, Government Of India, Ministry Of Home Affairs, Freedom Fighters Division, Lok Nayak Bhawan, Khan Market, New Delhi
 3. The Deputy Secretary, Government Of India, Ministry Of Home Affairs, Freedom Fighters Division, Lok Nayak Bhawan, Khan Market, New Delhi
 4. The Under Secretary, Government Of India, Ministry Of Home Affairs, Freedom Fighters Division, Lok Nayak Bhawan, Khan Market, New Delhi

.... Appellant/s

Versus

1. Sadanand Poddar Son Of late Ramnath Poddar, Resident Of Village-Rattanganj, P.O.-Sukita, P.S.-Gopalpur, District-Bhagalpur, At Present Residing At Mohalla-32 Guru Sahay Lal Nagar, Magistrate Colony, Patna-25
2. The State Of Bihar through Home Secretary, Government of Bihar, Secretariat, Bihar, Patna
3. The Director-Cum-Joint Secretary, Home (Special) Department, Secretariat, Bihar, Patna
4. The District Magistrate, Patna
5. The District Magistrate, Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. ARUN KUMAR ARUN
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 12-04-2018

The Union of India and its authorities have preferred this Intra-Court appeal for setting aside the order dated 04.08.2011 passed by the learned Writ Court in CWJC No.1112 of 2010 by which the Writ Court has been pleased to allow the prayers of the petitioners holding that the order dated 18.09.2009 as contained in Annexure-10



to the writ application depriving the petitioner from Swatantrata Sainik Samman Pension under the Scheme of 1980 is bad in law, thereupon the appellants have been directed to restore the pension of the petitioner forthwith and also to pay the arrears within a period of three months from the date of receipt/production of a copy of the order.

2. Learned counsel for the appellants has placed before us the reasoned order dated 18th September, 2009 issued under the signature of Under Secretary to the Ministry of Home Affairs, Government of India as contained in Annexure-10 to the writ application. It is submitted that earlier the Writ Court while hearing CWJC No.7136 of 2005 had held that the petitioner who was earlier granted pension cannot be deprived of the same on the ground that he was only 13 years old in the year 1942 when he is said to have participated in the freedom struggle, but while holding so the learned Writ Court remitted the matter back to the Central Government to reconsider the matter strictly in accordance with the policy and to pass a fresh order. It is in compliance of the said order the authorities concerned examined the case of the petitioner vis-à-vis the scheme whereunder it is specifically provided that any applicant who claims undergoing suffering is eligible for grant of pension provided he fulfills the following conditions:-



“Underground Suffering: A person, who on account of his participation in freedom struggle remained underground for more than six months, provided he was:

A. a proclaimed offender; or

B. one on whom an award for arrest/on head was announced; or

C. one for whose detention, order was issued but not served.

The claim of underground suffering is considered subject to furnishing of the following evidence:-

*(i) **Primary evidence:** Documentary evidence by way of Court's/Government's orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. Absconsion on issue of warrant of arrest is not an eligible suffering for grant of SSS pension, unless the same is followed by the order of proclaimed offender/or award on arrest/head or detention order.*

*(ii) **Secondary evidence:** In the absence of primary record-based evidence, a Non-availability of Records Certificate (NARC) from the concerned State Government/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail*



suffering of a minimum of two years and who happened to be from the same administrative district can be submitted as supporting evidence to the claim.

Voluntary underground suffering or self exile for party work under the command of the party leaders is not covered as eligible suffering for pension under the Scheme.

The NARC is treated as valid only when it is furnished by the State Government in the following manner:-

“All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.”

The claims of Central Samman Pension can be considered by the Central Government only when these are duly verified and recommended by the State Governments/Union Territory Administrations concerned along with the basis of such recommendation in accordance with the provisions of the said Scheme. As per the Scheme, the verification and recommendation report of the State Government/Union Territory Administration is mandatory in view of the fact that the documents and other evidences of the claims



are in the possession of the State Governments/Union Territory Administrations and not with the Central Government. However, it is also to mention that the Central Government has to keep all documents/reports/evidence in view and to take a decision strictly in accordance with the eligibility criteria and evidentiary requirements of the Central Government's Swatantrata Sainik Samman Pension Scheme. A positive recommendation of the State Government is, therefore, not binding on the Central Government (if the claim does not satisfy the eligibility criteria and evidentiary requirements prescribed in the Scheme)."

3. After examining the claim of the petitioner it was found that he was not eligible for grant of pension because there was no primary evidence by way of court's/Government's order proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. The petitioner has failed to produce a valid non-availability of record certificate (NARC) from the competent authorities i.e. the State Government containing all ingredients prescribed therefore, in absence of valid 'NARC' the secondary i.e. Personal Knowledge Certificate cannot be considered and is not acceptable. The petitioner had submitted certificate from



the record room dated 3.6.1986 which cannot be treated as 'NARC' and was not found fit to be relied upon. The authorities while considering the case of the petitioner held that the letter dated 17.12.1987 from the Registrar of the Bhagalpur Court to the Under Secretary, Home Department, Bihar it may be found that since the record had been destroyed, no other information can be provided. The information provided cannot be said to be confirmation of involvement of the individual in the case mentioned by the petitioner. The petitioner had also not mentioned the details of the case in which he has been arrested.

