

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.156 of 2018

Arising out of
Civil Writ Jurisdiction Case No.576 of 2016

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1. The Union of India through the Secretary, Ministry of Home, Freedom Fighter Department, N.D.C.C. Building, Phase-II, 2nd Floor, Jai Singh Road, New Delhi.
 2. Under Secretary, Department of Home, Government of India, Freedom Fighter Department, N.D.C.C. Building, Phase-II, 2nd Floor, Jai Singh Road, New Delhi.

... .. Review Petitioners

Versus

1. Smt. Sita Devi, Wife of Late Manager Yadav, (Writ Petitioner), Resident of Village Poari, P.O.- Khairi Banka, P.S.- Bisfi, District- Madhubani.

.....Opposite Party (Ist Set)

2. The State of Bihar, through the Secretary, Department of Home, Patna.
3. The Director-cum-Joint Secretary, Department of Home Special, Govt. of Bihar, Patna.
4. Deputy Secretary to the Government, Home Special Department, Government of Bihar, Patna.

.....Opposite Party IInd Set

Appearance :

For the Petitioners	:	Mr. Rajesh Kumar Verma, ASG
For the O.P. No. 1	:	Mr. S. N. Yadav, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-02-2020

Heard Mr. Rajesh Kumar Verma, learned Assistant Solicitor General for the petitioners and Mr. Suraj Narain Yadav, learned counsel for the opposite party no. 1.

2. The petitioners have moved the Court seeking review of the judgment dated 10.04.2017 passed in CWJC No. 576 of 2016 by which *mandamus* has been issued for grant of Freedom



Fighter Pension in favour of the original writ petitioner namely Manager Yadav.

3. Learned counsel for the petitioners submitted that the writ petition was heard and judgment reserved on 10.02.2017 and the judgment was delivered on 10.04.2017, but during the period the petitioner Manager Yadav passed away on 28.02.2017. Learned counsel submitted that such fact not having been brought to the notice of the Court and there being no substitution of his heir(s), the judgment passed in favour of a dead person cannot be implemented or enforced. It was submitted that the heir(s) of Manager Yadav were required to move an application bringing such fact to the notice of the Court soon after the death of the writ petitioner or even at the time when the judgment was being pronounced so that the Court could have appropriately considered and dealt with the matter and passed orders accordingly. It was submitted that even on the date of judgment, such fact was not brought to the notice of the Court which finally delivered the judgment on 10.04.2017.

4. Learned counsel submitted that the matter of grant of Central Samman Pension under the Scheme was essentially a token of honour by a grateful nation to the Freedom Fighters and their dependents. Learned counsel submitted that revised



guidelines of the Scheme of 1969 were issued on 06.08.2014 in which it is provided at Clause 1.5 that there shall not be any sanction of such pension in the name of the freedom fighter after his/her death even if his/her matter was under examination which entailed no life time arrears or dependent pension. Learned counsel submitted that the matter being governed totally by the Scheme of the Central Government, the Court would consider the spirit behind the Scheme which was to honour the Freedom Fighter and after honouring him, if he had dependents, the same were also to be granted dependent pension but the Scheme always envisaged that if a Freedom Fighter dies prior to such sanction, no such sanction would be granted either with regard to arrears or dependent pension. Learned counsel submitted that though due to inadvertence, the Scheme could not be brought on record before the Court, but the same should not be held against the petitioners for the reason that it is an admitted position that fresh guidelines had already been issued much prior to even the filing of the writ petition in the year 2016 and this was the only guidelines which were relevant for consideration by the Court.

5. Learned counsel for the opposite party no. 1 submitted that once at the time of passing of the order the person was alive, subsequent death would not change the position, and if



a *mandamus* is issued by the Court, the same has to be duly complied with by the authorities. However, on a direct query of the Court at this junction that if strictly the order has to be implemented then the *mandamus* having been issued for sanction of pension in the name of Manager Yadav, how such order can be implemented in favour of any other person when Manager Yadav is dead, learned counsel was not in a position to counter the same.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the Policy Guidelines dated 06.08.2014 being the only document on which the claim of the writ petitioner was based and which was required to be considered, not having been brought to the notice of the Court in the earlier proceedings, there being issues which require consideration, the matter has to be re-heard on merits. Though learned counsel for the opposite party no. 1 has tried to address the Court on merits with regard to the Scheme also but the Court finds that such has now to be considered afresh after restoring the original writ petition and recalling the *mandamus* earlier issued.

7. In view thereof, the application is allowed. The judgment dated 10.04.2017 passed in CWJC No. 576 of 2016 issuing *mandamus* for grant of Freedom Fighter Pension to



Manager Yadav stands recalled. CWJC No. 576 of 2016 stands restored to its original file and number.

8. The matter be now placed before the appropriate bench, after obtaining permission of Hon’ble the Chief Justice.

9. As learned counsel for the opposite party no. 1 has submitted that now the wife is alive and even she being old in age, the matter requires to be heard on urgent basis, the Court would only observe that it shall be open to opposite party no. 1 to make a motion before Hon’ble the Chief Justice for priority/early listing and hearing of the case.

(Ahsanuddin Amanullah, J)

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