

ORISSA HIGH COURT: CUTTACK.

W.P.(C) Nos. 5003, 5006 & 5009 OF 2006

In the matter of applications under Articles 226 and 227 of the Constitution of India.

Brundu Samal (WPC No. 5003/06)

Smt. Sova Debi (WPC No. 5006/06)

Gunanidhi Samal (WPC No. 5009/06)

..... Petitioners

-Versus-

State of Orissa & Others (In all)

..... Opp. parties

For Petitioners : M/s. K.K. Swain,
P.N. Mohanty &
P.K.Mohanty.
(In all)

For opp. parties: Addl. Govt. Advocate.
(In all)

Date of Judgment: 25.04.2011

PRESENT :

THE HONOURABLE SHRI JUSTICE M.M. DAS

M. M. DAS, J.

As common questions of fact and law are involved in the aforesaid three writ petitions, they were heard together and are being disposed of by this common judgment.

2. The petitioners in all the aforesaid cases claimed to have participated in the freedom movement during pre-independence period for which they were taken to custody and remained in jail for certain period. A scheme was framed in the year 1972 known as "Freedom Fighters' Pension Scheme" to grant various benefits to the Freedom Fighters/persons who took part in the freedom struggle of

the country before independence. The said scheme was again reframed as “Swatantrata Sainik Samman Pension Scheme, 1980” effective from 15th August, 1981. The intention of framing the original scheme by the State was to grant pension to living freedom fighters, their families if such freedom fighters are no more alive and to the families of martyrs. It was confined to only one from each of such family. Definition of family in the scheme included mother, father, widower, widow, if he/she has not since remarried, unmarried daughters and sons in exceptional cases where they are unable to establish themselves in life on account of the imprisonment/martyrdom of the freedom fighters.

3. For the purpose of the said Scheme, the movement for merger of the erstwhile princely States with the Indian Union after 15th August, 1947 and the freedom struggle in the former French and Portugese possession in India (colonies) are considered as part of the National Freedom Movement. Participation in the I.N.A. and the Indian Independence League is also treated as participation in the National Liberation Struggle. The freedom fighter under the scheme included a person who has suffered a minimum imprisonment of six months in the mainland jails before independence. It also provided that ex-I.N.A. or ex-Military personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India. Other definitions are given for being eligible to receive such pension in the

explanation under the eligibility clause. Clause for issue of sanction order in the scheme was as follows:

“Sanctions will be issued as applications are scrutinized, and conveyed to the Accountant-General of the area with copies to the Chief Secretary of the State Government/ the Union Administration and the Collector/D.C. of the District concerned. Simultaneously, a communication conveying sanction of pension as also the amount of pension will be issued to each grantee. Applicants who are not approved will be duly informed.”

4. In the new scheme framed in 1980 renamed as Swatantrata Sainik Samman Pension Scheme, 1980 envisaged the purport of the scheme to be as follows:

“During Twenty Fifth Anniversary (Silver Jubilees Year) of Independence, a Central Scheme for the grant of pension to freedom fighters and their families from Central Revenues was introduced by the Government of India. The Scheme commenced from 15th August, 1972 and provided for the grant of pension to living freedom fighters and their families, if they are no more alive; and to the families of martyrs. The minimum quantum of pension sanctioned to a freedom fighter be Rs.200/- p.m. and in case of families varied from Rs.100/- to Rs.200/- in accordance with the size and number of eligible dependents in the family. Till 31st July, 1980 the Freedom Fighters’ Pension was admissible only to those who were in need of financial assistance on account of their meager annual gross income. Thus an annual income ceiling of Rs.5,000/- was enforced for eligibility to pension. From 1.8.1980, the benefit of the pension Scheme has been extended to all freedom fighters, as a token of SAMMAN to them.”

5. Some amendments were brought with regard to rate of pension. The definition clause of freedom fighters almost remained in tact as the previous scheme. Provisions are made with regard to

availability of application forms, fixation of last date for submission of applications, method for proving the claim, issue of sanction order etc. To prove the claim, the following evidence is required in Clause-9 of the scheme.

“9. HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED)

The applicant should furnish the documents indicated below whichever is applicable:

(a) IMPRISONMENT DETENTION ETC:

Certificate from the concerned jail authorities. District Magistrates or the State Government. In case of non-availability of such certificates co-prisoner certificates from a sitting M.P. or M.L.A. or from an ex-M.P. or an ex-M.L.A. specifying the jail period (Annexure-1 in the application form).

(b) REMAINED UNDERGROUND:

- (i) Documentary evidence by way of Court's/Government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention.
- (ii) Certificates from veteran freedom fighters who had themselves undergone, imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

(c) INTERNMENT OR EXTERNMENT

- (i) Order of internment or externment or any other corroboratory documentary evidence.
- (ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available in addition to some circumstantial/Co-lateral evidence (Annexure II in the application).

(d) LOSS OF PROPERTY, JOB ETC:

Orders of confiscation and sale of property,
Orders of dismissal or removal from service.”

6. Be it mentioned here that Swatantrata Sainik Samman Pension is being granted by the State Government and prorated by the Central Government. In the instant cases, the petitioners were being granted State pension from the year 1988, except in W.P.(C) No.5009 of 2006, where the petitioner was receiving the same from 1987 and continued to receive the same till January, 2006. The payment of such pension was abruptly stopped from February, 2006 onward and the petitioners have stated that they have never been communicated as to why their pension has been stopped. They made representations to the opposite parties ventilating their grievances upon which no steps have been taken for redressal of their grievances. Being aggrieved by such action/inaction, they have approached this Court in the present writ applications for appropriate relief.

