

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2265 of 2015

In
Civil Writ Jurisdiction Case No.21526 of 2011

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Fulwati Devi (female) Wife of Late Ambika Singh, Resident of Village -
Kochahsa, P.O. - Kochaha, District - Arwal, Bihar - 804426.

... .. Appellant/s

Versus

1. The State of Bihar through the Commissioner cum Secretary Home (Special) Department, Bihar, Patna.
2. The Under Secretary, Home (Special) Department , Freedom Fighter Cell, Bihar,Patna.
3. The Union of India through the Home Secretary, Govt. of India, New Delhi.
4. The Under Secretary, Ministry of Home Affairs, Freedom fighter(R) Division, CZ Section, Ist Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Pawan Kumar Singh, Advocate
For the State	:	Mr. G.P. Ojha, G.P.22 Mr. Sarvesh Kumar, GP 24
For the UOI	:	Dr. K.N.Singh, ASG Mr. Ravindra Kumar, CGC Mr. Amarendra Nath Verma, Sr. Panel Counsel Mr. Rakesh Kumar no.1 CGC

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 20-11-2024

1. The instant appeal has been preferred against the order dated 12.8.2015 passed in CWJC No. 21526 of 2011 whereby the learned Single Judge was pleased to dismiss the writ application. The sole appellant having died during pendency of the instant appeal on 1.6.2023, was substituted in the case by



his widow.

2. The writ petitioner-appellant filed CWJC No. 21526 of 2011 for the following reliefs:-

“I. For issuance of writ of certiorari quashing and setting aside the letter of communication bearing No.CZ/114/Gaya/104667/84-FF Bihar dated 29.04.2011 (Annexure-9) issued under the seal and signature of Respondent no.4 whereby and whereunder the said respondent instead of restoration of petitioner's freedom fighters samman pension (herein after referred to as "Samman Pension") and instead of compliance of the Hon'ble High Court's order dated 07.12.2010 passed in C.W.J.C. No. 16626 of 2009 has cancelled the Samman Pension Sanctioned to the petitioner w.e.f. 1.8.1980 in a most arbitrary and illegal manner and the said cancellation of Samman pension has been communicated by the impugned letter to the Accountant General (A&E)-1, Bihar and Jharkhand, P.O. Doranda, Ranchi and a copy of the same has been forwarded to the petitioner as well as the respondent state of Bihar for necessary action.

II. For issuance of appropriate writ (s) particularly writ in the nature of mandamus commanding upon the respondents to take every necessary steps for restoration of petitioner's Samman Pension which was earlier sanctioned to him w.e.f. 1.8.1980 but subsequently suspended and ultimately cancelled on false and frivolous grounds in utter defiance of earlier order of this Hon'ble Court.

III. For issuance of appropriate writ(s) particularly writ in the nature of mandamus commanding upon the respondents to pay the



petitioner's his arrears of Samman pension since the year 2001 and commence his regular current Samman Pension with interest and cost on account of stoppage of Samman Pension on false and frivolous grounds.

IV. Any other relief /relief (s) as deem find fit and proper.”

3. The case of the writ petitioner-original appellant in brief is that having remained underground for the period from August, 1942 to 1946 during the freedom struggle he applied for *Samman* Pension and on recommendation of his case by the State Government, the Union of India vide letter dated 8.9.1987 granted him pension with effect from 1.8.1980. He was regularly getting pension till the year 2001 when pursuant to an order of this Court dated 14.11.2002 in CWC No. 10638 of 2001 and analogous cases, the State Government was directed to inquire, examine and submit a report to the Government of India. It is submitted that though a report as contained in letter dated 8.8.2006 was submitted by the Home (Special) Department, Government of Bihar in favour of the appellant however, the same could not be traced. In the meantime, on an estimation of the age of the appellant and others by a medical board, the payment of the *Samman* Pension to the appellant and others had been stopped. It is the case of the original appellant that on an application filed by him under



the RTI Act, it transpires that the State Government's letter giving an opinion in favour of the appellant was untraceable. This finally led to the appellant filing of CWJC No.16626 of 2009 which was disposed of by this Court by order dated 7.12.2010 directing the appellant to file representation before the Union of India along with the enquiry reports. The Union of India was directed to cross check and verify the correctness of the report and to take a final decision on the issue of freedom fighter pension to the appellant within three months. Learned counsel for the appellant submits that on a representation having been filed by the appellant, by order contained in letter dated 29.4.2011 of the Under Secretary, Ministry of Home Affairs, Government of India the pension sanctioned in favour of the appellant was cancelled.

