

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-25796-2017 (O&M)
Date of decision: 12.02.2024

Darshan Singh ...Petitioner

VERSUS

State of Punjab and others ...Respondents

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

Present :- Mr. Gulzar Mohd. Advocate for the petitioner
(through V.C.).

Mr. Saurav Verma, Addl. A.G., Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for issuance of directions to the respondents to release the stopped pension granted in favour of the petitioner being a freedom fighter and to restore his PPO No.7395 with immediate effect.

2. Learned counsel for the petitioner contends that the respondents had released the freedom fighter pension to the petitioner for his having participated in the Quit India Movement. However, an application was submitted by one Ishwar Chand son of Sarova Ram resident of Village Ghalwandi, alleging that the petitioner was availing pension on the basis of forged documents. An FIR No.165 dated 21.07.2004 under Sections 420, 467, 468, 471, 120-B IPC was thereafter registered at Police Station Sadar Khanna. The petitioner faced trial and was later convicted by the Judicial Magistrate 1st Class, Khanna, vide judgment dated 29.03.2012 against which

an appeal was preferred before the Court of Sessions Judge, Ludhiana. Vide judgment dated 25.09.2014, the petitioner had been acquitted by the Additional Sessions Judge, Ludhiana.

3. He further contends that a representation dated 27.10.2014 was thereafter submitted by the petitioner to the respondent-authorities, along with a copy of the judgment dated 25.09.2014 of his acquittal, for restoration of his freedom fighter pension. However, the respondent-authorities did not pay heed to the representation submitted by the petitioner. Aggrieved against the stoppage of pension and for not passing of any order on the representation made by the petitioner, the present writ petition is preferred.

4. A reply on behalf of respondents No.1 to 3 had been filed on 05.07.2018, wherein the following averments have been made:

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1. That the petitioner has filed the present writ petition for issuance of directions to the respondents to release the stopped pension granted to the petitioner as a freedom fighter. At the outset, it is submitted herein that the petitioner has not approached the High Court with clean hands and on the account of this fact only, the present writ petition be dismissed with costs as the petitioner was born on 20.10.1953 (after more than 6 years of Independence). However, he had got the monthly pension as a freedom fighter by submitting false documents containing therein false information with regard to date of birth of the petitioner and

the same was stopped the moment a proper inquiry was conducted into the matter by the official respondents.

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3. That upon coming to know about the aforementioned pension scheme, the petitioner approached the official respondents and submitted his documents for grant of pension wherein he submitted that he had participated in the Quit India Movement whereby he suffered imprisonment in Central Jail, Lahore for a period commencing w.e.f 20.10.1942 till 18.10.1943. Since there were no means to verify the genuineness and bona fides of the details provided in the application forms submitted by the petitioner, the Government of Punjab, Department of General Administration, Political-III Branch vide Letter dated 27.07.1993 requested the Ministry of Home Affairs, Freedom Fighters Pension, New Delhi to grant pension to the petitioner. In pursuance to the approval granted by the Central Government, the Government of Punjab vide letter No.9(46) 3P(II)-93/14609 dated 08.09.1993 approved grant of provisional pension to the petitioner and he started getting monthly pension w.e.f. 30.05.1988. It is pertinent to mention herein that the Government of Punjab had recommended the case of the petitioner to the Central Government for grant of a monthly pension of freedom fighter on the basis of the false

Information provided in his application form only. Thus, the petitioner in an illegal manner continued to receive the monthly pension of freedom fighter w.e.f. 30.05.1988 till it was stopped by the Official Respondents w.e.f. 24.06.2004. However, the illegal pension received by the petitioner for a period of 16 years caused a huge financial loss to the state exchequer which must be recovered from the petitioner with interest.

4. That one Sukhdev Singh vide complaint dated 29.04.2003 addressed to the Chief Minister, Punjab intimated the official respondents that the petitioner had got the pension of freedom fighter by giving false Information. It further mentioned that petitioner was born around 1950 and he was a resident of Village Raipur, P.O. Khod, Tehsil R. S. Pura, Jammu and he had completed his elementary education from his village school only. Thereafter, he completed his higher studies from Government High School, Simbal Camp, R. S. Pura, Jammu. A copy of the complaint dated 29.04.2003 of Sukhdev Singh is appended herewith as Annexure R-1-T. Thereafter, another complaint dated 06.12.2003 was lodged against the petitioner by Sh. Ishwar Chand. A copy of the complaint dated 06.12.2003 is appended herewith as Annexure R-2-T. Upon receiving such serious complaints, the respondent No.1 vide Memo dated 24.06.2004

discontinued the monthly pension of freedom fighter of the petitioner till completion of Inquiry. A copy of the Memo dated 24.06.2004 is appended herewith as Annexure R-3-T.

5. That thereafter, the petitioner was directed to visit the office of the respondent No. 3 along with his documents pertaining to the illegal pension he had been receiving and he was further asked to bring the details of date of birth of his three children. The petitioner appeared before the respondent No. 3 on 30.07.2003. After going through all the documents, It was found that three children of the petitioner were born in the years 1976, 1978 and 1981 respectively. This fact was sufficient to arrive on a conclusion that real age of the petitioner was much less than he had been claiming and he never participated in freedom struggle.

