

(2017) 04 PAT CK 0037

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.576 of 2016

Manager Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Indian Penal Code, 1860 — Section 126, 395

Citation : (2017) AIR(Patna) 99 : (2017) 2 BLJud 313 : (2017) 3 PLJR 424

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Suraj Narain Yadav and Mr. Saroj Kumar, Advocates, for the Petitioner; Mr. S.S.P. Yadav, SC-14, for the Respondent/State; Mr. S.D. Sanjay, Addl. S.G. with Mr. Kumar Priya Ranjan, CGC, for the Respondent/UOI

Final Decision : Allowed

Judgement

Jyoti Saran, J.—The petitioner prays for issuance of an appropriate writ in the nature of mandamus commanding the respondents to grant him

freedom fighter pension in terms of the Swatantrata Sainik Samman Pension Scheme, 1980.

2. The writ petitioner claims to have participated in the 1942 freedom struggle and was made an accused in a criminal case bearing G.R.

No.742/41 (Emperor v. Vishwanath Prasad and others) registered for the offences punishable under sections 395 and 126 of the Penal Code

and section 26(i) (B) of the Defence of India Rules in which 78 others were also made accused. According to the petitioner, he was declared a

proclaimed offender and absconder vide order passed on 26.2.1942 by the court of Shri B.S.N. Jha. According to him, he was an absconder for

the period 1942 to 1946.

3. The petitioner applied for grant of freedom fighter pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as "the Scheme") in the prescribed proforma, a copy of which is present at Annexure-2. According to the petitioner, he submitted the required papers, copies of which are present at Annexures-1, Annexure-3 and Annexure-3/1 which are the documents supporting the claim and which were verified by the Bihar State Freedom Fighter Advisory Committee, Patna approving the claim. The claim of the petitioner was forwarded by the Director -cum- Joint Secretary, Home (Special) Department vide letter bearing Memo No.1404 dated 18.4.1985, a copy of which is present at Annexure-4 but remained pending with the Ministry of Home Affairs, Freedom Fighters Department, Government of India. The petitioner represented before the respondents and according to the petitioner, the Government of India in its Ministry of Home Affairs, Freedom Fighter Department dated 5.9.2014 called for papers from the State Government which was responded to by the Deputy Secretary, Home (Special) Department vide his letter dated 29.5.2015 present at Annexure-5, whereby he informed the Ministry that the application of the petitioner in its original and the other documents viz, personal knowledge certificate and the order of the State Level Advisory Committee, duly verified, had already been sent on 18.4.1985 (incorrectly mentioned as 18.4.1995) with recommendations for payment of freedom fighter pension.

4. The Deputy Secretary, however, accepting the request has again forwarded the second copy of the application form and other documents in original with recommendation for payment of freedom fighter pension to the petitioner. The Deputy Secretary, Government of India, Ministry of Home Affairs vide his letter dated 17.6.2015 while acknowledging the receipt of the letter dated 29.5.2015 of the State Government has stated that the documents accompanying are not in accordance with the documents required in the letter of the Ministry of Home Affairs dated 8.9.2014 and thus the State Government was requested to send attested copies of the earlier recommendations with fresh recommendation in terms of the pension scheme. The letter of the Government of India was again responded to by the Deputy Secretary, Home (Special) Department, Government of Bihar vide letter dated 10.9.2015 forwarding the photo copies of the documents so desired by the Government of India which

included the application form filed by the petitioner, the court records, the attested copy of court records, the personal knowledge certificate, the order of State Level Advisory Committee and the earlier recommendation bearing letter no.1404 dated 18.4.1985. A copy of the letter is present at Annexure-7. The Government of India in its Ministry of Home Affairs, Freedom Fighters Department, yet not being satisfied by the response, again directed the Home (Special) Department of the Government of Bihar to send duly attested/ countersigned papers of the petitioner. This letter dated 14.10.2015 of the Government of India present at Annexure-8 was responded to by the Deputy Secretary, Home (Special) Department of the Government of Bihar vide letter dated 1.12.2015 vide Annexure-9 informing the Ministry of Home Affairs that whatever documents were available with the respondents has already been sent by the State Government and thus the State Government not being in possession of any papers, it is not possible for them to send the certified copies of the documents as demanded by the Government of India.

5. It is being disgusted by the ball game played in between the Government of India in its Ministry of Home Affairs, Freedom Fighters Section and the Government of Bihar, that the petitioner filed this writ petition.

