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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 2934/2013**

HEERA SINGH Petitioner
Through: **Mr. I.C. Mishra, Adv.**

versus

UNION OF INDIA & ORS. Respondents
Through **Mr. Vivek Goyal, CGSC for R1
and R-2**
**Mr. Abhinav Mukerji, Mr. Siddharth Garg
and Ms. Pratishtha Vij, Advs. for R-3**

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

%

J U D G M E N T
01.07.2019

1. Following almost two centuries of hegemonic British rule, India attained independence on 15th August, 1947. Various schemes were introduced, by the Indian Government, to commemorate those who had shed their blood and sweat for the country's struggle for independence, one among them being the SSS Pension Scheme relating to Freedom Fighters' Pension.

2. The first scheme, providing for grant of pension to freedom fighters and their family members, was originally introduced in 1973, and was substituted by a fresh scheme, which came to be known as the Swatantrata Sainik Samman (SSS) Pension Scheme, 1980 (hereinafter referred to as "the SSS Pension Scheme").

3. Clause 4 of the SSS Pension Scheme defined “freedom fighter” thus:

“4. WHO IS ELIGIBLE?

For the purpose of grant of Samman pension under the scheme, a freedom of is: –

a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

b) The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1-8-1980.

EXPLANATION

1. Detention under the orders of the competent authority will be considered as imprisonment.

2. Period of normal remission upto one month will be treated as part of actual imprisonment.

3. In the case of a trial ending in conviction, under trial period will be counted towards actual imprisonment suffered.

4. Broken period of imprisonment will be totalled up for computing the qualifying period.

(b) A Person who remained underground for more than six months provided he was:

1. a proclaimed offender; or

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

3. one for whose detention order was issued but not served.

(c) A person interned in his home or externed from his district provided the period of internment/externment was six months or more.

(d) A person whose property was confiscated or attached and sold due to participation in the freedom struggle.

(e) A person who became permanently incapacitated during firing or lathi charge.

(f) A person who lost his job (central or state Government) and thus means of livelihood for participation in national movement.

A MARTYR is a person who died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include an ex-INA or ex-Military person who died fighting the British.”

4. Applications, for grant of pension under the SSS Pension Scheme, were, as per Clause 6 thereof, required to be filled in duplicate, with one copy sent to the Chief Secretary of the State Government, Union Territories Administration concerned and a second copy sent to the Deputy Secretary of the Government of India,

Freedom Fighter Division, Ministry of Home Affairs (Respondent No. 1 herein).

5. Clause 9 of the SSS Pension Scheme refers to the manner in which evidence was to be proved for entitlement, of any applicant, to grant of pension thereunder, and reads thus:

“9. HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED)

The applicant should furnish the documents indicated below whichever is applicable.

(a) IMPRISONMENT/DETENTION ETC.

Certificate from the concerned jail authorities, District Magistrates or the State Government in case of non-availability of such certificates co-prisoner certificates from a sitting M.P. or M.L.A. or from an ex-M.P. or an ex-M.L.A. specifying the jail period (Annexure-I in the application form).

(b) REMAINED UNDERGROUND:

(i) Documentary evidence by way of Court's/Government orders pro-claiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention.

(ii) Certificates from veteran freedom fighters; who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

(c) INTERNMENT OR EXTERNMENT

(i) Order of internment or externment or any other corroboratory documentary evidence.

(ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years; or more if the official records are not available. (Annexure II in the application).

Note:-

The Certifier veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganisation of States and their area of operation must be the same.

(d) LOSS OF PROPERTY, JOB, ETC.

Orders of confiscation and sale of property, Orders of dismissal or removal from service.”

6. The claim of the petitioner, for grant of pension under the SSS Pension Scheme, stands rejected, by Respondent No. 1, *vide* order dated 30th March, 2010, which this writ petition seeks to assail.

7. The petitioner avers, in the writ petition, that he, along with certain other compatriots, including one Jamuna Prasad Singh, had, during the freedom struggle, captured a railway station, post office and police station, which disconnected avenues of communications, for the British, of the town of Madhubani, from the Headquarter Darbhanga, as well as from Patna. For this act, criminal proceedings were

instituted, by the British government against the petitioner, Jamuna Prasad Singh and other colleagues, *vide* GR 594/42 (*Emperor v. Jamuna Prasad Singh & Ors.*), in which the petitioner was charged with having committed offences under Sections 147/148/336/337/335/395/34/126 IPC read with Rule 26 (1) (b) of the Defence of India Rules.

8. As he was absconding, a non-bailable warrant was issued, against the petitioner, on 30th September, 1942, which was followed by a proclamation, under Section 82 and 83 of the erstwhile Code of Criminal Procedure, 1973, declaring the petitioner to be a proclaimed offender. This was followed by the attachment of the petitioner's movable property on 22th June, 1944.

9. Asserting that, by virtue of the fact that he had remained underground for a period from August, 1942 to December, 1946, which exceeded the requisite period of six months as prescribed under the SSS Pension Scheme, and that he had, for the said reason, being declared as proclaimed offender by the competent court, *vide* order dated 22nd June, 1944, the petitioner applied, for grant of pension under the SSS Pension Scheme, on 19th March, 1982. He enclosed, with the application, a document, on non-judicial stamp paper, containing the "list of disposed of records, deposited in the record room by the Court of the S.D.O., Madhubani for the month of June 1944", and title "Political file record month of June 1944", which may be reproduced, in view of its importance, thus:

“List of disposed of records deposited in the record room by the Court of SDO Madhubani for the month of June 1944

Political fine record month of June 1944

1. Serial number of Record – 1
2. Name of Magistrate and Station-S.D.O. Madhubani
3. Serial number of case in the Primary Register - G.R. 594/42
4. Name of Complainant - Emperor
5. Name of Accused - Jamuna Pd. Singh & Others
6. Natures of case with section of the Penal Code or other Act applicable - 147, 148, 336, 337, 335, 34, 395, 126, 26(1)(B) D.I.R.
7. Final order passed with details of sentence and date of decision -

Fine Rs. 50/- Rup Lai Mahto and Maya Bati Debit wife of Upendra Jha Balaha 12.8.42 on Madhubani Jail custody Suresh Jha has born in Jail custody and Sona alias Soni W/o. Satya Deo Mishra Pakhranni 13.8.42 on Madhubani Jail custody Ghanshyam Mishra has born in Jail custody and Mohan Sharma S/o. Ramjee Mistri Narkotia Pariharpur.

