

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

247

CWP-7768-2021 (O&M).

Date of Decision: 17.04.2023.

JOGINDER SINGH

. Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Chander Shekhar Singhal, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed for seeking quashing of the impugned order dated 08.03.2021 (Annexure P-11) passed by respondent No.2-the Deputy Commissioner, Ambala. The petitioner had submitted an application with the respondent-Authorities for pension under “the Haryana State Shubhra Jyotsna Pension and other Facilities Scheme, 2018,” which was declined vide the impugned order.

As per the Notification No.16/27/2017-4 Protocol dated 16.04.2018 of Haryana Government, the pre-requisite for a person to be eligible for release of pension under the aforesaid scheme i.e. “the Haryana State Shubhra Jyotsna Pension and other Facilities Scheme, 2018” are extracted as under:-

“Eligibility-

(a) This scheme is applicable to residents of Haryana who participated actively and struggled during the period of emergency and faced imprisonment even for one day, under MISA Act, 1971 and /or Defence of India Act, 1962 and Rules framed there under. The policy shall also be applicable to widows of such persons.

(b) He or she must be a resident of Haryana State and must have undergone imprisonment for any period, during the Emergency Period i.e. 25.06.1975 to 21.03.1977. He or She has to produce the jail certificate for the same issued by Jail Superintendent concerned and counter signed by District Magistrate.

(c) In case the person cannot produce the jail certificate due to record being missing or being unavailable, he may produce certificate from two co- prisoners. Such certificate of co-prisoners must be authenticated by an MLA or MP of the concern district.”

Learned counsel for the petitioner contends that the petitioner remained in custody from 26.02.1976 to 27.02.1976, hence, the petitioner was entitled to the grant of pension under the aforesaid Scheme. He contends that the petitioner had sought the record of the Prisoners from the office of Central Jail, Ambala for the period from 1975 to 1977 under the Right to Information Act and in reply thereto, he was informed vide letter dated 20.06.2019 that the records had been destroyed during floods in the year 2004 and as per the record available, the name of Joginder Singh i.e. the petitioner herein does not figure. Hence, the petitioner produced certificates from two co-prisoners namely Chander Bhan and Manjeet Singh, who also remained in prison from 23.02.1976 to 20.03.1976 and from 23.04.1976 to 03.01.1977 respectively and the same was duly

authenticated by the Local MLA. It is thus averred that the petitioner having submitted the certificate from the two co-prisoners was entitled to be considered for the grant of pension under the aforesaid Scheme and the same has wrongly been denied to him.

Reply on behalf of respondents No.1 to 3 by the Deputy Commissioner, Ambala-respondent No.2 dated 28.07.2022/01.08.2022 has been filed wherein it has been averred that a report was received on 13.11.2020 from the office of Superintendent, Central Jail, Ambala, wherein it was stated that the name of the petitioner was not mentioned in the list of prisoners who were confined in the aforesaid jail during the period 26.02.1976 to 27.02.1976 as a lot of the record of the jail was destroyed in the year 2004. Thereafter, another report dated 29.01.2021 was received from the office of Superintendent, Central Jail, Ambala, through SDO (Civil), Ambala, in respect of the persons who were confined in the Central Jail, Ambala, for the period from 26.02.1976 to 27.02.1976 during Emergency and as per the said report, the petitioner was not found confined at Central Jail, Ambala, for the period from 26.02.1976 to 27.02.1976. It was also reported in the said letter dated 29.01.2021 that a lot of record of the Jail was, however, destroyed in the floods in the year 2004. A clarification was accordingly sought from the office of Superintendent Jail, Ambala, whereupon he has taken a categorically stated vide letter dated 16.09.2021 that petitioner Joginder Singh was not confined in the Central Jail, Ambala, from 26.02.1976 to 27.02.1976. It has been further reported that as per Register No.1 of the undertrial prisoners of their office, details of prisoners from Sr. No.1 to 14 is available in which the name of the

petitioner does not figure. The relevant extract of the aforesaid reply is extracted as under:-

