

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

+ WPC No. 9362/2004

Judgment reserved on: 21.04.2009

Judgment delivered on: 30.05.2009

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Shri Satish Chandra Mishra Petitioner

Through: Mr. I.C. Mishra, Advocate

versus

Union of India & Ors. Respondent

Through: Ms. Saroj Bidawat, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

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1. By way of this writ petition, the petitioner Sh. Satish Chandra Mishra seeks directions for setting aside rejection Order dated

23.7.2001, denying the Swatantrata Sainik Pension to the petitioner, passed by the respondent no.2. The petitioner has also sought directions against the respondents for grant of pension as per SSS Pension Scheme 1980.

2. The facts as set out in the petition are as under:

The petitioner is a senior citizen. He had participated in Quit India Movement i.e. also known by August Movement, 1942 and due to participation in that movement a criminal case was registered against the petitioner and his colleagues as G.R. No. 75/42 dated 20.08.42 titled as Emperor versus Hira Singh and others and the petitioner was named accused in the above mentioned case, but the petitioner was not arrested at the place of occurrence and absconded. An NBW was issued against the petitioner, despite that the petitioner was not arrested. Proceedings under Sections 82-83 Cr.P.C. took place against the petitioner and declared P.O. Upto December, 1943 the petitioner was underground due to apprehension of arrest by the English Government and the petitioner was active and he had been working for the freedom of India along with his other colleagues. The petitioner applied for Swatantra Sainik Samman Pension Scheme 1980-81 in the

office of respondent Nos. 2 and 3. State of Bihar/respondent No. 3 recommended the name of the petitioner for grant of S.S.S. Pension after due consideration and verification but still the respondent No. 2 had rejected the application of the petitioner. Aggrieved with the said actions of the respondents, present petition has been filed by the petitioner

3. The contention of counsel for the petitioner was that the Freedom Fighter Scheme was introduced by the Govt. of India in 1972 in which the normal eligibility fixed for grant of pension was six month imprisonment while participating in Freedom Movement and the same was relaxed under S.S.S. Pension Scheme, 1980-81. The counsel urged that the said 1980-81 scheme also provided for those freedom fighters who had absconded due to registration of a criminal case. Under this scheme petitioner had applied for grant of S.S.S. Pension being an absconder and accordingly mentioned the same in his application and the same was also certified by the prominent freedom fighters who were his colleagues as required under the said scheme. The counsel maintained that the petitioner did not mention the criminal case number as at the time of filing the said application under the scheme he could not recollect it but later upon his remembering

the same, which was also confirmed by his friend Hira Singh, a certified copy of the same was applied for but no records were available for the same and this fact is admitted by both, the petitioner and Hira Singh, by way of affidavit. The counsel urged that upon the receipt of the verification report of the case bearing GR No. 75/1942, the respondent no. 2 vide letter no. 525/General dated 29/11/1995 revealed that the said records were destroyed on 24/12/1949; the case started in 1942 and culminated on 20/3/1943 and Hira Prasad Singh was the main accused therein. The counsel submitted that the application of the appellant was rejected by the respondent no. 2 vide orders dated 23/7/2001 on the ground that the petitioner did not submit sufficient documents to prove his undergrounding upon the case having been registered against him. It was also stated by the respondent no.2 that the application made by the petitioner was an after thought and the fact that the petitioner did not mention the criminal case number in the application led to an adverse inference and thus the conditions mentioned in the S.S.S. Pension Scheme were not fulfilled by the petitioner. The counsel contended that the said act of rejection of the application of the petitioner is unconstitutional and violative of principles of equality enshrined in Art. 14 of the Constitution and the

respondent did not consider the documents submitted by the petitioner in their true spirit. The counsel also averred that the petitioner himself met the respondent no. 2 on 11/8/2001 and gave an application for reconsideration but no action has been taken on the said application and therefore, petitioner was forced to send a legal notice dated 26/4/2004 to respondent no. 1. The counsel relied on following judgments in support of his contentions:

1. Mukund Lal Bhandari & Ors. Vs. UOI & Ors. – AIR 1993 SC 2127;

2. Smt. Subhadrabai vs. UOI – 86 (2000) DLT 678; and

3. Kachru vs. UOI – 2001 (I) AD (Delhi) 364

4. Per contra counsel for respondent no. 1 submitted that to prove underground sufferings, the scheme itself mentions the primary and secondary evidences, which are relevant and should be adduced by the applicants. The counsel maintained that The claim of underground suffering is considered subject to furnishing of the following evidence:-

- (i) 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. 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.