- (2) Ram Lakhan Roy S/o. Shyam Roy Rajnagar
- (3) Marchhi Devi W/o. Keswar Paswan Simri East
- (4) Budha Mandal Satghara Raj Nagar
- (5) Jagdeo Pd. Gupta Laukahi

- (6) Tej Narain Single S/o. Johar Singh Sahorwa
Gadha Ladania
- (7) *Heera Singh S/o. Rambahadur Singh alias
Lai Bahadur Singh Lakhnour Madhopur,
Madhubani*
- (8) Tahakai Roy Mitjapur Rajnagar
- (9) Shiva Kumar Pd. Gupta Deodha
- (10) Sitaram Yadav Sonwari
- (11) Abdul Gafur S/o. Mahbali Ali Raj Nagar
- (12) Lalu Pd. Sah S/o. Laxmi Pd. Sah Raj Nagar
- (13) Abhinandan Pandeya Bahar Bon Belahi
Khajauli
- (14) Mahgu Yadav Sonbari Raj Nagar
- (15) Rajeshwar Pd. Sah Pipra Bazar Supaul Sahrsa
- (16) Bhogendra Jha S/o. Gangadhar Jha Singion
- (17) Bachkun Thakur S/o. IMangni Thakur.
Dadurwara Khaicha Baheri, Darbhanga
- (18) Rainawatar Singh Parsahl Sidhpa Ladania
- (19) Deonandan Mishra Gangapur Pandaul
- (20) Baidyanath Singh Usrahi Inarwa Jai Nagar
- (21) Dwarika Mahasheth Jainagar
- (22) Baleshwar Yadav alias Bale Yadav Inraw
Usrahi Jainagar

(23) Bishwanath Chaudhary Samoul, Birsair
Madhubani

(24) Md. Yasuk S/o. Md. Isak Rajnagar

(25) Anwar Hussain Raj Nagar

(26) Md. Faruk Azann Ansari S/o. Mahnnad
Alann Ansari Ramkhetari Simri, Madhubani

(27) Jamuna Pd. Singh Simri

(28) Ramchander Roy S/o. Chaatu Roy

(29) Sone Mandal S/o. Moti Lai Mandal Chapahi

(30) Bikram Mahto Nakti - Absconder 22.6.44

8. Result of appeal or revision—

9. Class of each file (A and B) of the case under rule
40 part III – Whole

10. *Name of proclaimed offenders not arrested - Serial
No. 1 to 30 total 30 absconders*

11. Date when disposed of and shelved in the District
Record Room —

12. Number of Shelf and rack in the District Record
room —

13. Date of destruction of files and initials of officer
superintending destruction —

14. Remarks—

The reply of letter No. 1453 dated 2.12.46
regarding disposal of the case of all freedom fighters for
the year 1942 to 1946 has been sent to Govt. of Bihar

Home Department Patna vide letter No. 530 dated 20.1.47.

Sd/-

28.1.47

Signature of Officer of Dispatching Court

Sd/-

Signature of District Record keeper”

This document, therefore, indicates that the appellant, who was an accused in GR 594/42 (*Emperor v. Jamuna Prasad Singh & Ors.*) (*supra*), had been charged under sections 147/148/336/337/335/395/34/126 IPC read with Rule 26(1)(b) of the Defence of India Rules. A list of the persons accused in the said case followed, in which the name of the petitioner figured at S. No. 7. At the foot of the said certificate, it was specifically stated that all the accused named at serial no. 1 to 39 of the list, which included the petitioner at serial no. 7, were proclaimed offenders.

10. The petitioner also annexed, with his application, certificates from Jamuna Prasad Singh and Sheetal Prasad Singh (who, he claimed, were veteran freedom fighters who had participated, with him, in the freedom struggle), to the effect that the petitioner was a participant in the freedom struggle of the country.

11. The petitioner’s case was recommended, for grant of pension under the SSS Pension Scheme, by the Government of Bihar, after verifying the records, on 23rd February, 1985.

12. After having kept the case of the petitioner pending for over 20 years, the petitioner's application was rejected, by Respondent No.1, on 6th June, 2007.

13. The Government of Bihar again recommended the case of the petitioner, for grant of pension under the SSS Pension Scheme, on 24th June, 2009, but to no avail.

14. The petitioner, in the circumstances, moved this Court by way of WP (C) 538/2010, which was disposed of *vide* order dated 27th January, 2010, the operative portions whereof reads thus:

“Since the respondent Union of India has not given due weightage and consideration to the documentary record of the Court of SDO Madhubani placed by the petitioner and which record pertains to the relevant period and wherein the name of the petitioner appears at serial No. 7. Since such record has not considered by the Union of India as would be borne out from the reasons given by the Union of India in their letter dated 6.6.2007, therefore, it is directed that let the. Union of India reconsider their decision after taking into consideration the said record wherein the name of the petitioner as an absconder is illustrated at serial No.7. After taking into consideration the said record if the Union of India finds the case of the petitioner meeting the eligibility criteria for the grant of Swatantrata Sainik Samman Pension then appropriate decision be taken by the Union of India within a period of three months from the date of this order.

The petition is accordingly disposed of.”

15. Respondent No.1 again rejected the petitioner's claim for pension under the SSS Pension Scheme *vide* the impugned order dated 30th March, 2010, which reads as under:

"Registered Post

Dy. No.28/MP/CZ/2004-FF Bihar
Government of India/Bharat Sarkaar
Ministry of Home Affairs/Grih Mantralaya
(FFR Division)

1st Floor, Lok Nayak Bhawan, Khan Market,
New Delhi-110 003

Dated 30th March, 2010

To,

Shri Hira Singh,
S/o Shri Ram Bahadur Singh @ Lal Bahadur Singh,
R/o Gram & PO Lakhnour,
PS Madhepur,
District Madhubani, Bihar

Sir,

Subject: Compliance of Hon'ble Delhi High court's
order dated 27.1.2010 in Writ Petition (C)
538/2010 filed by Mr. Heera Singh vs UOI
& Ors.-regarding.

