

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1231 of 2017

In
Civil Writ Jurisdiction Case No.8255 of 2012

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1. The Union Of India through the Ministry Of Home Affairs, Government of India, Freedom Fighter Section Lok Nayak Bhawan, Khan Market, New Delhi
 2. The Under Secretary, Ministry of Home Affairs (FFR Division- CZ Section), 1st Floor, Lok Nayak Bhawan, Khan Market, New Delhi.

... .. Appellant/s

Versus

- 1.1. Dr. Arun Kumar Jha, Son of late Bageshwari Devi, Resident of Kashipur Ward No. 14, P.S. Samastipur , District- Samastipur.
- 1.2. Shrawan Kumar Jha, Son of late Bageshwari Devi, resident of Flat No. F3, Kunti Villa Apartment, Ambedkar Nagar, P.S.Rajeev Nagar, District- Patna.
- 1.3. Manoj Kumar Jha, Son of late Bageshwari Devi, Resident of Flat No. 103, Raj Hans Apartment, Ambedkar Nagar, P.S. Rajeev Nagar, District- Patna.
- 1.4. Alok Kumar Jha, Son of late Bageshwari Devi, Resident of Mohalla- Veer Kunwar Singh Colony, Ward No. 7, Samastipur, P.S. and District- Samastipur.
- 1.5. Pankaj Kumar Jha, Son of late Bageshwari Devi, Resident of Mohalla Barah Pathar , Ward No. 15, Near SC/ST Police Station- Samastipur, P.S. and District- Samastipur.
- 1.6. Kanchan Devi, Wife of late Raman Kumar Jha, Resident of R.B. Ultrasound Mohalla Kashipur, Ward No. 14, Samastipur, P.S. and District- Samastipur.
2. The State of Bihar, through Joint Secretary, Home (Spl) Department, Bihar Patna.
3. The District Magistrate, Samastipur.
4. The Treasury Officer, Samastipur.
5. The Accountant General, (A & E), Jharkhand, P.O. Doranda, Ranchi.

... .. Respondent/s

Appearance :

For the Appellant/s : Dr. S.D. Sanjay (Addl. S.G.)
Mr.Anshuman Singh, CGC
Ms. Parul Prasad, Advocate
Mr. Mohit Agarwal, Advocate
For the Respondent/s : Mr.Mukesh Singh Thakur, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 30-08-2019

Heard Shri S.D. Sanjay, learned A.S.G.I. for the Union of India, and Shri Mukesh Kumar for the heirs of late Triveni Kant Jha who had claimed pension as a freedom fighter.

There is no dispute on the count that the eligibility for the pension is prescribed by Rules and, according to the learned counsel for the appellants, Clause-2 of the eligibility Rules emphasizes on the words “participation of a person” so as to make him eligible after incarceration to claim pension. We may at the outset mention that Shri S.D. Sanjay has not disputed the factum of incarceration of late Triveni Kant Jha, but his main argument is that if he went behind bars under some suspicion of an offence under Section- 132 of the Defence of India (DIR) Rules, and has claimed freedom fighter pension, then that by itself did not entitle him to claim any such pension, inasmuch as the incarceration may have been for several other reasons that were not connected with the freedom movement or the participation on behalf of the said person. The Rule which has been pressed into service, namely Clause 2, is extracted hereinunder:

“2. **Who is eligible for Samman Pension:-**

All the persons who participated in the freedom movement in some way or the other are not eligible for Samman Pension. Only following category of freedom



fighters are eligible for the Samman Pension under the Scheme subject to furnishing of the specified evidences:-

2.1 Eligible dependents of martyrs:- A martyr is a person who died or who was killed in action or in detention or was awarded capital punishment due to participation in the freedom struggle of India. Relevant documents from official records and newspapers of the relevant time are considered as evidences in such cases.

2.2 Imprisonment:- A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:-

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Govt. indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the certifier happens to be a sitting or Ex. M.P./M.L.A., only one certificate in place of the two is required.

