

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2539 of 2016

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Ramjhari Devi, wife of late Mahtab Lal, Resident of Village- Tarachak, P.S.-
Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through Department of Home (Freedom Fighter Wing), Lok Nayak Bhawan, Khan Market, New Delhi. `
2. The Under Secretary, Ministry of Home Affairs, Govt. of India, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
3. The Under Secretary, Department of Home (Freedom Fighter Wing), Lok Nayak Bhawan, Khan Market, New Delhi.
4. The State of Bihar through the Chief Secretary, Government of Bihar.
5. The Secretary, Home (Special) Department, Govt. of Bihar, Patna.
6. The Deputy Secretary, Home (Special) Department, Govt. of Bihar, Patna.
7. The Director-cum-Deputy Secretary, Department of Home (Special), Bihar Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Adv.

For the Union of India : Mr. S.D. Sanjay, ASG

Ms. Punam Kumari Singh, CGC

For the State : Mr. Sumant Kr. Singh, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 06-12-2018

The petitioner, who is the widow of a political



sufferer and who is entitled for Swatantrata Sainik Samman Pension (*in short the S.S.S. Pension*), has challenged the order dated 05.01.2006, issued under the signature of the Under Secretary, Ministry of Home Affairs, Govt. of India, whereby the arrears of the Freedom Fighter Pension with effect from 01.08.1980 to 01.08.1996 as well as the Family Freedom Fighter Pension with effect from 24.08.1996 has been declined.

2. Without going into the evidence brought on behalf of the petitioner and the reasons for the rejection of her claim, this Court re-counts certain facts broadly.

3. The husband of the petitioner was granted S.S.S. Pension and was being paid Rs. 200/- per month. The time when such S.S.S. Pension was given to him, it was the requirement that the pensioner must not have more than 5,000/- rupees as his annual income. Later, it was discerned that the husband of the petitioner (pensioner) had more income than Rs. 5,000/- annually. Hence, the aforesaid pension was stopped and an order was passed for the recovery of the amount which was given to the



pensioner.

4. The aforesaid order of recovery was set-aside by a Bench of this Court on the ground that such recovery could not have been made from a widow after so many years. While saying so, this Court also took note of the fact that now the S.S.S. Pension scheme does not require a pensioner to have an income less than Rs. 5,000/- annually. As such, the recovery was stopped. Thereafter, again, process was initiated for payment of pension to the husband of the petitioner. For the aforesaid purpose, the evidence brought on record by the husband of the petitioner to demonstrate that he was a political prisoner, indicated his date of entry in the jail. No document was available with respect to his exit from the jail. Thus, it was difficult to ascertain as to for what period did the husband of the petitioner remained in jail to entitle him for the pension under the scheme. There is a requirement of being confined in jail for six months for general category of the sufferers and three months for women sufferers under the SC/ST category for the entitlement for S.S.S. Pension. The State



Government has presumably come with the plea that the records with respect to the release of the petitioner is not available with them. In that case, Non-Availability of Record Certificate (*in short NARC*) ought to have been sent by the State Government to the concerned wing of the Home Department of the Union for them to take a decision.

5. The Rules/Guidelines with respect to grant of pension indicate that on the recommendation and statement of the respective State Government that the records are not available with them (NARC), secondary evidence would be relied upon for determining whether a person was a political sufferer and is thereby entitled to the pension under the scheme.

6. In the present case, the Union Government has rejected the claim of the petitioner on the sole ground that NARC certificate has not been sent by the State Government and, therefore, the secondary evidence in the shape of certification by another political sufferer, who had been confined in jail for more than one year, cannot be taken into account.



7. Mr. Prabhu Nath Pathak, the learned Advocate for the petitioner has painstakingly argued that if the State has made a statement that the records with respect to the release of the petitioner is not available with them, there was no reason for the State Government not to have sent the certificate of NARC to the Union Government along with the documents furnished on behalf of the petitioner. The Union Government also ought to have taken into account that earlier the husband of the petitioner was granted the pension which was stopped only because at the relevant time, there was a requirement of the pensioner having an annual income of less than Rs. 5,000/- per month, which certificate of the petitioner was found to be incorrect. It has also been submitted that the fact that the husband of the petitioner was an awardee of *Tamrapatra* clearly evidenced that the petitioner had participated in the freedom struggle and was entitled to pension.

8. The present writ petition is thus being disposed off now with the following directions:-

(i) The petitioner shall furnish all documents necessary for the purposes of



grant of pension/family pension under the S.S.S. Pension Scheme, 1980 along with the representation and a copy of this order before the Home Secretary, Govt. of Bihar within a period four weeks from today.

(ii) The Home Secretary, Govt. of Bihar shall ensure that the documents are processed by the concerned wing of the Department dealing with the scheme of S.S.S. Pension and in case the records with respect to the claim of the petitioner about her husband being in jail for a particular period are not available with them, necessary NARC certificate shall be issued. The aforesaid papers, after processing, be sent to the Union Home Ministry, Freedom Fighter Wing, Lok Nayak Bhawan, Khan Market, New Delhi. The process be completed within a period of three months from the date of presentation of the documents by the petitioner.

(iii) Thereafter, the Union Government shall take a decision with respect to eligibility of the petitioner to get the Family Pension because of her being the widow of a political sufferer, entitled to S.S.S. Pension under such scheme. The



order shall be passed on the basis of records within a period of two months from the date of receipt of the documents dispatched by the State Government.

9. With the aforesaid direction and observation, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.12.2018
Transmission Date	N/A