I am directed to enclose a copy of the court order dated 27.1.2010 in Writ Petition (C) 538/2010 filed by Mr. Heera Singh v. UOI & Ors.

2 In pursuance of the above stated court order the claim of Shri Heera Singh has been reconsidered, keeping in view, the documents on applicable provisions of the Swatantrata Sainik Samman (S.S.S.) Pension Scheme, 1980.

3. After examination of the claim, it is found that Shri Heera Singh is not eligible for grant of Central Samman pension due to the following shortcomings/discrepancies:

(i) Shri Hira Singh has not furnished any acceptable record based primary evidence, duly verified by the State Government, in support of his claimed underground suffering.

(ii) The State Government vide its letter no.819 dated 23.02.1985 while recommending the case, has mentioned court records of GR No.607/42 in support of his claim of underground, suffering from August, 1942 to 15.09.1949. But the Government with their letter dated 23.02.1985 enclosed a copy of court record of GR No.549/42.

(iii) Even if the contents of this GR No. 594/42 is taken into account, this document cannot be accepted as primary evidence since it has not been verified by the State Government from official records nor the recommendation of the State Government is based on the participation of the petitioner in the freedom movement on the basis of this GR. Authenticity of a copy of a document can be accepted only if the same is duly verified by the concerned authority State Government.

(iv) Copy of the PKC submitted by him from Shri Sheetal Prasad Singh has been scrutinized. The same is not acceptable as the certifier has not furnished any record/evidence of his own jail suffering of minimum two years (i.e., he has furnished no evidence to establish that he is an eligible certifier) and also it has not been accompanied by a valid NARC from the State Government.

4. In view of the above, the claim of Shri Heera Singh does not meet the eligibility criteria and evidentiary

requirements of the *Swatantrata Sainik Samman Pension Scheme, 1980*.

5. It is, therefore, regretted that it is not possible to accept the claim of Shri Heera Singh for grant of Central Samman pension from Central Revenues. Hence, the same is, hereby, rejected.

6. This issues with the approval of the competent authority.

Yours faithfully

Sd/-
(H.C. Bhanot)
Under Secretary

Copy by Regd. Post for information to

1. The Under Secretary, Home (Special) Department,
Government of Bihar, Secretariat, Patna - 800001.

Sd/-
(H.C. Bhanot)
Under Secretary”

16. The petitioner moved this Court, challenging the aforesaid order dated 30th March, 2010, rejecting his claim to pension under the SSS Pension Scheme by way of CM 3878/2013 in WP (C) 538/2010 (*supra*). The said application was, however, disposed of, by a learned Single Judge of this Court *vide* order dated 1st April, 2013, with liberty to the petitioner to separately challenge the order dated 30th March, 2010 (*supra*) in independent proceedings.

17. In accordance with the liberty so granted, the petitioner has moved the present writ petition, praying that, in view of fact that he had remained underground for six months and had been declared as a proclaimed offender, by the competent court, in connection with the freedom struggle of the country, and had also provided cogent evidence in support of his claim, Respondent No.1 be directed to grant, to him, pension under the SSS Pension Scheme.

18. Respondent No. 1 has filed a counter affidavit, in which it seeks to contend that claims for grant of pension under the SSS Pension Scheme could be considered only when they were duly verified and recommended by the concerned State Governments, with the basis for such recommendation being clearly forthcoming, in accordance with the provisions of the SSS Pension Scheme. Following on this exordium, reasons have been cited, to justify rejection of the petitioner's claim. Firstly, it was contended that the record of GR 594/42, in which the petitioner claimed to have been incarcerated, and in connection whereof he claimed to have gone underground and, subsequently, to have been declared a proclaimed offender, had not been verified by the Government of Bihar from the official records. Secondly, it was pointed out that, while enclosing, with its letter of recommendation, documents relating to GR 607/42, the Government of Bihar had recommended the case of the petitioner on the basis of his involvement in another case i.e., GR 607/42. This, it was sought to be contended, created doubts regarding the genuineness of the petitioner's claim. In these circumstances, the counter affidavit sought to contend, the recommendation of the Government of Bihar, though

in favour of the petitioner, could not be regarded as categorical or positive, so as to entitle the petitioner to pension under the SSS Pension Scheme on the basis thereof.

19. The petitioner has filed a rejoinder to the counter affidavit of Respondent No. 1. In the rejoinder, the petitioner points out that Jamuna Prasad Singh had, in fact, been awarded pension under the SSS Pension Scheme, by Respondent No.1, for his involvement in the very same Scheme, i.e. GR 594/42, in which the petitioner claimed also to have been involved. The petitioner also annexed, with his rejoinder, an affidavit of Jamuna Prasad Singh, which reads thus:

“I, JAMUNA PRASAD SINGH S/O LATE JANAKDHARI SINGH VILAGE SIMARI PS RAJ NAGAR DISTT MADHUBANI, solemnly affirm and state as under;

1. That I am a freedom fighter and my PPO NO is SC-10647 POLITICAL.
2. That I am receiving the State Govt pension from SDO Nazarat Madhubani Bihar.
3. That accordingly I am receiving the Central SSS Pension from Punjab National Bank Branch Raj Nagar Distt Madhubani.
4. That I have already distributed my property amongst my sons SAMRENDRA NARAYAN SINGH, DHRENDRA NARAYAN SINGH, VIMLENDRA NARAYAN SINGH, SURESH PRASAD SINGH AND RAMESH KUMAR SINGH and my all five sons are living separately and doing their own business.

5. That I am living with my 2nd son Dehrendra Narayan Singh who serve me.

6. That I have not received the pension since long from Bihar Govt. accordingly the SSS Central Govt pension also did not receipt since August 1994.