5. The counsel averred that the petitioner neither submitted the NBW's issued against him and nor even the NARC, which was issued to him as per the reports. The counsel further urged that mere production of the report and affidavits by fellow freedom-fighters is not sufficient to avail benefits under the scheme. The counsel also contended that the case bearing GR No. 75/42 bore the name of Sh. Hira Prasad Singh and the contention of the petitioner that he falls in the category of 'others' is of no assistance, as it is well settled that a person cannot claim parity on being in the category of 'others'. The counsel relied on

judgment in Mukund Lal Bhandari & Ors. Vs. UOI & Ors. – AIR 1993 SC 2127, in support of her contentions.

6. I have heard counsel for the parties and perused the record.

7. During the Silver Jubilee year of Independence a Central Scheme for grant of pension to freedom fighters and their eligible dependents (Where freedom fighters have already expired) was introduced by Government of India with effect from 15.08.1972. In 1980, the Scheme was liberalized and renamed as “Swatantrata Sainik Samman Pension Scheme, 1980” (the Scheme) and made effective from 01.08.1980.

8. 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:-

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.

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.

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 was announced; or

C. one for whose detention, order was issued but not served.

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.

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.

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.

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 of two years from their dismissal or removal from service and were in receipt of benefits or pay and allowances are not eligible for pension.

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.

9. As regards, power of judicial review exercised by this Court under Art. 226 of the Constitution of India, Hon'ble Supreme Court in the case of **Union of India Vs Mohan Singh and others. (JT 1996(8) S.C.341)** has held -

"This Court in Mukand Lal Bhandari and others Vs. Union of India and others. [(1993) SUPP. 3 SCC 2 (para 6)] had held, as regards the *sufficiency* of the proof, that the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners they had produced in support of their claim, and pronounce upon their genuineness. It is the function of the *Government* to do so. We would, therefore, direct accordingly."

10. The issue again came up before the Apex Court in the case of **Union of India Vs. R.V.Swamy Air 1997 SC 2069. Hon'ble Supreme Court**, after considering the issue at length, held -

"In this case, the evidence does indicate that there is no proof of any warrant issued against the respondent as a proclaimed offender nor is there any evidence of actual proof indicating actual sentence." (para7)

"Under these circumstances, the reliance on the certificate issued by the persons mentioned in the judgement of the High Court is a matter of appreciation of evidence." (para 8)

"In view of the above consideration, it being a pure appreciation of evidence, the High Court was not justified in directing grant of freedom fighter pension to the respondent." (para 10)

"Of late, large number of cases have been coming up quite frequently for grant of Freedom Fighter Pension on the basis of the certificate issued by some pensions with status of freedom fighters and are by and large not found to be acceptable to the Government of India. Since several matters are coming up to this Court, It is for the Government of India to re-consider the matter and to lay down appropriate clear guidelines for the so called freedom fighters who issued certificates to persons who come forward for Freedom Fighters Pension. Learned Counsel for the respondent has stated that since the State Government has recommended the case of deceased - respondent for grant of Freedom Fighter Pension, the respondent widow may be given liberty to approach the State government in that behalf. Liberty is given to her to approach the State Government. It is for the State Government to consider the application according to their guidelines and dispose it of on merits." (para 11)

11. Therefore, while making judicial review of administrative decision, the court is not supposed to sit as Appellate Authority, and substitute its own findings in place of findings recorded by the authorities. As is often said, the court while making judicial review has to see the correctness or otherwise of the decision making process and not the correctness of the decision itself. Where the court finds that there were materials available before the authority, on the basis of which the impugned decision could be arrived at, it is not supposed to go in to the question of adequacy of the material.

12. In the instant case, the petitioner applied for SSS pension under the 1980-81 Scheme in the office of respondent Nos. 2 & 3. Shri Ranjan Kumar Gupta on behalf of respondent No. 3 gave his statement by way of affidavit admitting that the petitioner claimed pension based on underground suffering during freedom movement from August, 1942 to December, 1943 and in support of his claim petitioner produced certificate of the non-availability of Court record issued from Deoghar record room and personnel knowledge certificate of Shri Dhokal Mahte and Shri Parmanand Singh. He also stated that the matter of the petitioner was put up before the meeting of District committee held on 15/16.10.92 and the said committee recommended his case for pension and accordingly, same was put up before the State Advisory Committee held on 20/21.8.1993. Since his case was recommended by State Advisory Committee for pension, therefore, certificate issued by State Government was sent to Government of India vide letter No. 1827 dated 28.6.1994. Surprisingly, the Government of India vide order dated 23.7.2001 rejected the claim of the petitioner. The said order is reproduced as under:-

“To,

Satish Chandra Mishra
S/o Late Braj Mohan Mishra
Village Mishra Jamua
Post SangramLodia,
P.S. Jasidih Dist. Deoghar
Jharkhand

In the matter of

Subject: Swatantra Sainik Samman Pension

Sir,

I have to say on the above mentioned subject matter regarding your application dated 11/04/2002 after consideration I have been directed to communicate you that due to below mentioned reasons your grant of S.S.S. Pension cannot be possible because