2.3 Underground:- 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/head 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:-

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

(b) In case records of the relevant period are not available, secondary evidence in the form of 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 could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available.

2.4 Internment/Externment:- A person who, on account of participation in the freedom struggle, was interned in his home or externed from his district for a minimum period of 6 months is eligible subject to furnishing of order of internment or externment issued by the competent authority, from official records. In absence of the official records, NARC from the State Govt./UT Administration concerned, along with a



certificate from prominent freedom fighter, who had proven jail sufferings of at least two years; who belonged to the same administrative unit and whose area of operation was same as that of the applicant, should be furnished.

2.5 Loss of property:- A person whose property was confiscated or attached and sold due to participation in the freedom struggle is eligible subject to furnishing of orders of confiscation and sale of property, provided that the persons whose property was restored are not eligible for Samman Pension.

2.6 Permanent incapacitation:- A person who on account of participation in freedom struggle, became permanently incapacitated during firing or lathi charge subject to furnishing of:-

(a) certificate from the District Magistrate stating that permanent incapacitation was done by bullet injury/lathi charge sustained during participation in the National Freedom Struggle and

(b) Medical certificate from the Civil Surgeon in support of the handicap.

2.7 Loss of Government Job:- A person who lost his Govt. job for participation in freedom struggle is eligible subject to furnishing of orders of dismissal or removal from service. However, persons who were reinstated in service before expiry or two years from their dismissal or removal from service and were in receipt of benefits or pay and allowances are not eligible for pension.

2.8. Canning/Flogging/Whipping:- A person who was awarded the punishment of 10 strokes of caning/flogging/whipping due to his participation in freedom struggle is eligible subject to furnishing of copies of orders passed by the



competent authority from official records.”

It is also not in dispute that the pension which was sanctioned after enquiry came to be cancelled after a show cause was issued and orders were passed for recovery of the pension drawn by the deceased pensioner. This order relating to withdrawal dated 18th March, 2012 gave rise to the filing of the writ petition by the pensioner himself who later on died and stood substituted by his widow in the writ petition. The learned Single Judge, after having traversed the facts, came to the conclusion that the period of incarceration was not disputed but the reason given for cancellation merely because the pensioner had accepted the job of a Police Inspector in the then British Government was incomprehensible. The learned Single Judge further held that the order of cancellation could have only been founded on the basis of the objections raised and the reply given to that effect and once the objection stood explained under the Circular of the Government dated 13th February, 1982, then in that event, if the deceased pensioner had joined government service after release from incarceration, the same cannot be a ground to deny pension. The learned Single Judge further held that the deceased pensioner cannot be castigated as a traitor in the freedom struggle because he had accepted an employment



during the regime of the British Government. The writ petition was, accordingly, allowed. That has been questioned by the Union of India in the present appeal.

Learned counsel for the respondent-petitioner has urged that once the period of incarceration is established and the certificate of co-prisoners was on record, then in that event, there was no room for any doubt to be expressed by the Union of India or the State Government about the claim of pension on the ground of the pensioner having accepted employment and served as a Police Inspector during the British Government.

According to the learned counsel, this was absolutely alien to the cause of grant of pension and, therefore, the show cause suffered from an invalidity which stands perpetuated in the order passed by the Government cancelling the pension that has been rightly quashed by the learned Single Judge.

Shri S.D. Sanjay has, however, reiterated his submissions with the support of three judgements in the case of **M.L. Bhandari Vs. Union of India**, reported in **1993 Suppl. 3 SCC 2**, paragraphs 7 and 9, **Union of India Vs. Awtar Singh**, reported in **(2006) 6 SCC 493**, paragraph 7 and the third decision in the case of **State of Orissa Vs. Choudhary Nayak**



(D) through L.Rs. & Ors. reported in **(2010) 8 SCC 796**, paragraph 10. The contention as raised appears to be centring around the claim of pension having been made by the pensioner with regard to his incarceration which is being doubted on the ground that the pension has been obtained without there being any participation in the freedom struggle. This, according to the appellants, is contrary to the letter and spirit of the scheme which requires that the person claiming such pension should have actually participated for the cause of freedom of the country and not for any other reason. Pension being granted in such matters, being a matter of honour, cannot be claimed as a matter of right on a mere ground of incarceration without proof of participation in the freedom struggle.

