

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24219 of 2018

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Saina Devi wife of Late Dhruv Narayan Prasad resident of Village- Gyanpur
Semariya (Balupar), Police Station- Barahara, District- Bhojpur.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
2. The Secretary, Ministry of Home Affairs, Government of India, New Delhi.
3. The State of Bihar through its Chief Secretary.
4. The Principal Secretary, Home Department, Government of Bihar.
5. The District Magistrate, Bhojpur.
6. The Superintendent of Police, Bhojpur.
7. The Sub- Divisional Officer, Sadar Ara, District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar
For the Respondent/s : Mr.Sheo Shankar Prasad

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 14-07-2022

The present writ petition has been filed for grant of family pension to the widow petitioner, who claims to be the widow of a freedom fighter namely Late Dhruv Narayan Prasad, under the Swatantra Sainik Samman Pension Yojna.

2. The case of the petitioner in brief is that the husband of the petitioner was a freedom fighter and had actively participated in the 1942 independence movement along with other freedom fighters and had hoisted flag on Barhara Police station, destroyed



railway track and post office records with view to end the British rules. The husband of the petitioner had applied for grant of freedom fighter pension vide application dated 31.08.1981, however, the same was not approved on account of lack of evidence, whereafter the husband of the petitioner had again collected evidence and the Home (Special), Department, Government of Bihar, Patna vide letter dated 30.03.1990 had recommended the case of the husband of the petitioner for grant of freedom fighter pension.

3. Per contra, the learned counsel for the State has submitted that the aforesaid scheme is a scheme of the Union Government, hence, it is the appropriate authority to grant or reject the claim of the petitioner/ her husband. It is also submitted that the husband of the petitioner died on 25.12.2009 and till that time his Swatantra Sainik Samman Pension was not sanctioned to him, hence the claim of the petitioner is not maintainable.

4. Per contra, the learned counsel appearing for the Union of India has submitted that the case of the husband of the petitioner for grant of Swatantra Sainik Samman Pension was rejected long back on



3.9.1981 as is apparent from Annexure- R/1 to the counter affidavit filed on behalf of the respondents no. 1 and 2. It is also submitted that the present writ petition is misconceived and is an abuse of the process of the court in as much as since the husband of the petitioner had never been granted Swatantra Sainik Samman Pension, the widow petitioner has got no locus to claim any freedom fighter pension/ family pension. It is also the submission of the learned counsel for the Union of India that the rejection of the case of the husband of the petitioner vide letter dated 3.9.1981 was never challenged by the husband of the petitioner during his life time, hence, the present writ petition also suffers from the vice of estoppel and acquiescence. It is also the case of the Union of India that though the petitioner has annexed a recommendation letter of the State Government, however, the same was never received in the Ministry. In any view of the matter, it is submitted that it is a trite law that the mere fact that an application has been recommended by the State Government is not a ground to grant pension under the Central scheme, as has been held by the Hon'ble High Court of Kerala in WA No. 2569 of 2005 vide judgment dated 16.01.2006



in the case of **A.R. Parameshwaran vs. the Union of India and Ors.** The learned counsel for the petitioner has also referred to a judgment dated 19.6.2018 rendered by the Hon'ble High Court of Judicature at Madras in W.P. no. 27687 of 2012 (**Issauqe Sam vs Union of India & Ors.**) to submit that the Hon'ble High Court has been held that once the application filed by the father of the petitioner for grant of pension has already been rejected, his son cannot subsequently, after the death of his father, become entitled for pension.

5. Lastly, it is submitted by the learned counsel for the Union of India that on account of rampant misuse of the Swatantra Sainik Samman Pension Yojna, the Government has come out with a revised policy/ guidelines vide letter dated 6.8.2014, as amended vide letter dated 30.12.2015, Clause 1.5 whereof provides that no pension shall be sanctioned in the name of the freedom fighter after his/ her death even if his/ her matter was under examination. Thus, in the present case since the husband of the petitioner has already died on 25.12.2009 and no freedom fighter pension was ever granted to him, the petitioner herein, who is the widow of the said deceased person, is not at



all entitled to any sort of pension.

6. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the husband of the petitioner had applied for grant of freedom fighter pension under the Swatantra Sainik Samman Pension scheme, however, the same had stood rejected by the Union of India vide letter dated 3.9.1981, which was never challenged by the husband of the petitioner. This Court also finds that the petitioner has got no locus standi to maintain the present writ petition for grant of family pension in as much as freedom fighter pension was never sanctioned/ granted to the husband of the petitioner herein. The principle of law enunciated in the cases referred to by the learned counsel appearing for the Union of India, as propounded in the case of **A.R. Parameshwaran** (supra) and in the case of **Issaque sam** (supra), squarely covers the present case, consequently the present writ petition is sans any merit. This Court also finds that the Government of India has come out with a revised policy/ guidelines in the year 2014-15 which also bars sanction of pension in the name of the freedom fighter after his/ her death, hence, since the husband of the petitioner is no more



alive, no pension can be sanctioned in the name of the husband of the petitioner, thus, the petitioner is not entitled to any family pension.

7. Having regard to the facts and circumstances of the present case and for the reasons mentioned herein above, I find that the present writ petition is wholly misconceived, hence, is dismissed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.07.2022
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