6. A counter affidavit has been filed in which it is simply stated that duly attested copies of the documents as desired by the Government of India have not been provided by the State Government.

7. A counter affidavit is also filed by the respondent nos.3 to 5 i.e. the authorities in the Home (Special) Department of the Government of Bihar

and in which it is stated that the State Advisory Committee in its meeting held on 7.2.1983 recommended for payment of the Swatantrata Sainik

Samman Pension to the petitioner and following which, his claim was recommended vide letter bearing no.1404 dated 18.4.1985 with a reminder

on 19.3.2014. It is further stated that the Home (Special) Department again vide letter dated 29.4.2015 forwarded the required documents

received from the petitioner along with its recommendation to the Ministry of Home Affairs, Government of India. It is further stated by the Home

(Special) Department that subsequently vide letter No.403 dated 10.9.2015 the department again sent application of the petitioner along with the

court records, photo copy of the verification report of the court records, personal

knowledge certificate, the minutes of the meeting of the State

Advisory Committee and the departmental letter No.1404 dated 18.4.1985. It is stated that despite the position the Government of India vide

letter dated 14.10.2015 has again made a request for the documents and when the Home (Special) Department of the Government of Bihar vide

letter dated 1.12.2015 informed them that since now, they were no more in possession of the original records which was already forwarded to the

Government of India, it is not possible for them to send any attested documents.

8. This Court taking note of the situation directed the Joint Secretary, Government of India, Ministry of Home Affairs to file his reply and

accordingly an affidavit in the form of show cause was filed on 2.2.2017 reiterating the same sequence of events and the same objections as noted

above. It is mentioned that since the State Government failed to furnish the attested copies of the documents despite repeated request of the

Government of India that the claim has not been acted upon. According to the Union of India, the documents enclosed are not in accordance with

the documents required to be filed under "the Scheme" and in absence whereof it is not possible to accept the claim.

9. Mr. Suraj Narain Yadav has appeared for the petitioner while the State is represented by Mr. S.S.P. Yadav, learned Standing Counsel No.14

and the Union of India is represented by Mr. S.D. Sanjay, learned Additional Solicitor General who appears along with Mr. Kumar Priya Ranjan,

learned Central Government Counsel.

10. While it is the contention of the learned counsel for the petitioner and the counsel for the State that whatsoever document that was required for

grant of freedom fighter pension under "the Scheme" has already been forwarded to the Government of India, an objection is being taken by the

authorities in the Ministry of Home Affairs, Freedom Fighter Department that the documents received are not in tune with the modalities prescribed

in "the Scheme".

11. Mr. Sanjay, learned Additional Solicitor General while defending the action of the Union of India in its Ministry of Home, Freedom Fighters

Department, has reiterated the stand as taken in the affidavits filed in the proceedings. It is submitted that since the documents forwarded to the

Government of India do not bear attestation of the authorities of the Home

(Special) Department it could not have been acted upon. It is the argument of Mr. Sanjay that should the authorities in the Home (Special) Department, Government of Bihar forward the documents supporting the participation of the petitioner in the freedom struggle duly attested and countersigned, the claim of the petitioner would be considered accordingly but until such time that the documents supporting participation of the petitioner in the freedom struggle is not duly attested by the respondent State, it cannot be acted upon.

12. I have heard learned counsel for the parties and I have perused the records.

13. The case in hand is a classic example of how unwarranted litigations are generated. I am constrained to observe that if the instances of present

kind are to continue then any form of litigation policy be at National level or at State level would fall flat on the ground. The discussion on the

contest made above would confirm that the Government of India does not doubt the claim of the petitioner on its genuineness nor any objection

has been raised as to the participation of the petitioner in the freedom struggle. Rather a flimsy objection has been taken by the Government of

India in its Ministry of Home Affairs, Freedom Fighters Department that the submission of the document by the State Government in its Home

(Special) Department is not in tune with the requirements of "the Scheme". I am totally at loss to appreciate as to what exactly is objection of the respondents.

14. On the direction of this Court that the file has been produced by the learned Additional Solicitor General and the perusal thereof would confirm

that whereas the application of the petitioner in its original along with the personal knowledge certificate of a freedom fighter is present in its

original, even the other documents relevant for grant of freedom fighter pension are present in several sets.