4. The appellant preferred the writ application against the said order of cancellation dated 29.4.2011 besides other reliefs which having been dismissed by order dated 12.8.2015, the present appeal has been preferred.

5. A counter affidavit was filed in the instant case in the writ application on behalf of the State of Bihar and a separate counter affidavit on behalf of the Union of India.

6. It is the case of the respondent State of Bihar that it is



only the recommending authority under the scheme while the Central Government is competent to sanction the freedom fighters pension or the *swatantrata sainik samman* pension ('SSS pension' in short). It is the case of the respondents that on a complaint having been received, the Ministry of Home Affairs, Government of India vide letter dated 16.12.1998 requested the District Magistrate, Jehanabad and Gaya to inquire into the same. The District Magistrate submitted his inquiry report contained in letter dated 17.9.2001 recommending to withhold the SSS pension granted to the appellant. In light of the order dated 13.11.2001 of this Court in CWJC No. 11855 of 2001 the District Magistrate, Jehanabad was requested to procure the medical inquiry report with respect to determination of age of the appellant, from the PMCH, Patna. The same was procured and submitted. The writ application (CWJC no. 16626 of 2009) was disposed of asking the Union of India to take a final decision on the issue of freedom fighters pension of the appellant. By order contained in letter dated 29.4.2011 the Ministry of Home Affairs, Government of India cancelled the SSS pension of the appellant.

7. It is submitted both by learned counsel for the State



of Bihar as also the Union of India that there is no merit in the instant appeal nor in the writ application and the same be dismissed.

8. Having heard learned counsel for the parties and having perused the material on record, the relevant facts in brief are that pursuant to the order contained in letter dated 8.9.1987, freedom fighters pension was sanctioned to the appellant by the Union of India with effect from 1.8.1980.

9. The District Magistrate, Jehanabad by his letter dated 17.9.2001 addressed to the Commissioner, Bihar recommended for stopping of pension to the appellant as the documents submitted by him with respect to his age were suspicious. In his said letter the District Magistrate mentioned that the Executive Magistrate had reported by his letter no. 1760 dated 17.11.1998 that the appellant appeared to be aged about 55-56 years and in a case before the Munsif Magistrate in the year 1963 he had deposed that his age was 22 years. The District Magistrate further stated that pursuant to a direction a medical board was constituted by the Civil Surgeon- cum- Chief Medical Officer, Jehanabad for determining the appellant's age and according to the medical board, his age was determined between 55-65 years. The report of the medical board was



awaited. The recommendation of the District Magistrate was forwarded by the Joint Secretary, Home (Special) Department Government of India to the Deputy Secretary, Home Ministry, Government of India. By order contained in letter dated 7.11.2001 of the Additional Secretary, Government of India addressed to the Principal Accountant General, Bihar, the provisional pension being granted to the appellant was stopped on the following grounds: (1) information given by the appellant with respect to his age was found to be forged (2) the information provided with respect to the appellant going underground was not sustainable as the document did not contain the case number, the date of disposal nor the section under which the same has been registered (3) the requirements for sanction of the freedom fighters pension was not satisfied by the appellant (4) the reason for the appellant having gone underground has also not been given. The appellant was asked to reply as to why the provisional pension granted to him be not cancelled and appropriate steps be not taken.

10. This Court by its order dated 14.11.2002 passed in CWJC no.10638 of 2001 and analogous cases taking note of the fact that the cases were being examined by the State Government and directions had been given by the State



Government to the District Magistrate to examine the same afresh, directed that the cases be inquired, examined and report be submitted to the Government of India within the time fixed.

11. A letter dated 8.8.2006 was written by the Additional Secretary, Home (Special) Department, Government of Bihar to the Home Ministry, Government of India with respect to the appellant. It was stated therein that the appellant had filed a representation for restarting his pension. On examination of his case it was found that there was a lot of contradiction in determination of his age. While in the '*Janm Kundli*' submitted by him, his year of birth was shown as 1924, the appellant had also given his voter list as proof of age according to which he was aged 82 years. The age as per these two documents were in contradiction to the appellant's age determined by the Medical Board. As such it was stated that in the facts of the case it was not possible for the State Government to give a clear view on the appellant's age. Enclosing the documents with respect to the appellant's age the Home Ministry, Government of India was requested to take an appropriate decision in the matter of restarting of the appellant's pension which had been stopped.

12. The respondents not having taken a decision, the appellant moved this Court in a writ application being CWJC



no. 16626 of 2009 seeking restoration and resumption of his Freedom Fighter Samman Pension which had been stopped since the year 2001. The writ application was disposed by order dated 7.12.2010 directing the Union of India to take a final decision on the issue of freedom fighter pension to the appellant within three months.

