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

+ **LPA 116/2024 and CM APPL. 8478/2024**

SMT. MEENA DEVI

..... Appellant

Through: Mr. A. K. Thakur, Mr. Rishi Raj, Mr.
Sujeet Kumar and Mr. Ishaan Ojha,
Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Shaunak Kashyap, Ms. Parul Tuli
and Mr. Balasubramanian Ramesh Iyer,
Advocates.

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Date of Decision: 13th February, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 8478/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM APPL. 8479/2024

1. The CM APPL. 8479/2024 seeking condonation of delay of four days in filing the appeal is allowed.

**LPA 116/2024**

2. The present appeal filed under Clause X of the Letters Patent Act, 1865 impugns the judgment dated 20th December 2023 ('Impugned Judgment') passed in W.P (C) 2153/2019 wherein the learned Single Judge dismissed the writ petition seeking a direction to the Respondents for grant of pension along with arrears and interest under Swatantrata Sainik Samman Pension Scheme, 1980 ('SSSP Scheme' or 'Scheme') and a direction for setting aside the impugned letters of rejection dated 12th March, 2008, 14th December, 2009, 08th May, 2013 and 05th October, 2016.

2.1. The writ petition was filed by Appellant in her capacity as a legal heir of late Mr. Ramchandra Jha, being his widow and on the assertion that late Mr. Ramchandra Jha had participated in the freedom struggle in August, 1942 and had remained underground until 18th June, 1946.

2.2. Late Mr. Ramchandra Jha on 31st March, 1981 applied for grant of pension under the Scheme, along with documents and the said application was recommended by the Government of Bihar. However, Respondents i.e., Union of India after examining the documents submitted by the applicant vide order dated 12th March, 2008 rejected the claim for pension on the ground that the evidentiary requirement and the eligibility criteria of the Scheme are not satisfied.

2.3. The first representation filed by late Mr. Ramchandra Jha for reconsideration of the aforesaid decision was rejected by Respondents vide order dated 14th December, 2009 on the premise that no new evidence had been filed.



2.4. Late Mr. Ramchandra Jha made a second representation for re-consideration. However, the same as well was rejected by Respondents vide communication dated 08th May, 2013.

2.5. Late Mr. Ramchandra Jha made a representation to Government of Bihar against the rejection letter dated 12th March, 2008. The Government of Bihar by its letter dated 20th August, 2014 forwarded the representation of the Applicant along with the documents submitted initially on 31st March, 1981 and requested the Respondents to re-consider the application of late Mr. Ramchandra Jha.

2.6. Late Mr. Ramchandra Jha expired on 14th September, 2014 during the pendency of the aforesaid representation. His wife Smt. Meena Devi, i.e., the Appellant herein filed her representation on 25th August, 2016 following up with the Respondents for re-consideration of their decision dated 12th March, 2008.

2.7. The Respondents vide order dated 05th October, 2016 rejected the recommendation of the Government of Bihar dated 20th August 2014 and the representation of the Appellant dated 25th August, 2016 after recording that the shortcomings recorded in the first letter dated 12th March, 2008 have not been clarified and no new documents have been filed in support of the claim. It was additionally stated that as per paragraph 1.5 of the revised guidelines of the Scheme dated 06th August, 2014, no pension can be sanctioned in the name of the freedom fighter after his/her death.

2.8. The writ petition was thereafter filed in the year 2019 assailing the orders dated 12th March, 2008, 14th December, 2009, 08th May, 2013 and 05th October, 2016.



2.9. The learned Single Judge by the Impugned Judgment has concluded upon the finding of the Respondents that the documents placed on record by late Mr. Ramchandra Jha, along with his application dated 31st March, 1981, do not substantiate his claim for pension and therefore cannot be interfered with, as the Writ Court cannot review the evidence like an appellate Court to arrive at a finding different from the Respondents. The Court also opined that as per Clause 1.5 of the revised Scheme was also attracted in the facts of this case, as the application for pension was not allowed during the lifetime of the Applicant i.e. Mr. Ramchandra Jha.

3. Learned counsel for the Appellant states that the first order dated 12th March 2008 is erroneous, as the primary evidence in support of the Applicant i.e. late Mr. Ramchandra Jha underground suffering was duly filed. He relies upon the copy of the record of Court of the Magistrate, Madhubani being G.R. No. 747/1942 ('G.R.') to contend that the said document shows that the Applicant i.e. late Mr. Ramchandra Jha was convicted in a criminal case and his name finds mention at serial no. 33 of the said order which records that the accused was an absconder. He states that the said G.R. was verified by the Collector, Madhubani. He states that on the basis of the said G.R. and the certificate issued by the Collector, Government of Bihar on 01st March, 1985 recommended the Applicant's application for grant of pension under the Scheme. He states that in view of the said documents and the recommendations of the State Government, the Respondents arbitrarily rejected the application dated 31st March, 1981.

