
(2015) 08 OHC CK 0053
In the Orissa High Court
Case No : Writ Petition (C) No. 22356 of 2010

Kahnei Charan Biswal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 188, 283

Citation : (2015) 08 OHC CK 0053

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Advocate : M. Basu, A.K. Biswal, S. Debdas and R.C. Mohapatra, for the Appellant

Judgement

S.N. Prasad, J—Petitioner who is stated to be a Freedom Fighter has been allowed benefit of Freedom Fighters Pension under Central Scheme having recommended by the State Government on 29.9.1986 but it has been withheld vide order dated 5.6.1996 (Annexure-6) against which petitioner is before this Court.

2. Case of the petitioner that he being a Freedom Fighter and participated in Labana Satyagraha in the year 1930, participated in the non-cooperation movement against British Government during 1937-39, arrested in the year 1938 for active participation in the Freedom Movement, took active part in Quit India Movement in the year 1942, canned and underground for more than six months from January 1942 to August, 1942, hence being eligible as per the Central Scheme benefit has been extended vide order No. 54160 dated 5.11.1986 which the petitioner has received from 5.11.86 till July, 1993. The petitioner has received letter bearing No. 31932 dated 22.7.1993 asking show cause as to why benefit of Freedom Fighters Pension granted should not be cancelled on the ground that the jail certificate furnished in support of suffering in the national freedom struggle is not genuine.

3. Petitioner has given reply on 11.8.1993 clarifying the position and has

submitted that the fact which has been stated regarding participation in the freedom struggle is purely genuine and he has not suppressed anything, he has also disclosed in his reply that he has been convicted in Nilgiri G.R. Case No. 62 of 1938-39 under sections 188/283 of I.P.C. and was granted jail certificate by the Superintendent, Nilgiri Sub-Jail which was furnished by him along with certificates of co-prisoners, but case of the petitioner that without considering the reply the authorities have taken decision vide Annexure-6 dated 5.6.1996, stopped the benefit which is under challenge in the writ petition.

4. It has been submitted by learned counsel for the petitioner that the authorities have taken ground that jail certificate produced by the petitioner is not genuine but they have not given any conclusive proof of the same because they have conducted a which is annexed as Annexure-B/1 to the counter affidavit which reflects that the authorities have not come to a conclusive proof that the petitioner has committed any forgery rather the authorities have come to conclusion that name of the petitioner does not find place in the jail register of District Record Room, Balasore.

5. It has been contended that name of the petitioner has been mentioned in Annexure-C/1, letter dated 19.9.1992 issued under the signature of Under Secretary to Government, Finance Department addressed to the I.G. Prisons, Orissa, Bhubaneswar wherein name of petitioner appears at sl. No. 92. Names of Freedom Fighters namely Bhagabat Pradhan appears at sl. No. 59 and Baikunthanath Naik appears at sl. No. 80 of the list have been denied of benefits of Freedom Fighters pension but subsequently by order of this Court they are getting the benefit of Freedom Fighters Pension, hence case of the petitioner is also similar and as such the petitioner is entitled to get the benefit of the same.

6. It has been contended by learned counsel for the petitioner that the petitioner has become entitled to the benefit of Freedom Fighters Pension under the scheme formulated by the Central Government and the petitioner has been found to be eligible for the same accordingly benefit was sanctioned/granted but the same has been stopped without any cogent reason and valid proof regarding commission of forgery or regarding any conclusive proof that certificate produced by the petitioner is not genuine rather only finding given in the report by the authorities is that name of the petitioner do not appear in the Challan Register of Nilgiri Sub-Jail, it cannot be said to be conclusive proof because the authorities have not taken any point to corroborate this aspect of the matter from other documents like records of the trial court since petitioner was convicted in Nilgiri G.R. Case No. 62 of 1938-39 under sections 188/283 of I.P.C..

7. It has been further contended that benefit of Freedom Fighters Pension was granted with effect from the year 1986 and the petitioner was continued to get the same till the year 1996 but the same has been stopped vide Annexure-6, hence there is not proper consideration of the reply submitted by the petitioner stopping benefit of the scheme. Hence, order dated 5.6.1996(Annexure-6) is not a speaking one and the authorities tried to justify their order by way of an

affidavit, while specific case of the petitioner in the reply to show cause is that he has been convicted by the trial court in Nilgiri G.R. Case No. 62 of 1938-39 under sections 188/283 of I.P.C and the authorities ought to have given specific reason before stopping said benefit because of the reason that conviction in criminal case having been passed by the competent court of criminal jurisdiction can only be said to be conclusive proof for denying the benefit. Moreover, petitioner has given certificate along with other co-prisoners who have participated in the national freedom struggle along with the petitioner.