6. That in order to ascertain the aforementioned factual matrix, the official respondents sent several letters dated 01.08.2003, 05.11.2003, 19.11.2003 and 07.01.2004 to the schools where the petitioner had studied. A copy of the letter dated 07.01.2004 is appended herewith as Annexure R-4-T. The head master of the Government High School, Simbal Camp., R.S. Pura, Jammu vide letter no. HSSC-1021 dated 17.04.2004 informed the respondent No.3 that according to the records of the School, the petitioner had studied at that school and his Admission Number was 1787 and his date of

birth was 20.10.1953. A copy of the letter dated 17.04.2004 is appended herewith as Annexure R-5-T. It clearly proved beyond any shadow of doubt that the petitioner had misrepresented the official respondents and on the basis of forged and fabricated documents got the pension of freedom fighter granted in his favour and caused huge loss to the State exchequer.

7. That the respondent No.3 vide Letter No. 2546, RRC dated 01.06.2004 found the petitioner guilty of misleading official respondents on the basis of the forged and fabricated documents. Thus, it was recommended that the petitioner should be proceeded against under relevant provisions of law and further, complete recovery be affected from petitioner. A copy of the inquiry report dated 01.06.2004 is appended herewith as Annexure R-6-T.”.

5. The communication dated 17.04.2004 issued by the Headmaster, Government Boys High School, Simbal Camp, R.S. Pura, Jammu is also attached with the aforesaid reply as Annexure R-5/T.

6. Counsel for the State contends that the Additional Sessions Judge, Ludhiana has extended a benefit of doubt to the appellant-petitioner. He submits that the petitioner having committed forgery and securing the pension on the basis of forged documents does not deserve any concession. The matter has already been enquired into by the State and the claim of the

petitioner was not established. The discontinuation of pension is accordingly valid.

7. I have heard the learned counsel for the parties and have also gone through the documents available on record.

8. The entire controversy is as regards the entitlement of the petitioner to claim the pension and as to whether the date of birth and other necessary documents submitted by the petitioner for availing the pension were valid or not. While the claim of the petitioner is that he was being granted the pension at an earlier point in time and the same was discontinued on receipt of a complaint from aforesaid Ishwar Chand for which the criminal prosecution was lodged. He having been acquitted by the Additional Sessions Judge, Ludhiana, and discontinuation of pension ought to be recalled and the freedom fighter pension of the petitioner be restored. The above said claim is denied and disputed by the respondents.

9. Having heard the parties and going through the pleadings, it is evident that the written statement in this case was filed on 05.07.2018. The averments contained in the written statement and the counter allegations levelled against the petitioner has remained undisputed and uncontroverted including the communication received from the Headmaster, Government Boys High School, Simbal Camp, R.S. Pura, Jammu issued on 17.04.2004 as per which the date of birth of petitioner was 20.10.1953.

10. Further, the judgment of the Additional Sessions Judge, Ludhiana has also been perused and it is evident from the same that a benefit of doubt has been extended to the petitioner as the prosecution had relied

upon the enquiry conducted by the Sub-Divisional Magistrate, Khanna. The said enquiry report was not accepted by the Additional Sessions Judge, Ludhiana to be a proof of fraud having been committed and was construed only as a piece of evidence giving rise to a suspicion. The prosecution also failed to examine the Headmaster who had issued the certificate in question. None-the-less the Additional Sessions Judge, Ludhiana, did not comment on the validity or legality of the certificate issued by the Headmaster wherein the date of birth of the petitioner has been recorded as 20.10.1953. If the above said date of birth mentioned in the certificate (which has remained uncontroverted and undisputed in the pleadings before their Court) is accepted as correct, for want of challenge or rebutted its validity, the petitioner was not even born at the time when the Quit India Movement had commenced. Moreover, a mere extension of benefit of doubt on failure of mode of proof cannot be read as a proof of the claim raised by the petitioner.

11. A criminal case is based upon a burden of proof beyond doubt, which is much heavier on the prosecution, whereas civil proceedings are based upon preponderance of probabilities. The validity and legality of the certificate issued by the Headmaster, Government Boys High School, Simbal Camp, R.S. Pura, Jammu is neither denied nor disputed. Creditworthiness of the certificate cannot be impeached even without denying validity of the said certificate and by merely placing reliance on judgment of acquittal giving benefit of doubt since the evidence of the Headmaster was not recorded, the Court never ruled on validity of the said certificate. Moreover, additional corroborative circumstances like birth of

children has also been taken into consideration as a contemporaneous circumstantial evidence to hold that wrong information was given by the petitioner. If the claim of the petitioner of having been in jail in 1942 is accepted and he is deemed to be at least 18 years of age then, his first child was born in 1976, hence, he would be at least 52 years of age when first child is born, which again seems unlikely in the given social scenario.

12. Under the given circumstances it cannot be out-rightly said that the above said conclusion has no credibility or value in the eyes of law. The date of birth in these circumstances would be a disputed question of fact which cannot be gone into by this Court at this stage. The stand of the respondent-State cannot thus be out-rightly said to be unreasonable or unsubstantiated by any corroborating, *prima facie* convincing or credible evidence.

13. The present petition is accordingly **dismissed** at this stage.

14. Liberty is, however, granted to the petitioner to pursue his alternative remedies in accordance with law for establishing his claim.

15. The period during which the present petition has remain pending before this Court shall be taken into consideration by the respective Courts/Forums in the event of any such proceedings being instituted by the petitioner.

(VINOD S. BHARDWAJ)
JUDGE

12.02.2024
Mangal Singh

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