JAGDAMBA DEVI

v.

UNION OF INDIA AND ORS.

(Civil Appeal No. 1260 of 2017)

JANUARY 31, 2017

[DIPAK MISRA AND R. BANUMATHI, JJ.]

Freedom Fighter:

Swatantrata Sainik Samman Pension Scheme, 1980 – Dependent family pension – Benefit under the Scheme – Freedom fighter, accused and arrested in a criminal case emanating from freedom struggle movement – Claim of pension by widow – Eligibility – Held: Freedom fighter did not meet the eligibility criteria of either being an underground within the meaning of the Scheme for more than six months or undergoing sentence for more than six months and as such he was ineligible – Being 'underground' is not synonymous to being as 'absconder' – Further, there were discrepancies and ambiguities relating to the documents and also due to non-production of Non-Availability of Record Certificate, benefit of the Scheme could not be extended to the widow – High Court rightly held that the Central Government was well within its power to hold that the freedom fighter was ineligible to seek pension under the Scheme – Thus, the impugned order does not call for interference.

Dismissing the appeal, the Court

HELD: 1.1 Based on the verification of the documents, in its order dated 15.11.2006, the Central Government stated that the jail suffering of 'HK' was only for thirteen days whereas the minimum jail suffering required to become eligible for pension is six months. There was neither any document nor any report that 'HK' was absconding for more than six months. That being "*underground*" is not synonymous to being an "*absconder*". [Para 12] [488-B-C]

1.2 As per *Swatantrata Sainik Samman Pension Scheme, 1980*, the claim of "*Underground Suffering*" is considered subject to

A **furnishing of the stated evidence. Where primary evidence viz. records of the relevant period are not available, 'Non-Availability of Record Certificate (NARC)' from the concerned authority, in the form of secondary evidence becomes a pre-requisite for claiming "*underground suffering*". The instructions require the**
B **State Government to issue NARC only after due verification from the concerned sources. In the case of appellant, Central Government stated that the appellant did not produce any acceptable record-based evidence duly verified by the State Government to establish the claimed '*jail*' or '*underground sufferings*' of 'HK'. She also did not produce NARC from the**
C **competent authority as required and that thus, the eligibility criteria was not met. [Para 13] [488-C-D, G-H; 489-A]**

1.3 That *Swatantrata Sainik Samman Pension Scheme, 1980* is a document based Scheme and the documents required for eligibility for Samman Pension as mentioned in the Scheme are
D **to be produced by the applicant in support of his claimed suffering, duly verified and recommended by the concerned State Government. Due to the discrepancies and ambiguities relating to the documents and also due to non-production of NARC, benefit of the Scheme could not be extended to the appellant. It is not possible for this Court to scrutinize the documents as to**
E **its sufficiency or otherwise. [Para 16] [490-D-E]**

State of Maharashtra and Ors. v. Raghunath Gajanan Waingankar **(2004) 6 SCC 584 : [2004] 3 Suppl. SCR 365 – relied on.**

F **1.4 In C.W.J.C. No.9903 of 2001, the Single Judge made certain observations to the effect that *'HK' was absconding*" and that the same was sufficient under the provisions of the Scheme to declare him "*as remaining underground for more than six months*", thereby making him entitled for the pension. As rightly observed by the Division Bench of the High Court, the said**
G **observation in C.W.J.C. No.9903 of 2001 was without reference to the Scheme. In C.W.J.C. No.9903 of 2001, the Single Judge only remanded the matter to the Central Government for reconsideration, giving liberty to the Central Government to reappraise the documents. Upon reappraisal of the matter, the**
H **Central Government clearly pointed out that 'HK' did not meet**

the eligibility criteria of either being an underground within the meaning of the Scheme for more than six months or undergoing sentence for more than six months and as such he was ineligible. The High Court rightly held that the Central Government was well within its power to hold that 'HK' was ineligible to seek pension under the *Pension Scheme, 1980.* There is no reason warranting interference with the impugned order. [Para 17] [490-F-H; 491-A]

Gurdial Singh v. Union of India and Ors. **(2001) 8 SCC 8 : [2001] 3 Suppl. SCR 323 – referred to.**

Case Law Reference

[2001] 3 Suppl. SCR 323	**referred to**	**Para 6**
[2004] 3 Suppl. SCR 365	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1260 of 2017.