8. On the other hand, learned counsel for the State as well as Union of India have contested the case and submitted that the certificate has been found to be not genuine as such the authorities have issued show cause notice and after considering all aspect of the matter, a detail enquiry was directed to be conducted, in the enquiry it was found that name of the petitioner is not in the Challan Register of Nilgiri Sub-Jail, thereafter decision has been taken vide Annexure-6 of stopping the benefit.

It has been contended that the petitioner has been given benefit of Freedom Fighters Pension since in the year 1986 but when it has come to the notice of the State Government some manipulation has been committed, they directed to conduct enquiry and on the basis of the outcome of the enquiry the said benefit has been stopped.

9. Heard learned counsel for the petitioner and perused the documents on record.

10. The petitioner is stated to have fought for the nation in the Freedom Struggle and on the basis of the Central Scheme he has been given benefit of Freedom Fighters Pension from 5.11.1986. It has been paid regularly till July, 1993.

Show cause notice has been given on 22.7.1993 and the petitioner was asked to reply as to why benefit of the scheme be not stopped on the ground that Jail certificate which was furnished in support of jail suffering in the national freedom struggle is not genuine, no other document to corroborate suffering in the freedom struggle has been submitted.

Petitioner has given reply dated 11.8.1993 which is being quoted herein below:

"That I had executed an affidavit on 13.5.87 which was submitted along with my application for pension which was self-explanatory to the fact that I had taken active part in the Freedom struggle of the country in 1930, 1939 and 1942 in Salt movement at Inchudi under the leadership of late Dr. H.K. Mahatab, Satyagrahas on the cal of Late Mahatma Gandhi, agitations of Praja mandal against the state and also in the Quit India Movements at Nilgiri and other parts of Balasore District for which I suffered canning by British Police, arrests and also rustication from school. I was also imprisoned in Nilgiri Sub-jail for the period from 30.11.39 to 1.7.40 on being convicted in Nilgiri G.R. Case No. 62 of 1938-39 u/s. 188/283 I.P.C. The jail certificate as granted by the Superintendent Nilgiri Sub-jail was also furnished by me along with certificates of co-prisoners."

11. The authorities have passed order on 5.6.1996 in three lines saying that there is no satisfactory reply which suggests that there is no proper and adequate consideration of the reply. Authorities have filed detail counter affidavit annexing report of the Swadhinata Sangrami Sub-Committee wherein report regarding sub-Jail, Nilgiri has also been referred to and from its perusal it transpires that the Committee has given finding that several jail certificates have been issued from the Sub-Jail, Nilgiri and some names have been added subsequently, the matter has been referred to I.G.(Prisons) and S.P. Vigilance. The communication dated 19.9.1992 addressed to the I.G. Prisons, Orissa has been seen, and contents of the same are that decision of continuation/cancellation of their pension will be taken by the Govt. only after the said report is received. Communication dated 19.9.1992 contains list of 106 candidates in which name of the petitioner finds place at sl. No. 92. The report dated 18.11.1992 has been annexed as Annexure-D/1 to the counter affidavit wherein it has been referred that it is found that not a single name out of the 106 names in whose favour Jail certificates has been issued finds place in the challan register of District Record Room, Balasore. Thereafter authorities have issued communication dated 17.7.1993 discussing the case of the petitioner stating therein that the case of the petitioner was recommended to the Government of India for grant of SSS Pension vide letter dated 29.9.1986 on the basis of the jail certificate issued from Nilgiri Sub-Jail. Subsequent verification conducted by a team of officers under the aegis of I.G. Prisons has revealed that the said jail certificate is not genuine, hence the applicant is not entitled to SSS pension under the SSS Pension Scheme and on the basis of the communication 17.7.1993 the said benefit has been stopped.

12. Since the reason for issuing show cause notice is that the jail certificate furnished by the petitioner in support of jail suffering in the national freedom struggle is not genuine and the petitioner has failed to show other document to corroborate the suffering and for that the petitioner has submitted certificates of other co-prisoners but that has not been taken into account by the authorities as would be evident from Annexure-6 which is an order of rejection by saying that the reply submitted by the petitioner is not satisfactory which cannot be said to be after proper consideration of reply of the petitioner because when a show cause notice is being issued the same required to be considered by going through each and every aspect of the issue raised in the reply and then only it can be said to be consideration in view of the meaning of consideration which means proper consideration by scrutiny of the facts which has been brought in the notice of the authorities by the petitioner.

13. In this context, reference of judgment rendered by Hon"ble Supreme Court in the case of Chairman, LIC of India and Others Vs. A. Masilamani, (2013) 136 FLR 81 : (2013) LLR 301 : (2012) 11 SCALE 413 : (2013) 6 SCC 530 : (2013) 2 SCT 283 wherein at para-19 their Lordships have been pleased to observe as follows:--

"19. The word "consider" is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order."

In view of the fact, there is no consideration of the reply submitted by the petitioner by the authority concerned since it is without any discussion of facts raised by the petitioner.

