



2023:DHC:9202



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

Pronounced on: 20th December, 2023

+ **W.P.(C) 2153/2019**

SMT. MEENA DEVI

..... Petitioner

Through: **Mr.Rishi Raj, Advocate**

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: **Mr.T.P. Singh, SCGC for UOI**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

“a) Directing the Respondent to grant pension and/or other benefits to the Petitioner under the Scheme of the Respondent for Swatantrata Sainik Samman from the date of his eligibility and quash and/or set aside the impugned letters dated 05.10.2016 and all other letters of rejection.

b) Direct the Respondent to pay arrears with interest @ 18% till the date of actual payment;

c) Pass such other and further order or direction, as may be deemed fit and proper.”

FACTUAL MATRIX

2. The present writ petition is being filed by the petitioner for the grant

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of pension to under the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred as “SSSP Scheme”). The said scheme was launched to enable grant of pension to freedom fighters and their dependents. The aim of the scheme for grant of pension to freedom fighters and their eligible dependents with effect from 15th August 1972.

3. One of the categories was in respect of persons who on account of their participation in the freedom struggle remained underground for more than six months either on account of them being disclosed to be a proclaimed offender or an award of arrest was announced against them or a person against whom a detention order was issued, but not served.

4. The petitioner alleged that her husband i.e., Mr. Ram Chander Jha participated in the freedom struggle movement, thereby, remaining underground from August 1942 to 18th June 1946 and was declared absconding and warrants of arrest were issued against him. The petitioner husband's case filed his application for pension as per Clause 2.3 of the SSSP Scheme on 31st March 1981.

5. Thereafter, the District Collector, Madhubani issued a letter to Deputy Secretary, Home (Special), Govt. of Bihar regarding verification of record bearing GR No.223/42, 603/42, 604/42, 132/42, 602/42, 601/42, 747/42 and 605/42 on 8th October 1983 which were verified from the District Record Room, Madhubani and the copy of the verification Record was sent along with the said letter. Therefore, the petitioner's husband was recommended by Government of Bihar for grant of pension.

6. Accordingly, on 1st March 1985, a letter of recommendation was sent



by Joint Secretary, Government of Bihar to the respondent no. 2 for release of the pension of the petitioner's husband.

7. The petitioner had also furnished proof of the relevant extract on 21st February 2005 and the case being G.R. No. 747 of 1942 was disposed of by the Court of Mr. R. N. Singh, Magistrate III, Madhubani.

8. Thereafter, the Under Secretary of the Government of Bihar Home (Special) Department sent a reminder on 7th January 2006 to the Under Secretary, Ministry of Home Affairs, Government of India regarding the release of the pension to the petitioner.

9. The respondent no. 2 sent a letter to the Secretary of Home (Special) Department, Government of Bihar, Secretariat, on 12th March 2008 by which the claim of the petitioner was rejected on the ground that the petitioner does not meet the eligibility criteria and has failed to provide any evidentiary requirement in lieu of the Swatantrata Sainik Samman Pension Scheme, 1980.

10. Subsequently, the respondent no. 2 sent a letter a letter dated 14th December 2009 to the petitioner, thereby, stating that the case of the petitioner has been examined however, the petitioner was found ineligible for grant of pension under the SSSP scheme and therefore, the case of the petitioner has been rejected by the respondent.

11. Further, the Under Secretary to the Government of Bihar, Home (Special) Department wrote a letter dated 22nd December 2008, to the respondent no. 2 with a request to re-consider the claim of the petitioner. The respondent no.2 replied to the aforesaid letter to vide letter dated 8th



May 2013 and informed the petitioner that the decision with regard to the pension claim of her husband has already been rejected and the same had been communicated to the petitioner vide letters dated 14th December 2009 and 12th March 2008.

12. On 16th December 2013, the Under Secretary to the Government of Bihar further informed the respondent no. 2 that the claim of the petitioner has been rejected by the Ministry without disclosing any reason to the petitioner and that the request of the petitioner should be re-considered.

13. On 20th August 20014, the Special Secretary of Bihar Government to the Ministry of Home Affairs, Government of India made another request regarding re-consideration of the pension claim of the Petitioner;

14. On 14th September 2014, the petitioner's husband died and a death certificate was issued to the petitioner and she executed an affidavit by way of which she declared herself as the only legal heir of her husband.

15. Subsequently, on 6th July 2016, the petitioner filed an RTI application to the Ministry of Home Affairs, Government of India in order to obtain information as to why the pension claim of the husband of the petitioner was being repeatedly rejected without providing any cogent reasons for the same.