4. On the face of the aforementioned shortcomings, relying upon a catena of judgments of the Hon'ble Supreme Court such as **Union of India Vs. R.V. Swamy @ R. Vellaichamy** reported in **(1997) 9 SCC 446** learned counsel for the appellants submits that the Hon'ble Supreme Court has categorically held in paragraph 9 and 10 of the said judgment that various considerations which are required to be given in order to conclude that the respondent is a freedom fighter is a pure appreciation of evidence and the High Court was not justified in directing grant of freedom fighters pension to the respondent. The Hon'ble Supreme Court took note of the facts that of late a large number of cases were coming before the Court seeking direction for grant of freedom fighters pension on the basis of



certificates issued by some persons with status of freedom fighters but which are not acceptable to the Government of India.

5. Learned counsel representing the Union of India submits that there is a limit of judicial review under Article 226 of the Constitution of India. In the Case of **Mukund Lal Bhandari and Ors. Vs. Union of India** and Ors. reported in **AIR 1993 SC 2127** the Hon'ble Apex Court observed as under:-

“As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly.”

6. In the case of **Sri B.M. Rao Vs. UOI and Ors.** the Hon'ble Delhi High Court in its order dated 12th August, 1998 in CWP No.4368 of 1995 observed as under:-

“In the case at hand, the petitioner has failed to prove his eligibility for entitlement under the Scheme by tendering the proof of the nature and in the manner contemplated by the Scheme. The rejection of the petitioner's claim by Central Government cannot be found fault with.”



7. Again in the **State of H.P. and Another Vs. Smt. Jafli Devi** reported in **1997(5) SCC 301**, the Hon'ble Supreme Court held that:-

“In the context of a beneficial scheme for compassionate appointment that the policy laid down by the government should not be departed from merely on account of sympathetic considerations and hardship.”

8. The appellants have also relied upon a judgment of the learned writ Court dated 15.03.2000 passed in the case of **Bajnath Singh Vs. The State of Bihar and Ors. in CWJC No.6752 of 1996** in which it has been held that:-

“While making judicial review of administrative decision, the court is not supposed to sit as Appellate Authority, and substitute its own findings in place of findings recorded by the authorities.....”.

9. Further the Hon'ble Apex Court in the case of **Union of India Vs. Mohan Singh** reported in **JT 1996(8) SC 34** cautioned that only the Government can pronounce on the genuineness of documents produced for claiming pension and the High Court under writ jurisdiction shall not embark upon re-appreciation of the evidence.



10. Relying upon the aforesaid judgments it is the contention of the learned counsel representing the appellants that the learned Writ Court was not required to go into the issue of sufficiency of evidence and genuineness thereof that too in the facts of the present case where the authorities of the Central Government had examined documents in the light of the guidelines provided for under the scheme and a reasoned order such as Annexure-10 was passed.

11. On the other hand, learned counsel representing the private respondent submits that the learned Writ Court has rightly held that the liberty granted to the appellants by this Court vide Annexure-7 to the writ application did not authorize the Government of India to start a *de novo* enquiry as period of almost a decade had passed since the grant of pension to the petitioner by the Government of India. Learned Writ Court held that it is not the case of the respondents i.e. the authorities of the Union of India that the petitioner had given any false declaration or had submitted false documents which were not found to be genuine. Learned counsel submits that in the case of **R.V. Swamy @ R. Vellaichamy (supra)**, the Hon'ble Apex Court even though held that the consideration of the various aspects of the scheme vis-à-vis materials produced by the applicant is pure appreciation of evidence and the High Court was not justified in directing grant of freedom fighter pension to the respondent, liberty



was granted to the widow of the said applicant to approach the State Government as the State Government had to consider the application according to the guidelines on its merit.

12. Having heard learned counsel for the parties and on perusal of the records, we are of the considered opinion that vide Annexure-10 while holding that the petitioner does not meet the eligibility criteria and evidentiary requirements of the pension scheme, the authority of the Central Government has discussed the provisions of the scheme in paragraph 3 of the order and thereafter considered the materials which were brought by the writ-petitioner for consideration. The deficiencies and shortcomings which were found have been fully discussed in detail and all those reasons which are mentioned in Annexure-10 to the writ application have not been assailed as a factual error of fact. If the reasons provided in Annexure-10 to the writ application are not assailed on any legal or valid ground by the writ-petitioner, considering the judicial pronouncements, which we have referred hereinabove, in our opinion, the Writ Court was not required to restrict the scope of consideration by the competent authority.

13. A perusal of Annexure-7 to the writ application shows that the Writ Court had remitted the matter back to the Central Government to re-consider the matter strictly in accordance with the



policy and to pass a fresh order. No restriction was placed on the power of the competent authority and the Central Government in the matter of consideration of the eligibility of the petitioner to pay pension under the policy. In this condition once the competent authority considered all aspects of the matter and finding that the petitioner was not able to satisfy the requirements of the scheme and had not been able to produce documentary evidences in terms of the scheme, if passed the impugned order declaring the petitioner not eligible to get the pension, no fault may be found with the same.

14. The learned Court in the impugned order has taken a view that it was not the case where the documents produced by the petitioner was found to be false or to be found not genuine, in our opinion, the consideration as regards the eligibility of the petitioner-private respondent cannot be restricted only to that extent. The scope of judicial review as has been held by the Hon'ble Supreme Court does not permit the Writ Court to record it's own opinion over the findings recorded by the authorities of the Central Government unless such findings are found to be perverted. In the present case, we do not find any reason to interfere with the impugned order as contained in Annexure-10.

15. In result, the impugned judgment of the learned Writ Court in CWJC No.1112 of 2010 is hereby set aside and the writ



application is dismissed.

16. The appeal is allowed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	N/A
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