13. By order dated contained in letter dated 29.4.2011 written by the Under Secretary, Ministry of Home Affairs, Government of India to the Accountant General the pension sanctioned to the appellant was cancelled. It is this order which is impugned in the writ application.

14. On perusal of the order contained in letter dated 29.4.2011 it transpires that the respondent concerned have taken note of several shortcomings in the appellant's case. Firstly the State Government has not given any conclusive comment with respect to the appellant's date of birth which is at great variance as determined by the Medical Board compared to the documents enclosed. Giving the maximum benefit, the year of birth of the appellant will be 1931 and he would be about 11 years in the year 1942. The extract of the Government record could not be verified as the record of 1942 has been destroyed. It may be noted here that no document has been



brought on record in the writ application by the appellant to substantiate his case. The order further states that the genuineness of the Personal Knowledge Certificate is not established and further no documentary evidence, duly verified from official record by State Government has been furnished with respect to the Block Development Officer's inquiry report on the appellant's case.

15. In the case of **Gurdial Singh vs Union Of India & Ors [(2001) 8 SCC 8]** relied on by learned counsel for the appellant, the petitioner therein in support of claim for grant of his freedom fighters pension had placed reliance on various documents which included his driving licence issued in Thailand, personal affidavit mentioning the names of detention camps in Bangkok and Singapore where he was kept as an INA prisoner-of-war for more than six months, affidavits of co-prisoners who were detained in the same prison, copy of the INA Driving Licence no. 13/1206 as also the original certificate issued in his favour by Captain Bishan Singh Sanghai of INA regarding his training in weapons in 4th company of the INA. It was on the basis of these documents that he had been granted pension wef 29.4.1998. On the plea that the pension should be granted from the date of application



ie 12.3.1973 that the Government of India on 1.11.2000 cancelled it's earlier order by which pension had been granted wef 29.4.1998.

16. The judgment in case of **Gundial Singh** (supra) is of no assistance to the appellant. A perusal of the salient features of the Swatantrata Sainik Samman Pension Scheme, 1980, which has been brought on record in the counter affidavit filed by the the Union of India in the writ application would show that for grant in case of a person on account of participation in freedom struggle having remained underground for more than six months, he should have been declared a proclaimed offender or one on whom an award for arrest/head was announced or one whose detention order was issued but not served. The claim of underground suffering is considered, in case where records for relevant period are not available, on furnishing Personal Knowledge Certificate (PKC) form a prominent freedom fighter.

17. The appellant, though is placing his claim on the basis of the Personal Knowledge Certificate (PKC) granted by one Madan Mohan Singh, this also is of no assistance to him. The same could be considered by the Union of India, only if the State Government after due verification of the claim and it's



genuineness certifies that the documentary evidence from the official records in support of the claimed sufferings were not available. In the instant case no document whatsoever has been produced by the appellant nor any reason given by him for going underground, as claimed. The only material for making claim of pension is the Personal Knowledge Certificate; which solely, cannot validate the claim of participation in the freedom struggle.

18. Coming to the facts of the instant case, from the contents of the letter dated 13.10.2001 from the Joint Secretary, Home (Special) Department, Government of Bihar to the Ministry of Home Affairs, Government of India it would be evident that as per estimation of age by the Medical Board constituted by the Civil Surgeon-cum-Chief Medical Officer, Jehanabad the original appellant was aged about 9 years in the year 1942. Further as per the statement of the appellant in a case before the Munsif Magistrate, he was aged 22 years in the year 1963. Thus his year of birth would be 1942. It was thus stated that it cannot be expected for a child at such a young age to participate in the freedom movement and thereby to go underground. It was thus communicated by letter dated 14.6.2006 (Annexure-1 to counter affidavit of respondent no.1



in writ application) that it was not possible for the State Government to give a definite opinion in case of the appellant. The Union of India was requested to take a decision at its own level.

19. In view of the facts of the case and the inability having been expressed by the Government of Bihar to give a definite opinion in case of the appellant, the result of the scientific examination of the appellant's age conducted by two Medical Boards and absence of verification including that of the Personal Knowledge Certificate (PKC) furnished by the appellant, the Union of India rightly cancelled the pension sanctioned to the appellant.

20. The Court finds no error in the order of the learned Single Judge and no merit in the instant appeal.

21. The appeal is dismissed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree

(K. Vinod Chandran, CJ)

Bibhash

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