16. On 21st July 2016 the respondent no.2 rejected the said RTI application on the ground that the IPO enclosed with the said application was in favour of Additional Secretary-cum-CPIO Freedom Fighter Directorate, instead of Accounts Officer, MHA and therefore, the said RTI application did not come under the purview of RTI Act, 2005.

17. Thereafter, on 25th August 2016, the petitioner filed an application



with the Additional Joint Director, Ministry of Home, Government of India, New Delhi, with respect to the sanction of pension of the petitioner.

18. Further, the petitioner filed an application dated 1st September 2016 to the Additional Secretary, Home (Special) Department, Patna in respect of sanction of the pension of the petitioner.

19. The respondent no. 2 vide its letter dated 5th October 2016 addressed to the Deputy Secretary Home (Special) Department, Government of Bihar rejected the claim of the petitioner.

20. Aggrieved by aforesaid rejection letters by the respondent, the petitioner has preferred the present writ petition.

Submissions

(on behalf of petitioner)

21. Learned counsel on behalf of the petitioner submitted that the rejection of the application of the petitioner seeking pension after the lapse of 27 years has been illegally and unlawfully rejected the application of the petitioner by the respondent and is in complete contravention to clause 2.3 of the SSSP scheme.

22. It is further submitted that the letters dated 12th March 2008, 14th December 2009 and 8th May 2013 denying pension to petitioner's husband have wrongfully concluded that the evidences adduced by the petitioner's husband are insufficient and not in accordance with the SSSP scheme.

23. It is further submitted that for a period of 27 years i.e., from 1981 to 2008, the respondent did not take any action with regard to the application filed by the petitioner's husband and kept him waiting without providing any



information to the State Government or to the husband of the petitioner.

24. It is submitted that the conduct of the respondent is contrary to the purpose for which the SSSP scheme was introduced and the same has caused severe harassment to the petitioner and her husband. The petitioner is the only legal heir of her husband and is dependent on the grant of pension, which has been unlawfully and illegally rejected by the respondent.

25. It is further submitted by the petitioner that it is clear and evident from GR No. 747 of 1942 that the Court Magistrate, Madhubani had declared the petitioners' husband as an absconder on 18th June 1946 and the same can be considered as primary evidence.

26. It is submitted that the respondent rejected the claim of the petitioner on 12th March 2008 stating that the State Government has not verified the factum that the petitioner's husband was underground which is in clear contravention to the record and the Government of Bihar has duly verified the GR No. 747 of 1942, certifying that the facts mentioned therein are correct.

27. It is further submitted that the respondent rejected the claim of pension on the ground that the petitioner's husband failed to furnish a valid Non-Availability Records Certificate (hereinafter "NARC") from the State Government and in absence of NARC, the personal knowledge certificate (hereinafter "PKC") from one, Shri Sheetal prasad Singh is not acceptable.

28. It is submitted that petitioner's husband had merely submitted PKC from one Sheetal Prasad Singh as an abundant caution despite the availability of primary evidence being GR No. 747 of 1942. Since primary



evidence being the Court record was available there was no need/ question of furnishing NARC in the present case. The respondent ought to have taken into account the primary evidence which is GR No. 747 of 1942 which is enough evidence according to the SSSP scheme.

29. It is further submitted that the respondents in their letter dated 12th March 2008 had stated that the petitioner's husband has not specified a time when he was underground which is contrary as the petitioner husband has clearly mentioned in the application that he was underground from 1942 till the day India got independence.

30. It is submitted that the State Government has also verified the fact that the petitioner's husband remained underground till 18th June 1946 which proves that petitioner's husband was underground for more than six months and there was a Court order proclaiming the petitioner's husband as absconder. Therefore, the petitioner's husband is duly entitled to the pension in accordance with the SSSP Scheme.

31. It is submitted that in view of the foregoing submissions, the instant petition may be allowed and the reliefs as prayed for may be granted.

(on behalf of respondent)

32. *Per Contra*, the learned counsel appearing on behalf of the respondent submitted that the representation received from the petitioner's husband, Sh. Ramchandra Jha, alleging non-receipt of his pension under SSSP, was found to be untrue upon scrutiny of records since the petitioner's husband's claim was never received by the Ministry.

