

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.223 of 2018

In
Letters Patent Appeal No.631 of 2012

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Sadanand Poddar son of Late Ramnath Poddar resident of Village-
Rattanganj, P.O. Suktia, P.S. Gopalpur, District- Bhagalpur, at present residing
at Mohalla- 32, Gurusahay Lal Nagar, Magistrate Colony, Patna- 25.

... .. Petitioner/s

Versus

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 Bhavan, Khan Market, New Delhi
3. The Deputy Secretary, Government of India, Ministry of Home Affairs,
Freedom Fighters Division, Lok Nayak Bhavan, Khan Market, New Delhi
4. The Under Secretary, Government of India, Ministry of Home Affairs,
Freedom Fighters Division, Lok Lok Nayak Bhavan, Khan Market, New
Delhi
5. The State of Bihar through Home Secretary, Government of Bihar,
Secretariat, Bihar, Patna.
6. The Director-cum- Joint Secretary Home Special Department Secretariat,
Bihar, Patna.
7. The District Magistrate, Patna.
8. The District Magistrate, Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Dhananjay Mishra, Advocate
For the Opposite Party/s : Mr.Prabhat Kumar Verma Aag 3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 31-07-2019

I. A. No. 5364 of 2018

For the reasons stated in the interlocutory application, let
the delay of 66 days in filing this review application be condoned.



I. A. No. 5364 of 2018 stands allowed.

Heard learned counsel for the parties on merit.

This application seeking review of the judgment dated 12.04.2018 passed in L.P.A. No. 631 of 2012 has been preferred by the original writ petitioner who was respondent no. 1 in the Letters Patent Appeal.

By the judgment under review, the Hon'ble Division Bench of this Court has been pleased to set aside the judgment of the learned Writ Court passed in C.W.J.C. No. 1112 of 2010 and dismissed the writ application of the original petitioner. It appears that the writ petition was preferred seeking quashing of the communication dated 18th September, 2009 as contained in Annexure '10' to the writ application by which the Central Government came to a conclusion that the claim of the petitioner for the pension under the Swatantrata Sainik Samman Pension Scheme 1980 does not meet the eligibility criteria and evidentiary requirements of the said Scheme, hence, the claim is liable to be rejected.

The findings of the Central Government may be found in paragraph '4' of the impugned decisions /communication dated 18th September, 2009. Paragraph '4' is, thus quoted hereunder for a ready reference:



“4. After examination of the claim, it is found that Shri Sadanand Poddar is not eligible for grant of Central *Samman* pernsion due to the following deficiencies/short comings:-

(i) 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 has been furnished by the petitioner (as indicated in para 3 above).

(ii) The petitioner has not furnished a valid Non-Availability of Record Certificate (NARC) from the competent authorities (i.e. the State Government) containing all ingredients prescribed therefore (as indicated in para 3 above)

(iii) In the absence of valid Non-Availability of Record Certificate (NARC) secondary evidence, i.e. personal Knowledge Certificate cannot be considered and is not acceptable.

(iv) The certificate submitted by the petitioner from the record room dated 3.6.1986 cannot be relied upon and cannot be treated as NARC. This is further reinforced by the letter dated 17.12.1987 from the Registrar of the Bhagalpur Court to the Under Secretary, Home Department, Bihar, that since the record has been destroyed, no other information can be provided. The court has not just confirmed involvement of the individual in the case mentioned by the petitioner in his application to the record room.

(v) The applicant in his original application had not mentioned the details of the case in which his arrest was ordered. The description of underground suffering in the application is vague.”

Learned Single Judge had been pleased to allow the writ application on the ground that earlier the Under Secretary,



Government of India had recommended the case of the petitioner for grant of sanction after explaining the entire case of the petitioner. Learned Writ Court held that after having sanctioned the pension, the Government of India did not place any contention that if any of the informations submitted by the petitioner would be found to be false, the benefit would be canceled without giving any reason. The learned Writ Court held that the Government of India could not have started the *De Novo* inquiry in the matter as a period of almost a decade had expired since the grant of pension to the petitioner by the Government of India. The reasoning behind the order of the learned Writ Court was that “it is not the case of the respondent authorities of the Union of India that the petitioner had given any false declaration or had submitted papers which were not found to be genuine.....”.

The judgment of the learned Writ Court was, however, up-turned by the Hon’ble Division Bench by relying upon the finding recorded in paragraph ‘4’ of the impugned order. The Hon’ble Division Bench in its judgment in paragraph 12, 13 and 14 held as under:

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 its 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."

Learned counsel for the petitioner has tried to re-argue the matter in order to pursue this Court to take a view that once the pension had been sanctioned to the petitioner, the Central Government could not have taken a decision otherwise. It is his contention that the case of the petitioner was considered by the



District Advisory Committee, Bhagalpur who approved the same for placing the same in the meeting of the State Advisory Committee and the State Advisory Committee in its meeting held on 8/9.2.1990 recommended the case of the petitioner to the Central Government for grant of pension to the petitioner.

It is submitted that the case of the petitioner was recommended on the basis of the certificate of the eminent freedom fighters Dayanand Jha and Bhola Gope who had certified that the petitioner was absconding with him and co-operating in the work for independence of the country during 1942 movement. It is submitted that the judgment of the Hon'ble Division Bench under review has not taken into consideration the relevant facts particularly the fact that the case of the petitioner is based on secondary evidence and that the provisions of the Scheme be read liberally to the advantage of the freedom fighters.

Learned Central Government counsel has opposed the review application. It is submitted that the petitioner is unable to demonstrate any error apparent on the face of the record of the judgment under review. It is submitted that in its civil review jurisdiction this Court can correct an error apparent on the face of record but this jurisdiction is not to be used for purpose of a rehearing of the matter.



We have given our anxious consideration to the materials available on the record and the grounds raised in the review application.

This Court while considering the Letters Patent Appeal No. 631 of 2012 has held that Annexure '7' to the writ application shows that the Writ Court had remitted the matter back to the Central Government to reconsider the matter strictly in accordance with the policy 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. The plea which is being taken by the writ petitioner on the basis of the judgment of the learned Single Judge that once pension was sanctioned in his favour, it could not have been taken away by reviewing the sanction order, does not appeal to us. Learned Writ Court had allowed the writ application on taking a view that the Central Government could not have reviewed its earlier decision but on going through the reasonings and rational provided in Annexure '10' to the writ application which was the decision of the Central Government the Division Bench came to a conclusion that the Central Government had discussed the provisions of the Scheme in Paragraph '3' of the order and thereafter considered the materials which were brought before it by the writ petitioner for



consideration. The deficiencies/short comings 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 so as to establish any factual error. It is in this view of the matter that the Division Bench reversed the decision of learned Writ Court and upheld the order of Central Government as contained in Annexure '10' to the writ application.

Learned counsel for the petitioner is not able to point out any error apparent on the face of the record. The review application has thus no merit, it is dismissed accordingly.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

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