7. All the three writ petitioners are octogenarians and are suffering from various ailments due to old age. Along with their applications, they produced documents showing their participation in the freedom struggle during pre-independence period and having remained in custody. They also attached certificates of co-prisoners along with their applications, on consideration of which, they were being granted such pension

8. Counter affidavits have been filed by the opposite parties, i.e., the State of Orissa and other authorities of the State

Government, inter alia, stating that an inquiry has been initiated questioning the eligibility of the petitioners. On receipt of the inquiry report from the G.A. (Vigilance Department), the Treasury Officer, Jagatsinghpur/Sub-Treasury Officer, Balikuda have been requested to suspend the payment of such pension for further inquiry. The Vigilance Wing of the G.A. Department reported that in case of the petitioners there is no documentary evidence of imprisonment nor the local people have any knowledge about their imprisonment.

9. Rejoinder affidavits have been filed denying such allegations and further stating that no opportunity was given to the petitioners during any inquiry, if held. As it was contended by the learned counsel for the State that notice of such inquiry was sent to the petitioners, this Court in previous orders passed in the writ applications directed the State Counsel to produce any document to show that notice of inquiry was issued to the petitioners and also directed to file a further affidavit as to why the Vigilance inquiry was necessary, basing on which the pension has been kept in abeyance. Such orders were passed in the year 2007-08. No further affidavit appears to have been filed by the opposite parties nor was any document produced showing that notice of such inquiry was sent to the petitioners. Thus, the denial of the allegations that the petitioners along with their applications provided sufficient proof in support of their case that they participated in the freedom struggle and were taken to jail custody by the British Government, which was also

supported by the certificates granted by the other co-prisoners (freedom fighters), have not been substantiated by the State and remains uncontroverted. Basing on such proof, the petitioners were being granted the freedom fighters pension under the scheme. In the case of ***Panu Charan Mohapatra V. State of Orissa***, AIR 1987 Orissa 283, the petitioners therein suffered from more rigorous actions. The said petitioners were receiving freedom fighters pension on the claim that they participated in the Quit India Movement. In the said case grant of pension under the scheme in favour of the petitioners therein was suspended and thereafter cancelled on the basis of subsequent report received from the State Government that the claim of the petitioners that they were lodged in different camp jails in Nayagarh were found to be incorrect since there were no camp jails in Nayagarh. The Division Bench of this Court finding that the subsequent report of the State Government was based upon an inquiry, which was alleged to have become necessary because of complaints received from some quarters that sanction of pension has been made on the basis of incorrect and erroneous certificates about detention of the applicants and further finding that there was nothing on record to show that there was any specific allegation that the petitioner submitted false or misleading information relating to their detention as well as on perusal of the report said to have been submitted to the State Government when the matter was under review which showed no categorical conclusion was arrived at by the

Officer inquiring into the matter except stating that the materials on which reliance was placed earlier for grant of pension were not absolutely reliable, came to the conclusion that the finding of the inquiry officer was not based on adequate and reliable materials. This Court observed that to brand some of the recipients of freedom fighters' pension, as persons, who manipulated and submitted false certificates and false information for getting such pension was simply adding insult to the injury and would adversely affect the status/prestige and dignity of the persons who fought for the freedom of the country and such drastic measure should not have been taken by the Government in a casual manner as had been done in the said case.

10. It is also trite law that an inquiry conducted against a person, the result of which would amount to adversely affect him, requires an opportunity to be given to such person to place his case before either the Enquiring Officer or the person taking a decision on such inquiry as otherwise the same would amount to gross violation of principles of natural justice.

11. The facts of the case in Panu Charan (Supra) specifically with regard to the method in which the freedom fighters' pension which was being granted to the petitioners was stopped by keeping the same in abeyance or in a state of suspension and thereafter cancelling the same is almost similar to the facts of the present case. In addition to the fact that admittedly no opportunity to file a show

cause or hearing was given to the petitioners herein for placing their cases before the Enquiry Officer or the persons who directed to stop payment of their pension, nothing is brought on record to show that the documents produced by the petitioners along with their applications basing on which pension was earlier granted to them were either not genuine or manufactured.

12. In such situation, stopping the payment of freedom fighters' pension to the petitioners from February, 2006 on the basis of an inquiry report in which no opportunity was given to the petitioners to participate tantamounts to gross violation of principles of natural justice as well as attributes malice to the petitioners which adversely affects their status and prestige at a ripe old age.

13. In view of the above discussion, this Court is of the opinion that the action of the opposite parties in stopping payment of freedom fighters' pension to the petitioners from February, 2006 cannot be sustained and a mandamus is issued to the opposite parties directing them to continue to pay the freedom fighters' pension to the petitioners immediately at the rate as is being paid at present to other freedom fighters under the scheme and to pay the arrear pension from February, 2006 till date at the rate as applicable from time to time. The aforesaid order shall be complied with within a period of eight weeks from the date of receipt of the writ by the opposite parties.

14. In the result, the writ applications are allowed, but in the circumstances without costs.

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M.M. Das, J.

Orissa High Court, Cuttack.
April 25th, 2011/Himansu