33. It is further submitted that the State Government forwarded the



husband's claim in 2006, but it was rejected in 2008 by the respondent no.2 on the grounds of lack of verified primary evidence duly verified by the State Government in support of petitioner's husband claim of underground suffering and a valid NARC issued by the State Government with all requisite ingredients.

34. It is further submitted that in absence of NARC, PKC cannot be considered and in the instant case, the PKC certifier has not furnished any record of his own jail suffering hence, PKC is invalid. Furthermore, there is absence of a specific positive recommendation from the State Government

35. It is submitted that the pension claim was re-submitted on two occasions without acceptable verification by the State Government, leading to the Ministry maintaining its stance in 2009.

36. It is contended that after the petitioner's husband's death in 2016, the petitioner submitted a representation in 2016 for SSSP Scheme, which was rejected in 2016 based on Clause 1.5 of the revised guidelines, stating that no pension could be sanctioned after the death of a freedom fighter, even if the matter was under examination, preventing life-time arrears or dependent pension for the spouse/daughter.

37. It is submitted that there is no instance of procedural irregularity or inaction on part of the respondent necessitating judicial review by this Court under its writ jurisdiction.

38. In view of the submissions made above, it is submitted that the instant petition is devoid of any merit and the same be dismissed.

ANALYSIS AND FINDINGS



39. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

40. Heard the Counsels for the parties and perused the material on record.

41. It is the case of the petitioner that the 'Swatantrata Sainik Samman Pension' Scheme was announced by the Government of India to honour the freedom fighters who gave their sweat and blood to secure the freedom of the country. The Government of Bihar has recommended the case of the petitioner and has sent the original documents to the Central Government and the same have been lost by the Central Government.

42. The respondent has rejected the request of the petitioner as well as the recommendation of the Bihar Government since the documents produced on record by the petitioner do not fulfil the conditions to avail the pension as per the Scheme. Moreover, in accordance with Clause 1.5 of the revised Scheme states 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 and that no life time arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter. Accordingly, the case of the petitioner is not entitled to any pension under the Scheme.

43. Before delving on the merits of the case, this Court deems fit to reproduce the letter dated 12th March 2008 on the basis of which petitioner's



pension was rejected by the respondent as follows:

“I am directed to refer to Government of Bihar's letter no. 10 dated 7.1.2006 forwarding therewith the documents relating to Shri Ramchander Jha for consideration of grant of Central Samman pension to him under the Swatantrata Sainik Samman (S.S.S.) Pension Scheme, 1980.

2. The claim of Shri Ramchander Jha has been examined, keeping in view the documents on record and the applicable provisions of the Swatantrata Sainik Samman (S.S.S.) Pension Scheme, 1980.

3. In his pension application dated nil, the applicant has claimed underground suffering. No specific period of his underground suffering has been mentioned in his application. He has submitted a photocopy of extract from the list of disposed of records in the court of Mr. R.N. Singh, Madhubani for the month of June, 1946 and a copy of PKC of Shri Sheetal Prasad Singh.

4. As per the provisions of the S.S.S. Pension Scheme, 1980, any applicant who claims underground suffering is eligible for Samman pension, provided the following conditions are fulfilled;-

Underground Suffering: - A person, who on account of his participation in freedom struggle remained underground for more than six months, provided he was: A. a proclaimed offender; or;

B. One on whom an award for arrest or head was announced;

or

C. One for whose detention, order was issued but not served. Voluntary underground suffering or self exile for party work under the command or the party leaders is not covered as eligible suffering for pension under the Scheme.

The claim of underground suffering is ..ill.. Ject to furnishing of the following evidence:-



1) Primary evidence: Documentary evidence by way of Court's/Government's orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. According to the S.S.S. Pension Scheme, 1980 absconson on issue of warrant of arrest is not an eligible suffering for grant of SSS pension, unless the same is followed by the order of proclaimed offender/ or award for arrest/ on head or detention order.

II) Secondary evidence:- In the absence of primary record-based evidence, a Non-availability of Records Certificate(NARC) from the concerned State Government/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum of two years and who happened to be from the same administrative district can be submitted as supporting evidence to the claim. Where records of the relevant period are not available, Non-availability of Records Certificate (NARC) from the concerned authority is a mandatory pre-requisite for secondary evidence. The NARC should not be general or vague, but should conform to the instructions issued by the Government of India, Ministry of Home Affairs. The instructions, inter-alia, require the State Governments to issue an NARC only after due verification from all sources The NARC is treated valid only when it is furnished by the State Government in the following manner:-

"All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available."