7. That the pension payment of from Bihar Govt is irregular therefore, I am taking the loan for my livelihood and my second son Dhirendra Narayan Singh is entrusted to repay the loan.

8. That in above facts and circumstances I am discharging my moral liabilities to nominate my second son Dhirendra Narayan Singh as a nominee to withdraw the dues pensions from the concerned authorities after my death and same I hereby authorized to him.

9. That in my affidavit mentioned the facts in draft from para- 1 to 8 are correct to best of my knowledge and belief and no part of its is incorrect.

LTI
Deponent”

Asserting, further, that the letter, dated 23rd February, 1985, of the Government of Bihar indicated that the records of GR 594/42 had, in fact, been verified and clarified by the state government, the petitioner submitted that denial, to him, of pension under the SSS Pension Scheme, was *ex-facie* arbitrary.

20. The petitioner also placed, on record, a certificate, dated 23rd August, 2013, by the Officer In-charge, District Record Room, Madhubani Collectorate, which enclosed a photocopy of GR 594/42,

specifically stating that it related to the present writ petition. The said letter reads thus:

“Letter No. 45/R.

From,

Officer-in-Charge,
District Record Room,
Madhubani.

To,

The Additional Collector,
Madhubani

Madhubani

Dated: 23rd August, 2013

Subject: Regarding sending Report in W.U.P.C. No. 2934/12 Heera Singh Versus Union of India and Others received from Hon'ble High Court of Delhi.

Ref: Your letter No. 1763 Law Dated: 14.8.13.

Sir,

In the light of the referred letter on the above-mentioned subject, photocopy of GR- 594/42 related to W.U.P.C. No. 2934/12 Heera Singh Versus Union of India and Others is enclosed herewith this letter. Chinkut No. 610 mentioned in Annexure P-2 of the Petition has been filed on dated 4.12.01 and copy has been issued on dated 7.1.02, which is mentioned in the General Register for the Year 2001.

End. As mentioned

Total- 47 pages

1. Annexure P-2 is compared with the record and found correct.

Sd/- Ravi/19.8.11
Compared by

Yours faithfully

Sd/- illegible
22.8.13
Officer Incharge
District Record Room
Madhubani”

The record enclosed with the said letter indicates the name of the persons sentenced in connection with the GR 594/42 (***Emperor v. Jamuna Prasad Singh & Ors.***) which includes the name of the petitioner at S No. 7 thereof.

21. In view of the above, the petitioner contended that the denial, to him, of pension under the SSS Pension Scheme was *ex-facie* arbitrary. He placed reliance, for the said purpose, on the judgment of the Division Bench of this Court in ***Sukhai Thakur v. U.O.I., 2012 SCC OnLine Del 5614***, pointing out the fact that the Division Bench of this Court had, in view of the capricious stand adopted by Respondent No.1 in the said case, allowed the claim of the petitioner therein with costs of ₹ 25,000/-.

22. In view of the nature of the controversy, and keeping in mind the observations contained in the impugned letter dated 30th March, 2010 (*supra*), whereby the petitioner’s claim for grant of pension under the SSS Pension Scheme had been rejected by Respondent No. 1, this Court, on 5th November, 2014, passed the following order:

“1. Pleadings are complete.

2. Counsel for the respondents No. 1 &2/UOI draws the attention of this Court to the letter dated 30.3.2010 addressed by the Ministry of Home Affairs to the petitioner mentioning *inter alia* the letter dated 23.2.1985 addressed by the respondent No.3/State of Bihar recommending his case under the Swatantrata Sainik Samman Pension Scheme, 1980 by referring to the court records of GR No.607/42, but noting that the State Government had enclosed the records of GR No.549/42 with the said letter.

3. At this stage counsels for the parties jointly state that the letter dated 30.3.2010 wrongly refers to “GR No.549/42” and the correct number is “GR No.594/42” as would be clearly borne out from a perusal of para 3 (iii) of the very same letter.

4. It is requested by the counsel for the respondents No.1 &2/UOI that the respondent No.3/State of Bihar be directed to file a brief affidavit verifying the position with regard to GR No.607/42 that was mentioned in its letter dated 23.2.1985, as also the court records of GR No.594/42, on which reliance was placed by the State of Bihar while recommending the case of the petitioner for payment of pension.

5. Needful shall be done by the respondent No.3/State of Bihar within three weeks, with an advance copy to the counsels for the petitioner and the respondents No. 1 &2.

6. The respondents shall produce the relevant records on the next date of hearing.

7. List on 9th January, 2015 in the category of 'After Notice Miscellaneous Matters'.”

23. In compliance with the afore-extracted order dated 5th November, 2014, the State of Bihar filed a “short reply affidavit”, paras 3 and 4 of which read thus:

“3. It is stated that the present Counter Affidavit is being filed by the Respondent herein in compliance with the Order dated 05.11.2014 passed by this Hon’ble Court. It is submitted that in compliance with the Order dated 05.11.2014 passed by this Hon’ble Court the Respondent herein conducted a detailed search for the records pertaining to the GR 607/42. It is submitted that the State Government after conducting thorough enquiry for the said records, could not locate any records pertaining to the GR 607/42.

4. It is submitted that in the records of the GR No 594/42 the name of the Petitioner is mentioned at S. No. 7. Further, the GR No. 594/42 also mentions that S. No. 1 to 30 are absconder. A certified copy of the Court Records of GR No. 594/42 pertaining to the Petitioner have been requisitioned and would be handed over to this Hon’ble Court at the time of hearing.”

24. Keeping in mind the above affidavit, this Court, on 5th March, 2015, passed the following order:

“1. Respondent no.3 has filed the counter-affidavit. Additional documents in support of the counter-affidavit have also been filed. These documents have recently been given to the respondent no.1. Therefore, counsel for respondent no. 1 wants to go through the documents and take instructions in this regard.