From the Judgment and Order dated 01.04.2015 of the High Court of Judicature at Patna in L.P.A. No. 1348 of 2012.

Amit Sharma, Parijat Kishore, Dipesh Sinha, Advs. for the Appellant.

Maninder Singh, ASG, Ms. Ruksana Choudhury, Rajiv Nanda (For Ms. Sushma Suri), Rudreshwar Singh, Samir Ali Khan, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. The present appeal by way of special leave impugns the final judgment and order dated 01.04.2015 passed by the High Court of Judicature at Patna in LPA No.1348 of 2012 whereby the High Court allowed the LPA No.1348 of 2012 filed by the respondents herein and thereby declined appellant's claim of dependent family pension under *Swatantrata Sainik Samman Pension Scheme, 1980.*

3. Briefly stated, the facts of the present case are as follows: The appellant is the widow of one Late Hari Kant Jha who had been accused and arrested in a criminal case emanating from freedom struggle movement of 9th August, 1942. The deceased took part in the freedom struggle and allegedly remained absconding in this context from

16.08.1942 to 14.10.1944. The deceased was arrested on 14.10.1944 and remained in jail till he was released on bail on 27.10.1944. He was thereafter discharged from the case on 25.01.1945. Late Hari Kant Jha filed an application seeking pension under *Swatantrata Sainik Samman Pension Scheme, 1980* ("the Scheme"), which was subsequently pursued by his wife that is the appellant herein. The State Government *vide* letter dated 06.04.1993 recommended for sanction of Freedom Fighter Honour Pension to the appellant. It was however, noted in the recommendation letter as well as the jail certificate produced by the appellant that Hari Kant Jha was detained in jail for thirteen days only. Declining the State Government's recommendation, the Central Government *vide* order dated 26.07.2000 rejected the appellant's claim on the ground that the statutory mandate of serving minimum six months in detention was not fulfilled in the case of the deceased.

4. The Central Government's order dated 26.07.2000 was assailed by the appellant in C.W.J.C.No.9903 of 2001 filed before the High Court. The Single Judge allowed the writ petition *vide* judgment dated 25.08.2006, holding that the period for which Hari Kant Jha remained in jail is quite insignificant in the light of the fact that he remained underground for a period of around two years, which is sufficient for making the deceased entitled for compensation under the Act and directed the concerned authority to pass a fresh order in accordance with law considering the aforesaid documents. The Central Government once again rejected the application of the appellant by order dated 15.11.2006, on the ground that the appellant did not produce any satisfactory primary or secondary evidence.

5. Challenging the order dated 15.11.2006, the appellant filed C.W.J.C. No.816 of 2008. The Single Judge *vide* judgment and order dated 11.01.2011 disposed the writ petition on the ground that the findings of the Central Government are not in-consonance with the observations of the High Court made in its order dated 25.08.2006 while disposing of C.W.J.C. No.9903 of 2001. The said order dated 11.01.2011 passed by the Single Judge in C.W.J.C. No.816 of 2008 was challenged by the respondents by way of appeal in LPA No.1348 of 2012. The said appeal was allowed by the Division Bench of the High Court by the impugned order holding that the Single Judge had allowed the claim of the appellant without noticing that no document was produced by the appellant proving the fact that the deceased remained underground for more than six

months. The High Court further held that "*....the Central Government has clearly pointed out that the applicant did not meet the eligibility criteria of either being an underground within the meaning of the scheme for more than six months nor did he claim to be in custody for more than six months and as such he was ineligible*". A

6. The learned counsel for the appellant contended that the respondent authorities adopted a hyper-technical approach while dealing with the case of freedom fighter and ignored the basic objectives of the scheme, which is to honour and benefit the kith and kin of the freedom fighters. It was contended that the contradictions and discrepancies noticed in the case of the appellant by the High Court are not material to deprive the appellant of her right to get pension. It was further submitted that the impugned order was passed in complete disregard of the findings of this Court in the case of ***Gurdial Singh vs. Union of India and Ors***. (2001) 8 SCC 8, which is to the effect that the standard of proof required in cases dealing with *Swatantrata Sainik Samman Pension Scheme, 1980* is not such which is required in a criminal case. B C D