The claims of Samman pension can be considered, by the Central Government only when these are duly verified and recommended by the State Governments / Union Territory Administrations concerned alongwith the basis of such recommendation in accordance with the provisions of the Scheme. As per the Scheme, the verification and recommendation report of the State Government/Union Territory



Administration is mandatory in view of the fact that the documents and ' other evidences of the claims are in the possession of the State Governments/Union Territoiy Administrations and not with the Central Government.

However, it is also to mention that the Central Government has to keep all documents/reports/evidence in view and to take a decision strictly in accordance with the eligibility criteria and evidentiary requirements of the Central Scheme. A positive recommendation of the State Government is. therefore, not binding on the Central Government (if the claim does not satisfy the eligibility criteria and evidentiary requirements prescribed in the Central Scheme).

5. After examination of the claim, it is found that Shri Ramchander Jha is not eligible for grant of Central Samman pension due to the following shortcomings/ discrepancies (i) He has not furnished record-based primary evidence, duly verified ,by the State Government, in support of his claimed underground suffering. He has submitted a copy of extract from the list of disposed of records in the court of Mr. R.N. Singh, Madhubani for the month of June, 1946 which is not acceptable as the State Government has not verified the claimed suffering of the applicant from official records (as indicated in para 4 above).

(ii) He has not furnished a valid Non-availability of Recdrds Certificate (MARC) from the State Government (i.e., the competent authority), having all ingredients prescribed therefor (as indicated in para 4 above).

(iii) In the absence of a valid NARC, secondary evidence, i.e. Personal Knowledge Certificates (PKCs), cannot be considered and are not acceptable. However, a copy of the PKC 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).

(iv) State Government has not given its specific 85 positive recommendation for grant of samman pension in his case.



6. *In view of the above, the claim of Shri Ramchander Jha does not meet the eligibility criteria and evidentiary requirements of the Swatantrata Sainik Samman Pension Scheme, 1980.*

7. *It is, therefore, regretted that it is not possible to accept the claim of Shri Ramchander Jha for grant of Central samman Pension ujriider swatantrata Sainik Samman Pension Scheme, 1980 from Central Revenue. Hence, the same is hereby rejected.*

8. *It is requested that this decision may please be conveyed to Shri Ramchander Jha under intimation to this Ministry.*

9. *This issues with the approval of the competent authority.”*

44. Upon perusal of the aforesaid order, it is evident that the respondent rejected the petitioner’s claim on the grounds that

- a. The petitioner’s husband had not furnished the record based primary evidence, duly verified by the State Government, in support of his claimed underground suffering and copy of extract duly obtained from the list of disposed of records for the month of June 1946 from the Court of Mr. R.N Singh, Madhubani submitted by applicant was not acceptable as same has not been verified by State Government from their official record.
- b. Additionally, he had not furnished a valid non-availability of Record Certificate (NARC) duly issued by the State Government with all the required/ prescribed ingredients.



- c. Moreover, since there was no valid NARC available, secondary evidence i.e., PKCs cannot be considered and are not acceptable. Furthermore, the PKC of Shri Sheetal Prasad Singh submitted by the petitioner's husband has not furnished any record/evidence of his own jail suffering of minimum two years to prove himself as an eligible certifier. Hence, the PKC submitted by applicant cannot be considered as a valid PKC.
- d. Moreover, the State Government of Bihar has not rendered any specific and positive grant of recommendation of pension in the instant case.
45. Further, a representation submitted by the husband of the petitioner, was again received by the Ministry through State Government vide letter dated 22nd December 2008. Since, the applicant had not furnished any new acceptable evidence from the official record, duly verified by State Government in order to re-consider his claim, as such the stand of this Ministry taken vide letter dated 12th March 2008 was reiterated and conveyed to the petitioner's husband *vide* respondent's letter 14th December, 2009.
46. Thereafter, the State Government vide letter dated 16th December 2013 had forwarded the representation of husband of the petitioner without any new evidence, hence the claim was again rejected in view of the earlier rejection letter dated 12th March 2008 and same was communicated to the husband of the petitioner vide letter dated 13th February 2014.



47. Further, as stated by the petitioner, husband of the petitioner had expired on 14th September 2014. After death of her husband, the petitioner is pursuing the matter and accordingly she had submitted a representation dated 25th August 2016 for grant of SSS dependent Pension.