2. Let counsel for respondent no.1 take instructions, and *in case the documents filed by the respondent no.3/State of Bihar are verified documents, then prima facie, there is no reason why respondent no.1 should oppose this petition.*

3. List on 23rd April, 2015.”

(Emphasis supplied)

25. This was followed by order dated 23rd April, 2015, wherein Respondent No.1 was specifically directed to file an additional affidavit, demonstrating, clearly, its entitlement to question the stand of the State of Bihar.

26. In compliance with the said directions, an additional affidavit has been filed, by Respondent No.1, in which it sought, once again, to justify the decision to reject the petitioner’s claim for grant of pension under the SSS Pension Scheme. It is sought to be pointed out, in the said affidavit, that the State of Bihar had, with its “short reply affidavit”, annexed a photocopy of a letter dated 23rd August, 2013, from the Officer in-charge, District Record Room, Madhubani. This letter dated 23rd August, 2013, however, stated that Annexure P-2 to the letter, had been compared with the record and found to be correct. Annexure P-2, however, it is sought to be pointed out, was the list of cases disposed of, as obtained by the petitioner. Contending, therefore, that what was required to be verified, by the district authorities at Madhubani was GR 594/42 and not Annexure P-2, the Respondent No. 1 has sought to contend that pension, under the SSS Pension Scheme, could not be granted to the petitioner, either on the basis of the letter, dated 23rd February, 1985 *supra*, or on the basis of the “short reply affidavit”, filed by the State of Bihar before this Court. Para 5 of the said additional affidavit thereafter, submits thus:

“5. That it is submitted that GR No. 594/42 filed by respondent no. 3 is not a verified true copy but a

photocopy of a single page taken from GR register. It is further submitted that it is for the State Home Department to collect the information from various sub offices and inform the decision after due verification, informing inter-alia that the entries with regard to the applicant has been checked from the Original GR and has been found to be correct. However the same is missing in the present case. Hence the case of the petitioner has been rejected strictly as per the Scheme which requires the State Government to verify all the documents.”

27. On 30th September, 2015, a suggestion was mooted, by the State of Bihar, in the present proceedings, to the effect that it was willing to undertake a detailed inquiry with respect to GR 594/42. Noting the said submission, this Court adjourned the matter.

28. Following the said “detailed inquiry”, a “supplementary Counter-Affidavit” has been filed by the State of Bihar. The supplementary Counter-Affidavit initially refers to a report, dated 23rd November, 2015, from the Circle Officer, Lukhnor, the translated copy of which reads thus:

“Letter No. 747/Dated: 23.11.15

From,

The Zonal Officer,
Lakhnaur

To,

The Sub-divisional Officer
Jhanjharpur

Subject: Regarding providing Verification Report in
connection with the petitioner Shri Heera

Singh son of Late Ram Bahadur Singh,
Village and Poxst Office- Lakhnaur, Police
Station- Lakhnaur, District - Madhubani in
the matter of Civil Writ Petition W.P. (C)
No.2934/2015, Heera Singh Versus Union of
India and others.

Sir,

On the above-mentioned subject, it is to inform with due respect that *the investigations were got conducted through R. Karam. Cum P.A.N. in connection with Shri Heera Singh son of Late Ram Bahadur Singh, Village and Post Office - Lakhnaur, at the time of investigations, undersigned himself was also present. I am agreed with the investigations. Investigations Report of the R. K. and Certificate of presence of Shri Heera Singh is also enclosed.* Hence, submitted for further action please.

Yours faithfully

Sd/- illegible

23.11.15

Zonal Officer

Lakhnaur”

(Emphasis supplied)

29. The investigation report, of the Revenue Karamchari-cum-Sub-Inspector, Lukhnor, annexed to the afore-extracted letter dated 23rd November, 2015, reads thus:

“To,

The Zonal officer,
Lakhnaur

Subject: Regarding submitting Verification Report of Shri Heera Singh son of Late Ram Bahadur Singh, resident of Lakhnaur.

Sir,

On the above-mentioned subject, *it is to inform with due respect that he visited Lucknow and made local investigations and made investigations from the persons present there also. During investigations, he found that Shri Heera Singh son of Ram Bahadur Singh alias Lai Bahadur Singh resident of Lakhnaur has been Freedom Fighter, who presently is alive.* Signatures of present Heera Singh and other villagers are as under: -

Yours faithfully

Sd/- illegible

23.11.15

Heera Singh

Raja Singh

Rajender Yadav

Nawal Kishore Singh”

(Emphasis supplied)

30. Also annexed to the said communication, was the following declaration by the petitioner, given on 23rd October, 2015:

“I, Heera Singh son of Ram Bahadur Singh alias Lai Bahadur Singh, am a permanent resident of Lakhnaur, Zone: Lakhnaur, District - Madhubani (Bihar). On 23.11.2015, I personally appeared in the Zonal Office Lakhnaur and gave the information of the case related to the Civil Writ Petition No. W.P. (C) No. 2934/2013 Heera Singh Versus Union of India and others also.

Sd/- Heera Singh
23.11.15”

31. The supplementary Counter-Affidavit goes on to acknowledge the fact that the particulars of the petitioner were similar to the particulars of Heera Singh mentioned in GR 594/42, qua the name of the petitioner, the name of his father and his residence. Para 8 of the supplementary Counter-Affidavit of Respondent No.3, which so states, reads as under:

“8. It is pertinent to mention that *the particulars of the present Petitioner is similar to the particulars of the one Heera Singh mentioned in the GR No. 594/42*. A typed copy of the certified copy of the GR No. 594 / 42 is annexed and marked as Annexure R-3 (pg. 18 to 21).”
(Emphasis supplied)

32. Despite the above facts, the supplementary counter-affidavit of the State of Bihar goes on to state that, as per the admission register (Check) of Dharawati High School, Lukhnor, the date of birth of the petitioner was 9th October, 1954/5th May, 1953. The supplementary counter-affidavit annexes, in this context, a letter, dated 28th November, 2015, from the principal of the Dharawati High School, Lukhnor, which reads thus:

“From: Principal,

Dharawati High School
Lakhnaur (Post), No. - Madhubani

Letter No. 100/2015-16 Dated: 28.11.2015

To,

The Sub-divisional Officer, Jhanjharpur

Subject: Regarding School Records related to Shri Heera Singh son of Late Ram Bahadur Singh alias Lai Bahadur Singh in the light of Letter No. 1123

Dated: 28.11.2015.