14. Further from perusal of the reports the authorities have not given in conclusive proof that the certificate is not genuine rather the authorities have only said that the name of the petitioner does not find place in the Challan Register of District Record Room but even if name of the petitioner is not figuring in the Challan Register of the District Record Room the same cannot be said to be conclusive proof of declaring a document not genuine, its genuineness should have been tested from the other documents, so without any conclusive proof in this regard, questioning the genuineness of document cannot be said to be correct since the benefit of Freedom Fighter Pension has been questioned that to after allowing the petitioner to get benefit of the Scheme for period of 13 years having no conclusive proof of commission of any forgery by the petitioner, rather only on the ground that jail certificate which has been produced is not genuine and from the record annexed to the counter affidavit it is evident that all the original records is not annexed and it can be gathered that the authorities on the basis of whims and conjecture has come to conclusion that the certificate which has been produced by the petitioner is not genuine. However, the petitioner has produced certificate of co-prisoners who have fought in the national freedom struggle along with him but the same has not been whispered in the order while rejecting claim of the petitioner.

15. It has submitted by learned counsel for the petitioner that in the list of 106 candidates two candidates namely Bhagabat Pradhan who is at serial No. 59 and Baikuntha Nath Naik who is at serial No. 80 whose benefit of Pension had been stopped but this Court in the case of Baikuntha Nath Nayak Vs. Union of India and others has passed order relying upon the judgment rendered by the Hon"ble Supreme Court in the case of Gurdial Singh Vs. Union of India and Others, (2001) 7 AD 637 : AIR 2001 SC 3883 : (2001) 8 JT 165 : (2001) 6 SCALE 471 : (2001) 8 SCC 8 : (2001) 2 UJ 1584 : (2001) AIRSCW 3843 : (2001) 7 Supreme 216 which speaks that the standard of proof required in such cases is not such standard which is required in criminal case. Further relying the judgment in the case of C. Venkat Reddy and Others Vs. Union of India (UOI) and Others, AIR 2010 SC 190 : (2009) 8 SCALE 46 : (2009) 6 SCC 472 : (2009) 2 SCC(L&S)

221 : (2009) 9 SCR 493 and in the case of Mukund Lal Bhandari and others Vs. Union of India and others, AIR 1993 SC 2127 : (1990) CriLJ 2148 : (1993) 3 JT 342 : (1993) 2 SCALE 933 : (1993) 3 SCC 2 Supp : (1993) 3 SCR 891 has taken same view and thereafter it has been held that there is no clear, reasonable and cogent material in the report submitted by the AIG Prisons that the certificate submitted by the petitioner was also fake.

16. In the case of Kamalbai Sinkar Vs. State of Maharashtra and Others, AIR 2012 SC 2960 : (2012) 134 FLR 761 : (2012) 6 JT 515 : (2013) 1 RCR(Civil) 229 : (2012) 6 SCALE 545 : (2012) 11 SCC 754 : (2012) AIRSCW 4480 : (2012) 5 Supreme 21 wherein while dealing with the case of Freedom Fighters Pension their Lordships has been pleased to hold in paragraph-6 by placing reliance upon the earlier judgment rendered by the Hon"ble Supreme Court in the case of Gurdial Singh v. Union of India and others referred to above which is being reproduced below for ready reference.

"Having perused the above materials on record, at the very outset, we wish to refer to the observations made by this Court in Gurdial Singh Vs. Union of India and Others, (2001) 7 AD 637 : AIR 2001 SC 3883 : (2001) 8 JT 165 : (2001) 6 SCALE 471 : (2001) 8 SCC 8 : (2001) 2 UJ 1584 : (2001) AIRSCW 3843 : (2001) 7 Supreme 216 . In paragraph 7 of the judgment, this Court has highlighted the manner in which such claims are to be considered for grant of Freedom Fighters" Pension. It will be worthwhile to make a reference to the said passage before expressing our conclusion with regard to the claim of the appellant"s husband in the case on hand. Paragraph 7 reads 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."

17. In this case also authorities have stopped benefit of Freedom Fighters Pension merely on surmises and conjecture without giving conclusive proof of

allegation of commission of forgery rather stand taken is presumption as stated that it is presumed from the record that documents is not such a condition so that genuineness of the Freedom Fighters Pension can be assessed, hence it is evident that the reasons assigned in the show cause regarding genuineness of the certificate has not been ascertained by the authorities.

Moreover, petitioner has given certificate from co-prisoners in order to substantiate his stand that he has fought for the nation in the freedom struggle in the thirties and suffered for the nation.

Hence applying the reasoning of the judgment rendered by Hon''ble Apex Court in the case of Gurdial Singh(supra) Annexure-6 dated 5.6.1996 is quashed. Writ petition is allowed with direction to the opposite parties to release consequential benefit to the petitioner within a period of twelve weeks.