48. The respondent replied to the aforesaid representation vide letter dated 5th October 2016 and it has been reproduced as follows:

"I am directed to refer to your letter dated 20.03.2014 and Smt. Mina Devi w/o late Shri Ramchander Jha's representation dated 25.08.2016 on the subject mention above and to say that the State Government neither furnished any fresh documents for reconsideration the claim of late Shri Ramchandra Jha nor clarified the shortcomings raised by this Ministry letter dated 12.03.2008.

2. As per Para 1.5 of the revised guidelines of SSS Pension Scheme, 1980: "No pension shall be sanctioned in the nanne of the freedom fighter after his/her death even if his/her matter IA/as under examination. This also entails that no life time arrears or dependent pension shall be sanctioned to this/her spouse /daughter after the death of the freedom fighter"

3. In view of above, it is, therefore, regretted that it is not possible to accept the claim of late Shri Ramchander Jha for grant of Central Samman Pension under Swatantrata Sainik Samman Pension Scheme, 1980 form Central Revenues. Hence, the same is, hereby, rejected."

49. As per the aforesaid letter, it is stated by the respondent that since the husband of the petitioner was never sanctioned any pension in accordance with the SSSP Scheme therefore, the petitioner is also not eligible for SSS dependent pension as per Clause 1.5 of revised guidelines of Swatantarta Sainik Samman Yojana (hereinafter called "SSS Yojana"). Moreover, there were no fresh documentary evidences duly verified from the official record



either received from the husband of the petitioner or from the State Government, hence the claim of the petitioner was rejected vide letter dated 5th October 2016 issued by the Ministry, in view of the above stated lines.

50. Now before adjudicating the matter on merits, it is imperative to reiterate the law laid by the Court in a catena of judgments pertaining to non- interference of the Courts for investigating the proof submitted by the person claiming pension under SSSP Scheme.

51. The position of law in this regard has been enunciated by the Hon'ble Supreme Court in the judgment of ***Union of India v. Bikash R. Bhowmik***, (2004) 7 SCC 722 as follows:

“2. Learned Additional Solicitor General appearing on behalf of the Union of India relied upon two decisions of this Court viz. Mukund Lal Bhandari v. Union of India [1993 Supp (3) SCC 2] and Union of India v. Mohan Singh [(1996) 10 SCC 351] to the effect that pension could be sanctioned only as per proof as required in the Pension Scheme and in no other manner. We think there is great force in the submission made by the learned Additional Solicitor General. We find that the High Court could not have travelled beyond the Pension Scheme to find that there was substantial compliance with the prerequisites as to suffering of imprisonment. In order to get the benefit of the Pension Scheme, the proof required must be as provided in the Pension Scheme itself. As long as such proof was not available, the benefit could not have been granted. Therefore, we set aside the order made by the High Court and dismiss the writ petition filed by Respondent 1. The appeal is allowed accordingly.”

52. The Supreme Court in case of ***Bikash R. Bhowmick*** (*Supra*) has decided that pension could be sanctioned only as per proof as required in the pension scheme and in no other manner. The Courts should adhere to the



provisions of the pension scheme to ascertain if there was substantial compliance with the pre-requisites with the scheme. In order to get the benefit of the pension scheme, the proof required must be provided as per the pension scheme.

53. The aforesaid principle of law has been reiterated by the Supreme Court in the judgment of ***W.B. Freedom Fighters' Organisation v. Union of India, (2004) 7 SCC 716*** as follows:

*“15. Our attention is also drawn to an unreported order of this Court dated 24-9-2003 in Civil Appeal No. 1850 of 1999 [Subsequently reported as *Union of India v. Bikash R. Bhowmik, (2004) 7 SCC 722*] . In this case, an application had been made under this very Scheme. There was no jail record and only an affidavit of a person who had visited him in jail and a certificate from the Headmaster of a school had been submitted. This Court taking note of the observations in *Mukund Lal Bhandari case [Mukund Lal Bhandari v. Union of India, 1993 Supp (3) SCC 2]* held that proof as required under the Scheme had to be submitted. It was held that if proof as required under the Scheme was not submitted benefit could not be granted.*

*16. Reliance was also placed upon the case of *State of Maharashtra v. Raghunath Gajanan Waingankar [(2004) 6 SCC 584 : (2004) 6 Scale 478]* wherein it has again been reiterated that it is for the Government to be satisfied regarding genuineness of the claim and that the Court cannot sit in judgment over the decision of the State Government like an appellate authority. It has been held that the Court cannot, while exercising writ jurisdiction, enter into a reappreciation of evidence and/or reverse findings arrived at by the State*



Government, unless they be perverse or be such as no reasonable man acting reasonably could arrive at. In this case, the Court noted the observations in Gurdial Singh case [(2001) 8 SCC 8] and held that the observations in Gurdial Singh case [(2001) 8 SCC 8] do not negate the standards laid down in Mukund Lal Bhandari case [Mukund Lal Bhandari v. Union of India, 1993 Supp (3) SCC 2] and that those standards continue to apply.