Sir,

On the above-mentioned subject, it is submitted with due respect that on the basis of school records, details related to Shri Heera Singh are as under:-

Heera Nand Singh son of Shri Lai Bahadur Singh, Village - Lakhnaur, the then District Darbhanga's nomination was made at the serial number 42/42- dated 22.02.68 in Ninth Class. In pursuance to nomination, Kamlakant was the identifying male. Their registration was made for Bihar Annual Secondary Examination 1972 but he could not appear in the above-said examination.

According to the nomination register, his date of birth is 9.10.1954 and according to the register details, his date of birth is 05.05.1953.

Therefore, submitted for necessary action please.

Yours faithfully

Sd/- illegible
28.11.15

Enclosure:

- (i) Photocopy of Nomination Roll (One Page)
- (ii) Photocopy of Registration details received by the Bihar Annual Secondary Examination Patna.”

33. Reliance is also placed, for the said purpose, in the supplementary Counter-Affidavit, on the following certificate/declaration, dated 28th November, 2015, by one Vishnu Dev Yadav:

“I, Vishnu Dev Yadav son of Late Lal Muni Yadav, resident of Village- Beldi, Panchayat Lakhsaur, according to my knowledge, do hereby solemnly affirm and declare that in the year 1972, I appeared in the Matric Examination, in which, I have got 451/1000 Marks.

I further state that Heera Singh son of Ram Bahadur Singh alias Lai Bahadur Singh had been studying with me in Dharawati High School Lakhsaur with me upto 1972, information in this regard can be availed from the School Principal. According to my knowledge, age of Heera Singh should be near my age.

Sd/- Vishnu Dev Yadav
Siya Prasad Yadav
P. Secretary
Lakhsaur (West)

Raman Kumar
R.K. 28.11.15

IDENTIFIED by:

1. Ayodhi Yadav
2. Chhotkan Yadav
3. Siya Prasad Yadav”

34. Also annexed, to the supplementary counter-affidavit, of Respondent No.3, is a matriculation mark-sheet, purportedly reflecting the name of the petitioner. A reading of the said matriculation mark-sheet reveals that, it refers, however, to one “Heera Nand Singh, son of Lal Bahadur Singh”.

35. Asserting, on the basis of the above material, that the petitioner had been born on or after 1953, the supplementary counter-affidavit

contends that he could possibly not have been an accused in GR 594/42. As such, it is sought to be averred, in the supplementary counter-affidavit, that the petitioner, and Heera Singh, who figured at serial no.7 of records of GR No. 594/42, were two different persons. It is also averred, in this regard, that the petitioner, on being called to provide proof of his age, was not in a position to do so.

36. The petitioner has filed a response to the aforesaid supplementary counter-affidavit of State of Bihar, in which the petitioner asserts that “Heera Nand Singh” who had studied in Dharawati High School, was a person entirely different from the petitioner, who had never studied in any High School. He points out that his name was not “Heera Nand Singh” but “Heera Singh”, and that his father’s name was “Ram Bahadur Singh” and not “Lal Bahadur Singh”. He completely denies any acquaintanceship with Vishnu Dev Yadav, and has contended that the involvement of Heera Nand Singh s/o Lal Bahadur Singh, Vishu Dev Yadav and the Dharawati High School was a *mala fide* attempt to deny, to the petitioner, his right to pension under the SSS Pension Scheme.

37. The petitioner has also annexed, with the said response, an affidavit of Vishnu Dev Yadav, which reads as under:

“
AFFIDAVIT

I, Vishnudeo Prasad Yadav, S/o Muni Yadav aged about 63 years Vill. & Post Lakhnaur, Panchayat Lakhnour West Distt. Madhubani, Solemnly affirm and state as under:-

1. That I am permanent resident of above mentioned address.
2. That on dt. 28.11.2015 before SDO Jhanjharpur my statement had recorded in context of Heera Singh S/o S/o Sh. Ram Bahadur Singh.
3. That Heera Singh S/o Late Ram Bahadur Singh, had never studied with me.
4. That I know Heera Nandan Singh S/o Late Lal Bahadur Singh.
5. That on 28.11.15 I had stated to SDO Jhangharpur about Heera Nandan Singh who's father's name was Lal Bahadur Singh who had studied with me, whereas Heera Singh S/o Sh. Ram Bahadur Singh never studied with me.
6. That SDO Jhangharpur had not recorded my statement correctly and therefore I have sworn the present affidavit and it is my true and correct statement.
7. That this true statement based on my knowledge and belief.

Deponent
Sd/- Hindi, Vishnudeo Prasad Yadav

Sd/- Ashok Kr. Singh
Advocate
23.1.2017”

38. It is in the backdrop of the above facts that the petitioner's claim to pension, under the SSS Pension Scheme, is required to be examined.

39. I have heard Mr. I.C. Mishra, learned counsel for the petitioner, Mr. Vivek Goyal, learned CGSC appearing for Respondent Nos. 1 and 2 and Ms. Pratishta Vij, learned counsel appearing for Respondent No.3.

40. Learned counsel have, essentially, reiterated their respective stands, as reflected from the record and the various pleadings, to which allusion has already been made hereinabove.

41. Having heard learned counsel for the parties and examined the record with the attention it deserves, I am of the opinion that the decision of Respondent Nos. 1 and 2 to deny pension, to the petitioner, under the SSS Pension Scheme is capricious in the extreme.

42. Clause 6 of the SSS Pension Scheme reads thus:

“6. HOW TO APPLY ?

Persons who consider themselves eligible for Samman Pension under the Scheme should apply in duplicate on the prescribed application form. One form duly filled and supported by required documents as proof of claim of suffering should be sent to the Chief Secretary to the State Government/Union Territory Administration concerned. The second copy should be sent to the Deputy Secretary to the Government of India, Freedom Fighters Division, Ministry of Home Affairs, first floor, Lok Nayak Bhavan, New Delhi-110003 as an advance copy.”