7. Per contra, the learned Additional Solicitor General Mr. Maninder Singh contended that the Division Bench of the High Court has rightly declined the claim of the appellant, in the light of the fact that there was neither any document nor any report that the appellant was "*underground*" for more than six months. It was contended that being "*underground*" is not synonymous to being "*an absconder*" and the essentials of an "*underground*", as laid down in the Scheme, are not fulfilled in the case of Hari Kant Jha. E

8. We have heard the parties before us and have also perused the materials available on record, as also the impugned order. F

9. The *Swatantrata Sainik Samman Pension Scheme, 1980* is a Central Government Scheme for the grant of pension to freedom fighters and their families from Central Revenues which was introduced by the Government of India to extend the benefit of pension to all the freedom fighters as a token of respect to them. The Scheme is detailed to the effect that it clearly specifies the persons who are eligible for the purpose of grant of pension under the Scheme; what are the movements/ mutinies connected with the national freedom struggle; how to prove the claims; mode of payment of pension etc. Clause 3 of the Scheme lays down the eligibility of the persons who can claim pension under the Act. G H

A Clause 3(b), which is attracted in the case of the appellant reads as under:-

"3. WHO IS ELIGIBLE? For the purpose of grant of Samman pension under the scheme, a freedom fighter is:-

B (b) A person who remained underground for more than six months provided he was:

1. a proclaimed offender; or

2. one on whom an award for arrest/head was announced; or

3. one for whose detention order was issued but not served."

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10. Clause 7(b) of the Scheme explicitly lays down that the claim of being "*underground*" can be proved either by documentary evidence by way of Court's/Government's orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention; or, Certificates from veteran freedom fighters who had D themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability. Clause 7(b) reads as under:

"7. HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED).- The applicant should furnish the documents E indicated below whichever is applicable:-

(a) IMPRISONMENT/DETENTION, ETC.:

Certificate from the jail authorities concerned, District Magistrate or the State Government in case of non-availability of such certificates, co-prisoner certificate F from a sitting MP or MLA or from an ex-MP or an Ex-MLA specifying the jail period

(b) REMAINED UNDERGROUND:

(i) Documentary evidence by way of court's/government G 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 H

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.

Note.- The certified veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganization of States and their area of operation must be the same.

(d) LOSS OF PROPERTY, JOB ETC.:

Orders of confiscation and sale of property orders of dismissal or removal from service."

11. As it appears from the record, the Government of Bihar *vide* its letter dated 06.04.1993, had recommended an application dated 25.03.1982, of Late Hari Kant Jha for pension under *Swatantrata Sainik Samman Pension Scheme, 1980* on the basis of the deceased's "*underground suffering*" for about 26 months from 16.09.1942 to 14.10.1944 in the case related to G.R. No.609/42. What is material for our present consideration is the subsequent order 15.11.2006 passed by the Central Government rejecting the claim of the appellant, as being ineligible for the claim of pension under the Scheme.

12. The appellant had laid his claim only on the ground that Hari Kant Jha had remained underground for more than six months. From the aforesaid Clause 7(b), there are two modes of providing evidence for the same. The first one is by producing official records and the second, where the official records were not forthcoming due to their non-availability, as per Clause 7 (b)(ii), by producing certificate from the freedom fighters who have themselves undergone imprisonment for five years or more. In the case of the appellant, since official records were not traceable due to non-availability, the appellant submitted a certificate from one Shri Jagdish Singh who was a veteran freedom fighter. The Central Government *vide* its order dated 15.11.2006 clearly pointed out

A that none of eligibility criteria were met in the case of the appellant. As noted earlier, in G.R. No.609/1942, Hari Kant Jha was arrested on 14.10.1944 and remained in jail till he was released on bail on 27.10.1944. He was thereafter discharged from the case on 25.01.1945. The word "*underground*" is not synonymous to being "*an absconder*". Based on the verification of the documents, in its order dated 15.11.2006, the B Central Government stated that the jail suffering of Shri Hari Kant Jha was only for thirteen days whereas the minimum jail suffering required to become eligible for pension is six months. There was neither any document nor any report that Hari Kant Jha was absconding for more than six months. That being "*underground*" is not synonymous to being C an "*absconder*".