Having perused the aforesaid judgements, there is no dispute with regard to the laudable object with which the pension scheme was floated and implemented on the principles laid down therein. The question raised before this Court is as to whether the pensioner in the present case was entitled to any pension in the absence of any proof of actual participation. On the other hand, this is also undisputed that incarceration was suffered by the pensioner which he claims was a period when the Civil Disobedience Movement in the year 1942-43 was



going on. The pensioner, therefore, has attempted to link his incarceration with the Civil Disobedience Movement. The difficulty which has arisen in this case is that the evidence which was led by the parties did not indicate exactly about the nature of the offence under which the pensioner had been detained and had been put behind bars. Throughout the pleadings, the pensioner has been asserting that he had been sent to jail during the said period, but having gone through the pleadings we find that there is no such specific assertion by the pensioner about the form of his actual participation in the freedom struggle. The show cause notice which was issued before cancellation also does not very categorically call upon any such explanation in this regard. The suspicion appears to have arisen in the mind of the Government that if the pensioner was a real freedom fighter, there was no occasion for the British Government to have offered employment of a post like that of a Police Inspector to him shortly after his release from jail. The submission, therefore, on the part of the appellants is that had it been a participation in the freedom movement, the British Government would certainly not have rewarded the pensioner with a coveted post in the Government itself.

The difficulty which is being faced by us is that the



co-prisoner's certificate is not on record nor there is any material on record from where it can be gathered that the pensioner had been put behind bars solely on account of his participation in the freedom struggle movement or involvement in the Civil Disobedience Movement. The case of the pensioner is that since the police did not find any evidence against him for any offence, he had been released later on. The fact, however, remains that the period of incarceration suffered by the pensioner was on account of some suspicion of being involved in the commission of an alleged offence. The question is as to whether the suspicion was on account of any offence having been committed by him under the law for the time being in force which could be co-related to a participation or involvement in the freedom struggle movement. It is this evidence which is neither remotely nor clinchingly available on record for us to arrive at a final conclusion in the matter. Neither the Central Government nor the State Government have been able to gather any evidence or record nor any finding has been recorded on this crucial issue of the manner and the purpose for which the pensioner came to be arrested and put behind bars. Since this is the crucial issue, therefore, to conclude that the pensioner did not fall within the definition of "freedom fighter" would not be



appropriate as the pensioner has suffered incarceration. What we find is that while allowing the writ petition this scope of enquiry was not left open by the learned Single Judge leaving it for the Union of India to have enquired into this aspect as to whether the pensioner had suffered incarceration due to an involvement or participation in the freedom struggle.

The Government will also have to consider as to whether the suspicion, if any, for sending the pensioner to jail was based on his alleged participation in the freedom struggle, could also be a reason for grant of pension. It can be at times reasonable to infer that if innocent people have been lodged in jail on the suspicion of participation in the freedom struggle, then this suspicion by the then British Government would be justified against every Indian native who even may have been a bystander. The reason is that the sufferance is not on account of anything else but a presumption that every Indian was in favour of the freedom struggle unless proved otherwise.

We entirely agree with the learned Single Judge on the issue that a mere offer of appointment after release in the police service of British Government would not *ipso facto* dissolve the very factum of incarceration which would be dependent on its own facts and not on acceptance of a service



after release.

We, accordingly, dispose off this appeal with liberty to the Under Secretary, Ministry of Home Affairs, Government of India to further enquire into the matter in the light of the observations made hereinabove and any order passed on the basis of evidence that may be available or made available by the heirs of the pensioner shall be abided by the parties. The order be passed by the competent authority within a period of four months. The directions issued by the learned Single Judge in the impugned judgment dated 23.09.2016 shall stand modified accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

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