“3. That as a matter of fact, the report dated 13.11.2020 was received from the office of Superintendent of Central Jail, Ambala in which it had been mentioned that the petitioner was not found confined at Central Jail, Ambala for the period 26-02-1976 to 27-02-1976, however, it was reported in letter no 13-11-2020 that lot of the record of Jail was destroyed in the year 2004 due to the floods. There after another report dated 29.01.2021 was received from the office of Superintendent of Central Jail, Ambala through SDO (C), Ambala in respect of persons who were confined at Central Jail, Ambala for the period 26-02-1976 to 27-02-1976 during the period of emergency and as per the said report the petitioner was not found confined at Central Jail, Ambala for the period 26-02-1976 to 27-02-1976. However, it was reported in letter no 29.01.2021 that lot of the record of Jail was destroyed in the year 2004 due to the floods. The copies of letter dated 13.11.2020 and 29.01.2021 are annexed herewith as Annexure R-2 and R-3.

4. That after receipt of the Notice of this Hon'ble Court in the present case, the Superintendent of Jail, Ambala vide letter no. 4382/MA dated 9-09-2021 was requested to clarify the actual position in respect of the confinement of petitioner Joginder Singh S/o Niranjana Singh R/o Village Segata Tehsil & District Ambala and also asked to clarify that on which basis the details of the prisoner from serial no. 1 to 14 has been prepared so that the proper position can be ascertained and the discrepancies can be explained before the Hon'ble Punjab and Haryana High Court, Chandigarh. The copy of letter no. 4382/MA dated 09-09-2021 annexed as annexure R-4.

5. That in reference to the above letter no. 4382/MA dated 09-09-2021 the Superintendent of Central Jail, Ambala vide letter no. 12928/ASUT dated 16-09-2021 has categorically stated on the basis of record available in the Jail that the petitioner Joginder Singh was not confined in the Central Jail, Ambala from the period 26-02-1976 to 27-02-1976. It has been further reported in the said letter that as per register no. 1 of under trial prisoners of their office, which was available in the office the detail of prisoners serial no. 1 to 14 is available, in the said record whereas the name of the petitioner was not available in the Sr. No. 1 to 14 of the prisoners. The copy of letter no. 12928/ASUT dated 16-09-2021 which is annexed as annexure R-5.”

Despite the above reply having been filed on 28.07.2022/01.08.2022, no rejoinder/replication controverting the aforesaid factual stand of the respondents has been filed by the petitioner.

After hearing the learned counsel for the respective parties and going through documents appended with the present petition and also taking into consideration the uncontroverted response of the State as extracted above, this Court has no basis to assume that the petitioner remained as a prisoner during the period so as to be eligible for pension under “the Haryana State Shubhra Jyotsna Pension and other Facilities Scheme, 2018.” The certificate of the co-prisoners can only be relied upon in the event of absence of preliminary record. Since the respondent-State has specifically stated that the record of the undertrial prisoners of 26.02.1976 to 27.02.1976 shows that no person by the name of Joginder Singh son of Late Naranjan Singh was found as undertrial prisoners, there is no basis for this Court to come to any conclusion to the contrary.

Additionally, the petitioner also does not fulfill the requirement of seeking certification from the co-prisoners. He places reliance on the certificate from Chander Bhan and Manjeet Singh who remained in custody from 23.02.1976 to 20.03.1976 and 23.04.1976 to 03.01.1977 respectively. Since the petitioner was in custody from 26.02.1976 to 27.02.1976; Manjeet Singh cannot be said to be a co-prisoner since he was arrested much after the petitioner was already out as per his own case. Hence, the petitioner does not fulfill the requisites under the Scheme.

Further disputed questions of fact arise for determination in the present case. It is well settled that disputed questions of fact cannot be adjudicated in a writ jurisdiction. Such question need determination by appreciation of evidence. The present petition is accordingly dismissed. The petitioner may, if so advised, take recourse to his alternative remedies in law.

April 17, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No