13. As per *Swatantrata Sainik Samman Pension Scheme, 1980*, the claim of "*Underground Suffering*" is considered subject to furnishing of the following evidence:-

D "(i) Primary evidence: Documentary evidence by way of court's/Government's order proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. 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 E 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 F 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 primary evidence viz. records of the relevant period are G not available, 'Non-Availability of Record Certificate (NARC)' from the concerned authority, in the form of secondary evidence becomes a pre-requisite for claiming "*underground suffering*". The instructions require the State Government to issue NARC only after due verification from the concerned sources. In the case of appellant, Central Government stated that the appellant has not produced any acceptable record-based

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evidence duly verified by the State Government to establish the claimed '*jail*' or '*underground sufferings*' of Late Shri Hari Kant Jha. She has also not produced NARC from the competent authority as required and that thus, the eligibility criteria is not met.

14. Learned counsel for the appellant submitted that keeping in mind the object of the Scheme, the authorities concerned are required to adopt an approach which is beneficial to the freedom fighters. In this context, the counsel placed reliance on para (6) of ***Gurdial Singh vs. Union of India and Ors.*** (2001) 8 SCC 8, which reads as under:

> "6. The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Keeping in mind the object of the Scheme, the authorities concerned are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It had also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country."

15. The judgment in ***Gurdial Singh's*** case relied upon by the appellant does not stand in support of the case of the appellant. In fact, it was well explained by a subsequent judgment of this Court in ***State of Maharashtra and Ors. vs. Raghunath Gajanan Waingankar*** (2004) 6 SCC 584, wherein it was observed as under:-

> "7. It is true that in *Gurdial Singh's case* (supra) this Court has emphasized the need for dealing with the claim of freedom fighters with sympathy dispensing with the need for standard of proof based on the test of "beyond reasonable doubt" and the approach should be to uphold the entitlement by applying the principle of probability so as

A to honour, and to mitigate the sufferings of the freedom fighters. However, the observations of this Court in *Mukund Lal Bhandari*'s case (supra) cannot be lost sight of and give a complete go by wherein this Court has very clearly directed that:

B "6. As regards the sufficiency of the proof, 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 C Government to do so. We would, therefore, direct accordingly."

16. That *Swatantrata Sainik Samman Pension Scheme, 1980* is a document based Scheme and the documents required for eligibility for Samman Pension as mentioned in the Scheme are to be produced by D the applicant in support of his claimed suffering, duly verified and recommended by the concerned State Government. Due to the discrepancies and ambiguities relating to the documents and also due to non-production of NARC, benefit of the Scheme could not be extended to the appellant. As held in ***Raghunath Gajanan's Case***, it is not possible E for this Court to scrutinize the documents as to its sufficiency or otherwise.

17. In C.W.J.C. No.9903 of 2001, the Single Judge has made certain observations to the effect that "*Hari Kant Jha was absconding*" and that the same was sufficient under the provisions of the Scheme to declare him "*as remaining underground for more than six months*", F thereby making him entitled for the pension. As rightly observed by the Division Bench of the High Court, the said observation in C.W.J.C. No.9903 of 2001 was without reference to the Scheme. Be it noted that in C.W.J.C. No.9903 of 2001, the learned Single Judge only remanded the matter to the Central Government for reconsideration, giving liberty to the Central Government to reappraise the documents. Upon reappraisal G of the matter, the Central Government has clearly pointed out that Shri Hari Kant Jha did not meet the eligibility criteria of either being an underground within the meaning of the Scheme for more than six months or undergoing sentence for more than six months and as such he was ineligible. The High Court, in our view, has rightly held that the Central H Government was well within its power to hold that Hari Kant Jha was

ineligible to seek pension under the *Swatantrata Sainik Samman Pension Scheme, 1980.* We do not find any reason warranting interference with the impugned order. A

18. In the result, the appeal is dismissed. No costs.

Nidhi Jain Appeal dismissed. B