17. Having heard the parties, even presuming that the petition was in effect for payment of pension, we find that it is not possible for this Court to interfere as the Committee has come to a conclusion on the basis of available material. The decision of the Committee cannot be said to be perverse or one which no reasonable person could arrive at. We, therefore, see no reason to interfere.”

54. The Hon’ble Supreme Court has again reiterated the principle of judicial restraint that must be exercised by the Court in case of SSSP scheme in the aspect of ascertaining whether sufficient proof has been placed on record by the applicant to entitle him/her to the pension in the judgment of ***Union of India v. M.S. Mohammed Rawther, (2007) 12 SCC 527*** as follows:

“6. We have heard learned counsel for the parties and perused the record. We are of the opinion that the course adopted by the learned Single Judge was the correct course and the matter should have been remitted back to the Union of India to decide the question of grant of freedom fighter's pension afresh. It required necessary investigation of facts as to whether the incumbent was entitled to SSS Pension or not. The courts cannot encroach into the executive or legislative domain, and cannot assume the role of investigation of facts. It is the



duty of the State and the Union of India to have considered all the material on the subject and consider whether it is a case worth granting pension as per the SSS Pension Scheme, 1980. The court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate to itself the power of the executive. If the order passed by the Union of India is not justifiable on Wednesbury principles the court can only set it aside and remit the matter back to the executive for a fresh decision but the court cannot assume the power of the Union of India. The court must exercise judicial restraint in such matters. There is broad separation of powers under the Constitution, and one organ of the State should not ordinarily encroach into the domain of another. Montesquieu's theory broadly applies in India too."

55. In view of the foregoing discussion, this Court is of the view that the courts cannot encroach upon the executive or legislative domain and cannot assume the role of investigator of facts. The Court must exercise judicial restraint in such matters.

56. The writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate Court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a Court or a Tribunal. A finding of fact, howsoever erroneous, recorded by a Court or a Tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the Court or the Tribunal was insufficient or inadequate to sustain the impugned finding.

57. In the instant case, the competent authority respondents have examined the case of the petitioner's husband and has found that the



documents placed on record by him are unable to prove the fact that the petitioner's husband is entitled to the pension under the SSSP Scheme. The petitioner's husband claim has been unsubstantiated both by way of primary evidence and secondary evidence placed on record.

58. This Court cannot delve into the aspect that the respondents have appreciated evidences wrongly since, this is a disputed question of fact which cannot be adjudicated upon by this Court under its writ jurisdiction. It has to restrain itself to ensuring that the evidence placed on record by the petitioner's husband has been duly adjudicated upon by the respondents. It cannot investigate into the matter whether the respondent has denied pension to the petitioner's husband by incorrect

59. Furthermore, as per Clause 1.5 of the SSSP Scheme, no pension can be sanctioned in the name of the freedom fighter after his/her death even if his/her matter was under examination and it shall also entails that no life time arrears or dependent pension shall be sanctioned to his/her spouse /daughter after the death of the freedom fighter. In the instant case, Clause 1.5 is applicable and since, the petitioner's husband is no more therefore, the petitioner is not entitled to any amount of pension.

CONCLUSION

60. This Court is of the view that the grounds raised by the petitioner for setting aside the impugned rejection letters do not merit interference of this Court since, there is no error apparent on the face of the order. The respondent has considered the plea of the petitioner along with the evidence and accordingly, it adjudicated upon it.



61. There is no illegality on the part of the respondent in rejecting the claim of the petitioner on the grounds that there is no evidence adduced by the petitioner's husband in accordance with the Scheme. Hence, the petitioner's claim could not be allowed.

62. The writ of certiorari cannot be issued in the present matter since for the issue of such a writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in the instant petition.

63. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

64. The instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the rejection letters despite the fact that there are no such special circumstances that require the interference of this Court. The petitioner is not aggrieved by any such violation of the rights of the petitioner, which merits intervention of this Court in the orders passed by the respondent.

65. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and is liable to be dismissed.



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66. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

67. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 20, 2023
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Signature Not Verified

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