
(2007) 02 PAT CK 0194
In the Patna High Court
Case No : LPA No. 82 of 2006

Jai Kishun Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Citation : (2007) 2 PLJR 212

Hon'ble Judges : Narayan Roy, J;Ajay Kr. Tripathi, J

Bench : Division Bench

Advocate : Ganesh Pd. Singh, for the Appellant; Sanjay Kumar, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy J.

1. Heard counsel for the parties. This Letters Patent Appeal is directed against the order dated 3rd January, 2006 passed by a learned Single Judge of this Court in C.W.J.C. No. 2344 of 2003 dismissing the writ application of the appellant with a cost of Rs. 5000/- (five thousand).

2. Facts of this case fall under narrow compass which are enumerated hereinafter. The appellant was declared to be a recipient of Swatantrata Sainik Samman Pension (hereinafter referred to as "SSS Pension") under the Scheme of 1980 introduced by the Government of India. The appellant, in view of the 1980 Scheme of the Central Government, applied for grant of SSS Pension in a prescribed proforma duly recommended by one of the freedom fighters namely Raghunath Dom stating therein that during the freedom movement he took active part in the 1942 Movement and when the police started arresting the freedom fighters, he went underground and from there he organised and gave directions to accelerate the freedom movement and thus he remained underground from 15.8.1942 to 14.8.1943 for about one year and his age on the relevant time was 13 years.

3. The application filed by the appellant was processed by the State Government and the State Government vide its recommendation dated 30.11.1992 recommended to the Central Government for grant of SSS Pension to the appellant with effect from 1st August, 1980. The claim of the appellant for grant of pension was examined and ultimately vide letter dated 18th June, 1995 his claim was rejected by the Central Government. The appellant thereafter, again, pursued the matter before the State Government for grant of pension which was again forwarded to the Central Government and the Central Government vide its letter dated 26.12.1997 sanctioned SSS Pension to the appellant with effect from 31.3.1982. The appellant thereafter started drawing the amount of pension.

4. In the meantime, pursuant to a direction issued by this Court in C.W.J.C. No. 10638 of 2001, process started to identify fake pensioners and accordingly suo motu enquiries were held. The matter was after (sic) was reported by one Bijendra Kumar Singh to the District Magistrate, Siwan for stoppage of SSS Pension to the appellant as he was only five to seven years old in the year 1942. On enquiries, the appellant was identified to be one of the fake pensioners and the matter was recommended to the Minister of Home Affairs, Government of India for necessary action. The Government of India, by its letter dated 7.3.2002, suspended the grant of pension. A show cause notice accordingly was issued to the appellant and the Treasury Officer was informed accordingly. The appellant filed his reply to the show cause notice which was examined by the State Government and ultimately it was sent to the Central Government and thereafter on analysis/scrutiny, the claim of the appellant was found to be fictitious and ultimately, grant of SSS Pension was cancelled vide order dated 19.5.2004. The matter ultimately was challenged before this Court in its writ jurisdiction giving rise to the passing of the impugned order.

5. Learned counsel for the appellant submitted that the learned Single Judge of this Court without giving credence to the scientific measures adopted by the authorities while granting the benefit of SSS Pension to the appellant, took into consideration the oral testimony of some of the persons saying that during freedom movement, the appellant was hardly seven to eight years old whereas the appellant in course of enquiry, was examined by a Medical Board which determined his age as 13/14 years during 1942 movement. The learned Single Judge, therefore wholly erred in holding that the appellant was one of the fictitious freedom fighters. It is further submitted by learned counsel that the appellant at the time of application under 1980 Scheme, had shown his age as 13 years and the factum that he remained underground for about one year during 1942 Movement was duly supported by a veteran freedom fighter of the area namely Raghunath Dom which could not have been discarded in a mechanical manner. It is also contended by learned counsel for the appellant that the claim of the appellant was found to be true on the basis of the court records and the materials available which lent support to the case of the appellant that he had participated in the freedom movement and remained underground for about one year.

6. Learned counsel for the Union of India and the State of Bihar, on the contrary, submitted that on enquiry, materials surfaced before the State authorities that the appellant was hardly about seven-eight years old during 1942 freedom movement and he was thus declared to be fictitious recipient of SSS Pension.

7. Original records of the case were called for during hearing of this matter. From the records so produced, it appears that the appellant while applying for SSS Pension under 1980 Scheme had mentioned his age as 53 years in March, 1982 which comes to 13 years in 1942. Again it appears from Annexure 8 to the writ application that the appellant was examined by a Board of Doctors on 11.4.2002 where his age was scientifically assessed as 73 years which also comes to 13 years in 1942.

8. On perusal of the order impugned, it appears that the learned Single Judge of this Court had not taken note of the report of the Medical Board determining the age of the writ petitioner rather the order impugned records a finding that during enquiry, it was found that the appellant was hardly seven-eight years old during 1942.

9. The age disclosed in the oral testimony could have been weighed in the light of the scientific determination of the age of the appellant which determines his age as 13 years during 1942 Movement. The scientific examination of a person determining his age should be given evidentiary value in preference to the oral testimony. The approach adopted by the learned Single Judge of this Court to negate the claim of the appellant holding his age seven-eight years during 1942, thus, does not sound well.

10. Besides the facts as noticed above, it appears that the case of the appellant was thoroughly examined initially at the State level in the light of the certificate granted by a veteran freedom fighter and ultimately benefit of SSS Pension was granted to the appellant. The same, therefore, could not have been negated by this Court in its writ jurisdiction on oral testimony of some of the persons in course of enquiry.

11. For the discussions and reasons aforementioned, the order impugned is not sustainable in law. In the result, this Letters Patent Appeal is allowed, order impugned passed by the learned Single Judge of this Court is set aside. Consequently thereof, the writ application of the appellant is allowed and the order cancelling the grant of SSS Pension to the appellant is set aside and the benefit as such is restored to him.

Ajay Kumar Tripathi, J.

I agree.