1. That you have not mentioned in your application about your underground suffering period. You have submitted an affidavit in support of your underground suffering in June, 1993 after 13 years in that you have mentioned the underground suffering from August, 1942 to December, 1943 which is after thought.
2. That you have not claimed as an accused in GR No. 7542.
3. That Shri Bhuvneshwar Pandey has not mentioned the reason of your absconding in his personal knowledge certificate as per N.A.R.C. of GR 7542 it had registered against Hira Singh and there is no account about participation of other accused on this basis your participation is not proved after all case was disposed of on 20/03/43.
4. As per provisions of S.S. Pension Scheme 1980 anybody may be suffered as an absconder 6 months or more being participant of freedom struggle because (a) he was

proclaimed offender (b) prize was announce for his arrest/death or (c) warrant was issued but not served. You have not submitted any Government authentic documents in ministry which proved that your 6 months or more under ground suffering.

Yours faithfully

Sd/-

Virendra Kumar
Under Secretary
Govt. of India"

13. According to the SSS Pension Scheme, to prove underground suffering the applicant has to furnish following documents as evidence:-

“(i) 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. 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.”

14. The petitioner had furnished non-availability record certificate (NARC) and also Personal Knowledge Certificate (PKC) of Shri Dhokhal

Mahte and Shri Parmanand Singh, both were veteran freedom fighters. Clearly, the petitioner fulfilled the aforesaid second condition.

15. It is no more res integra that the standard of proof required in cases relating to SSS Pension is not to be proved beyond reasonable doubt and mere preponderance of probabilities is sufficient. In this regard in **Gurdial Singh vs. UOI (2001) 8 SCC 8**, the Hon'ble Apex Court observed as under:-

“7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of “beyond reasonable doubt”. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.”

16. The ground of rejection given in the order dated 23.7.2001 of Government of India that there is nothing to prove involvement of the petitioner in case bearing GR No. 7542, I feel that the certificates of Hlra Singh, Shri Dhokhal Mahte and Shri Parmanand Singh are

sufficient to prove that the petitioner was involved in case bearing No. GR No. 7542. Furthermore, the verification report dated 29.11.1995 is also material. Also, the petitioner need not prove his case beyond reasonable doubt as discussed above & all that is required by the Government is to see that the factum of eligibility is proved by preponderance of probabilities.

17. Another ground for rejection was that the petitioner took 13 years to submit an affidavit in support of his claim that he underwent an underground suffering from August, 1942 to December, 1943. It is a matter of common knowledge that those persons who participated in freedom struggle have now grown old, the present petitioner, who participated in quit India Movement of 1942 is of 90 years of age. We cannot expect such persons to remember minutely everything. In this regard, the Hon'ble Apex Court has in **Mukund Lal Bhandari & Ors vs UOI & Ors. AIR 1993 SC 2127** in para 4 has observed as under:-

“4. As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their

knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependants and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit.

Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents, would be readily in possession of the required documents. In the very nature of things, such documents have to be secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time-limit. What is necessary in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished."

18. In view of the observations made by the Supreme Court in the aforesaid case it is manifest that the delay in submission of evidence etc. regarding the claim is no ground for rejection of their claim.

19. Be that as it may, even an ordinary prudent man would know that in the absence of any Court record to prove the petitioner having suffered underground sufferance, only his colleagues and contemporaries could have helped him in remembering it. Thus delay is no ground for rejection.

20. On considering the aforesaid discussion and the factual scenario of the present case and also considering that respondent No. 3 had recommended and certified the petitioner for SSS Pension, I do not find any reason for the UOI to decline petitioners request for SSS Pension.

21. Today as we freely move around in our country without anyone questioning or imposing any kinds of restrictions on us we feel satisfied and contented. But this satisfaction is due to the efforts made by our freedom fighters to free our country from the British rule. It is because of our freedom fighters that today we are enjoying our freedom. Their satyagrahas, sacrifices, and tortures have resulted in the freedom that we enjoy today in our motherland India. Free India is a gift to each one

of us from these freedom fighters. As a mark of respect and to pay are gratitude to them the Govt. started the SSS Pension scheme. But cases like the present one show the apathy and pithiness of our Govt. on one hand it launches SSS Pension Scheme and on the other hand it arbitrarily denies the same to such freedom fighters who are eligible for it. The govt. should not deal with such matters in an arbitrary and shabby manner. These freedom fighters who now are very aged should not be made to run from pillar to post for grant of SSS Pension for which they are eligible. The govt. should be little more considerate and thoughtful while dealing with such cases.

22. In view of the above discussion, the rejection order dated 23.7.2001 passed by respondent No. 1 UOI is set aside. The respondent No. 1 is directed to grant SSS Pension to the petitioner from the date of the application i.e. 3.2.1981 within two months from today.

23. In view of the above discussions, the present petition is allowed with aforesaid directions.

May 30, 2009

KAILASH GAMBHIR, J.