43. In conjunction with Clause 6, sub- clauses (a) and (b) of Clause 9 of the SSS Pension Scheme clearly stipulate that certificate from the State Government is required only in a case where pension is being

sought on the ground of “imprisonment/detention etc”. Where pension is being sought on the ground that the claimant has remained underground, and has been declared proclaimed offender, she/he is required to furnish only documentary evidence, by way of Court/Government orders proclaiming the applicant is an offender, or certificates from veteran freedom fighters to the said effect.

44. The petitioner had provided a certified copy of the list of disposed of records, deposited in the record room by the court of the SDO, Madhubani, for the month of June 1944, titled “Political file record month of June 1944”, in which the name of the petitioner figured at S. No. 7 of the list of accused figuring therein. Clause 10 of the said document clearly states that the persons named at S. Nos 1 to 39 thereof were absconders and proclaimed offenders, who had not been arrested.

45. In the opinion of this Court, this document, even by itself, was sufficient as evidence to prove the legitimacy of the petitioners claim to pension under the SSS Pension Scheme, in view of Clause 9(b)(i) thereof.

46. In this context, reference may also usefully be made to the operative para in the order, dated 27th January, 2010, whereby this Court disposed of WP (C) 538/2010, which stands reproduced in para 14 *supra*. This Court has clearly held, in the said para, that the documentary record of the Court of the SDO Madhubani, on which the petitioner placed reliance, pertained to the relevant period and that

the name of the petitioner was shown as an absconder, in the said record at S. No. 7. This finding, figuring as it did in a final order disposing of WP (C) 538/2010, and never having been challenged by Respondent No.1, bound the said respondent. It was not open, therefore, to Respondent No.1 to go behind the said document, or seek additional details, to substantiate the petitioners claim.

47. Additionally, the aforementioned document, i.e. the Political file record in the office of the SDO, Madhubani, pertaining to the period June 1944 was also provided by the Officer-in-Charge, District Record Room, Madhubani, to the Additional Collector, Madhubani, under cover of his letter dated 23rd August, 2013 *supra*. It could hardly, therefore, lie in the mouth of Respondent No.1 to question the veracity of the document, once it had been obtained through official sources.

48. Respondent No.1 has placed reliance on a document titled “Salient Features of Swatantrata Sainik Samman Pension Scheme, 1980”. Para 3 of the said document, which is titled “Procedure”, states that claims for grant of pension, under the SSS Pension Scheme “can be processed by the Central Government only on receipt of verification and entitlement to pension reports of the State Government/U. T Administration concerned”. The application, under the SSS Pension Scheme, was only required to furnish a certificate by the concerned state government, recommending his case and indicating that it had verified the records. A recommendatory letter, to the said effect, had, in fact, been sent, by the State of Bihar, to

Respondent No.1 as far back as on 23rd April, 1985. Respondent No.1 has no jurisdiction, whatsoever, to go behind the said verification, or express any disagreement therewith. The manner of verification of the veracity of the petitioner's claim was entirely within the province of the State of Bihar. Once, *vide* communication dated 23rd April, 1985, it had done so, and recommended the petitioner's case, there was no question of going behind the said recommendation or the verification conducted by the State of Bihar before identifying the said letter.

49. To concretize matters further, the "short reply affidavit" filed by the State of Bihar, by way of compliance with the order dated 5th November, 2014 *supra*, passed by this Court in the present proceedings, specifically stated, on oath, in para 4 thereof, thus:

"It is submitted that in the records of the GR No 594/42 to the name of the Petitioner is mentioned at S. No. 7. Further, the GR No 594/42 also mentions that S. No. 1 to 30 are absconders. A certified copy of the Court Records of GR No 594/42 pertaining to the Petitioner have been requisitioned and would be handed over to this Hon'ble Court at the time of hearing."

(Emphasis supplied)

50. A reading of the afore-extracted para 4 of the short reply affidavit filed by the State of Bihar before this Court, in the present proceedings, leaves no manner of doubt that the State of Bihar confirmed that the person named at serial no. 7 in GR 594/42 was, in fact, the petitioner. This Court is of the view that, after this, there was no justification, whatsoever, for Respondent No.1 not to disburse, to

the petitioner, forthwith, the SSS Pension, to which he was duly entitled.

51. In the circumstances, this Court had, *vide* its order dated 23rd April, 2015, expressed, though not in so many terms, its surprise at Respondent No.1 questioning the stand taken by the State of Bihar and had directed, in this circumstances, an affidavit to be filed by Respondent No.1, setting out its entitlement to do so.

52. The affidavit which came to be filed by Respondent No.1, pursuant to the said direction, on 30th September, 2015, *conceded the fact that the petitioner actually figured in GR 594/42*, but refused, nevertheless, to allow the petitioner's claim on the ground that there was nothing to indicate that the State of Bihar had verified the contents of the said GR. This, incidentally, is the stand which has been taken by Mr. Vivek Goyal, learned CGSC, before me, as well, during arguments. This stand, too, in my view, is totally arbitrary and unjustified. Once the State of Bihar had issued the requisite certificate, after stating that it had verified the record, it was certainly not open to Respondent No.1 to go behind the verification, or opine that the verification was not done in an appropriate manner, just so as to deny, to the petitioner, his rights to SSS pension.

53. The supplementary counter-affidavit, filed by the State of Bihar pursuant to the order dated 30th September, 2015, the State of Bihar, first encloses the verification report, dated 23rd November, 2015, of the Circle Inspector, Lukhnor, annexing therewith, the investigation

report, of the same date, of the Revenue Inspector, Lukhnor, both of which clearly indicate that the petitioner was the very same Heera Singh whose name figured at S. No. 7 in the record of GR 594/42.

54. It was also acknowledged, in the said supplementary Counter-Affidavit that the particulars of the petitioner were the same as those of Heera Singh, figured at serial no. 7 in GR 594/42.