4. We have heard the learned counsel for the Appellant and perused the record.



5. The Applicant, late Mr. Ramchandra Jha had initially preferred his application for grant of pension under the Scheme on 31st March, 1981. The said application was forwarded and recommended by the Government of Bihar on 01st March, 1985. The Respondents by its order dated 12th March, 2008 rejected the said application. The said order reads as under:

"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:-

I) 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 absconsion 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 Territory 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 Records 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 & 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 under 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."

6. The phrase 'underground suffering' is defined at paragraph 2.3 of the Scheme and has been reproduced in the aforesaid order dated 12th March, 2008. For the sake of completeness, paragraph 2.3 of the Scheme is reproduced as under:

"2.3 Underground Suffering:- A person, who on account of his participation in freedom struggle remained underground for more than six months provided he was;

A. proclaimed offender; or

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

C. one for whose detention, order was issued but not served. Explanation: Voluntary underground suffering or self-exile suffering for party work under command of the party leaders, are not covered as eligible sufferings for pension under the Central Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence: -



(i) Documentary evidence by way of Courts/Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. OR

(ii) Where records of the relevant period are not available, a non-availability of records certificate (NARC) from the concerned State/Union territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit.

Gist of relevant Circulars/Instructions issued by the Govt. of India under the Scheme regarding claims based on Underground/ Abscondence' is given in Appendix B-11"

7. In his application dated 31st March 1981, the Applicant stated that he had suffered 'underground suffering' from August, 1942 until independence. The Applicant to prove his claim for 'underground suffering' solely relied upon the G.R. 747/1942, issued by the Court of the Magistrate, Madhubani.

8. In fact, the Applicant had annexed Personal Knowledge Certificate ('PKC') of one Mr. Shital Prasad Singh to support his claim for 'underground suffering' in which the said Mr. Shital Prasad Singh stated that the Applicant, late Mr. Ramchandra Jha was imprisoned from August, 1942 up to July, 1943. The contents of the PKC are contrary to the contents of the application, wherein there is no such assertion of imprisonment undergone by the Applicant, late Mr. Ramchandra Jha. Further, Respondents have noted that the said PKC is not acceptable as the certifier has not furnished the evidence of his own jail suffering.

9. It has been averred in this appeal that the Applicant, late Mr. Ramchandra Jha was declared as a proclaimed offender by the Court of the Magistrate, Madhubani. However, the G.R. 747/1942 does not record the Applicant as a proclaimed offender. In fact, the said order records the sentence awarded a fine of Rs. 200/-. It is unclear from the said order, if there was any direction of arrest or detention issued in the said proceedings. In



these facts, the finding of the Respondents that it is not satisfied with the Applicant's claim for 'underground suffering' from August, 1942 to 18th June 1946 on the basis of the said G.R. cannot be said to be so irrational or arbitrary so as to merit interference in the writ jurisdiction. It is also unclear from a perusal of the said G.R. if the case of the Applicant, late Mr. Ramchandra Jha is related to freedom struggle. Further, though the G.R. enlists the names of 54 accused, the appeal and the writ does not state that any of the other 53 co-accused have been receiving pension on the basis of this G.R.

10. As noted above, the Respondents re-considered the review/representations received from the Applicant, late Mr. Ramchandra Jha successively on 14th December 2009, 08th May 2013 and 05th October, 2016. The findings returned by the Respondents with respect to insufficiency of evidence to substantiate the entitlement for pension under the Scheme cannot be interfered in the present Letters Patent Appeal.

11. With respect to the non-binding nature of the recommendation of Government of Bihar dated 01st March, 1985 and 20th August, 2014 in the matter pertaining to the Scheme, the Supreme Court in the case ***Mahender Singh v. Union of India***¹ has noted that the State's recommendation is not binding on the Central Government in the absence of the required proof under the Scheme. The relevant portion of the Judgment reads as under:

"15. Though the State Advisory Committee and the Government of Bihar recommended the case of the appellant for the Central Scheme, it is pointed out by the learned counsel for the respondent that the same is not binding on the Central Government in the absence of required proof for the same. In other words, the recommendation of the State Government is not final or conclusive and it is for the authority of the Central Government granting such pension to make further

¹ (2010) 12 SCC 675



inquiry in the matter in terms of various conditions prescribed in the Scheme and to take a final decision”

(‘Emphasis Supplied’)

12. In view of the aforesaid findings, the present appeal is dismissed. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 13, 2024/hp/ms