55. Despite acknowledging this fact, the supplementary Counter-Affidavit chose, for the first time, to execute a surprising *volte face*, by disputing the identity of the petitioner, *vis-a-vis* the Heera Singh who figured at S. No. 7 of the record of GR 594/42, on the ground that there was another Heera Nand Singh, S/o Lal Bahadur Singh, who had been a student of Dharawati High School, Lukhnor and who was born on 9th October, 1954/5th May, 1953.

56. A statement, in writing, of Vishnu Dev Yadav, who professed to be a friend of Heera Nand Singh, who had studied with him in the Dharawati High School till 1972, was also enclosed. A matriculation mark-sheet of the said School, was also relied upon which, at a plain glance, refers to Heera Nand Singh, S/o Lal Bahadur Singh.

57. This Court is at a loss as to why the State of Bihar choose to suddenly chart this detour to the said Heera Nand Singh, a student of Dharawati High School. There is nothing to indicate that the petitioner was ever a student of Dharawati High School, or that he was known by the name of Heera Nand Singh. Not a scintilla of material has been

placed, on record, to establish the identity of Heera Nand Singh a student of Dharawati High School with Heera Singh, with the petitioner in the present case.

58. Though the certificate, dated 28th November, 2015, of Vishnu Dev Yadav (*supra*) does not refer to Heera Singh, it also refers to Heera Nand Singh, and Vishnu Dev Yadav himself filed an affidavit, specifically disclaiming any acquaintanceship with the petitioner.

59. Even otherwise, the said Heera Nand Singh would, having born in 1953, would have been sixty two years of age in 2015. The petitioner, who was 89 years of age in 2013, would have been 91 years of age in 2015. The petitioner had personally appeared before the Revenue Officer in Lukhnor. It is, therefore, preposterous, on the part of the investigating authorities in the State of Bihar to seek to confuse the petitioner, who was 91 years of age, with Heera Nand Singh who would have been only 62 years of age at that time.

60. It is extremely regrettable that such a stand has been taken before this Court by the State of Bihar and echoed by Respondent No.1.

61. Clearly, the petitioner fulfils all entitlements for grant of pension under the SSS Pension Scheme. The petitioner had furnished the requisite letter, from the State of Bihar, indicating that it had verified the record of GR 594/42. On the asking by this Court, a separate affidavit, vouchsafing this fact was also filed by the State of

Bihar. Extensive documents, indicating that the identity of the petitioner, with the person named at serial no. 7 of the record of GR 594/42 have also been placed on record.

62. The petitioner, who had applied for grant of pension, under the SSS Pension Scheme, as far back as in 1982, had to fight a battle for nearly 40 years, in order to secure his entitlement. Of this period, 25 years were taken, by Respondent No.1, to reject, *vide* decision dated 6th June, 2007, the petitioner's application, which was filed as far back as on 9th March, 1982. There is no explanation, whatsoever, for this delay.

63. Complacency and inertia are endemic to mankind, and the instant case presents a classic example thereof. Ensconced in our ivory towers, we have become blind, and deaf, to the plight of those who made a cosy existence, for us, possible. We have forgotten the agonies of those who suffered the thorns of ignominy and incarceration, merely so that they could strew the path behind them, with roses, for the generations to follow, like ours, to tread upon. Having given their all, to secure independence for this nation, persons, such as the petitioner, merely seek, in the twilight of their lives, pension, for their sustenance. Having promulgated, for the purpose, laudable schemes, such as the SSS Pension Scheme, the authorities, entrusted with the task of implementing the Scheme, are required to adopt a compassionate and considerate approach, and not to drive the seekers of pension, thereunder, from pillar to post, in search of their legitimate entitlements. Verification, of the genuineness of the claim, has, no

doubt, necessarily to be made; but the exercise has to end at some point. It would do well for the authorities to bear, in mind, that the seekers of SSS pension are, normally, advanced in years and often in impecunious circumstances, and it would be unrealistic to expect them to knock at the door of authority after authority, to garner evidence, supporting their claim, to the point where it would satisfy the disbursing officer.

64. Jamuna Prasad Singh, a co-accused with the petitioner in GR 594/42, has, as per his own affidavit, been sanctioned pension, under the SSS Pension Scheme. Revealingly, the affidavit states that, despite such sanction, for several years, Jamuna Prasad Singh has not received the sanctioned pension. Battling for his right, first before the respondents and, thereafter, before this Court, the petitioner has, today, entered the ninth decade of his life. Would this order, in the ultimate eventuate, benefit him in any manner? The question is best left unanswered.

65. Be that as it may, in view of the above discussion, it is clear that the petitioner is entitled to succeed in the present writ petition.

66. Though the petitioner ought to be entitled to interest, on the amount of pension due to him under the SSS Pension Scheme, computed from 1982, I am of the opinion that, in the facts of the case, the petitioner should, instead, be awarded costs, payable by Respondent No.1 and quantified, for the said purpose, at ₹ 1,00,000/-. The costs be also disbursed to the petitioner within the aforesaid

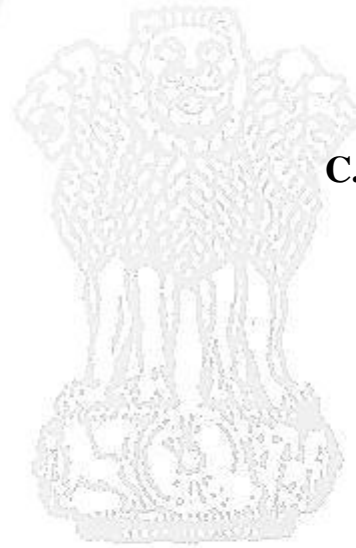
period, i.e., four weeks from the date of pronouncement of this judgment.

67. In the circumstances, the writ petition is allowed. The respondents are directed to disburse, to the petitioner, the entire arrears of pension, under the SSS Pension Scheme, along with costs as awarded hereinabove, as are due to him, within a period of four weeks from the date of pronouncement of this judgment, failing which Respondent No.1 would be liable to pay interest, on the entire said amount, @ 12% p.a.

C. HARI SHANKAR, J

JULY 01, 2019

dsn



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