15. The counter affidavit filed on behalf of the State in its Home (Special) Department clearly explains the number of times the demand has been

made by the Government of India for supply of documents and each time such demand was made, the Home (Special) Department has satisfied

the demand of the documents together with their recommendation for grant of pension. The objection now is that the photo copies of the

documents are not duly attested by the Home (Special) Department. The

objection taken by the Government of India despite the State in its Home

(Special) Department repeatedly reiterating their recommendation for grant of freedom fighter pension to the petitioner while enclosing the

document supporting such claim, is an example of the Government of India litigating at the worse level like an ordinary litigant.

16. As I have already indicated apart from the fact that all the documents noted above for such grant viz. the application of the petitioner, the court

records in the criminal case arising from G.R. No.732/41 confirming that the petitioner was an accused in the case as well as absconder, the

attestation by the Deputy Chairman, Bihar State Freedom Fighters Advisory Committee, Patna as to the court records, the recommendations of

the Advisory Committee in its meeting held in 1984 bearing Memo No.1131 dated 2.4.1984 where the name of the petitioner appears at serial

no.249, the first letter of the Home (Special) Department recommending the case of the petitioner for freedom fighters' pension bearing No.1404

dated 18.4.1985 are all on record and in several sets, the last of which was forwarded by the Home (Special) Department, Government of Bihar

together with the letter dated 10.9.2015 which is again on the records of the file so produced by the Additional Solicitor General. Despite such

conclusive proof on record and despite repeated recommendations by the Home (Special) Department of the Government of Bihar and with

nothing substantive for denying the claim of the petitioner in possession of the Government of India, yet they have sat over the file for all these years

with first recommendation having been made as back as in 1985 by the Home (Special) Department which is more than three decades back.

17. What surprises this Court even more is that even when the Home (Special) Department, Government of Bihar has filed an affidavit in the

present proceeding and has stated on oath confirming the entitlement of the petitioner to the benefit under "the Scheme" yet the Government of

India has failed to come up its magnanimity to accept the recommendation rather has struck to the stand that the documents are not duly attested,

as if an attestation would bear a better authenticity to an affidavit filed in a court of law.

18. The situation discussed above becomes even more unfortunate because similar instances being raised, the Supreme Court has been repeatedly

advising the Government of India not to take hyper technical approach in these matters and without insisting for a proof "beyond reasonable

doubt" they should process these matters on the principles of preponderance of probability. For the purpose I would be referring to few judgments

of the Supreme Court, the first of which is rendered in the case of Gurdial Singh v. Union of India since reported in (2001)8 SCC 8 and

paragraphs 6 and 7 of the judgment is an advise which yet evades the wisdom of the Government of India and are reproduced herein below:-

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 has 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. This Court in Mukund Lal

Bhandari Case¹ observed: (SCC pp. 7-8, para 9)

The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour

and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of

those who do not have sufficient income to maintain themselves refuse to take benefit of its, since they consider it as an affront to the sense of

patriotism with which they plunged in the freedom struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge

the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the

result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective

with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and

this is equally important to note, since we are by this decision making the benefit of the Scheme available irrespective of the date on which the

application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only

benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to

schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now.

The Court categorically mentioned that the pension under the Scheme should be made payable from the date on which the application is made

whether it is accompanied by necessary proof of eligibility or not.

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.

19. The Supreme Court again in the case of Kamlabai Sinkar v. State of Maharashtra since reported in (2012)11 SCC 754 while

considering the case of a underground freedom fighter whose claim had been

rejected for want of documents, has after referring to the conclusion

drawn by the Court in the case of Gurdial Singh (supra) has concluded as follows in paragraphs 10 and 11 of the judgment:

10. A perusal of the documents enclosed by the appellant's husband along with his application disclose that the appellant's husband made out a

case for grant of freedom fighters' pension under the category "underground freedom fighter". Applying the broad principles laid down in the

decision of this Court in Gurdial Singh 3, it will have to be held that there was nothing more for the State to examine to honour the claim of the

appellant's husband for grant of freedom fighters' pension. The claim of the appellant's husband cannot be held to be a fraudulent one or without

any supporting material.

11. In our considered view, the High Court ought to have examined the grievance of the appellant before confirming the order of rejection of the

respondent State. In the circumstances, the appeal deserves to be allowed. The impugned orders are set aside. The respondent State is directed to

grant freedom fighters' pension in favour of the appellant's husband and since he is no more, grant the same with all arrears to the appellant by

passing appropriate orders expeditiously, preferably within four weeks from the date of communication of copy of this order. We hope and trust

that the State Government will not indulge in any further delay in the matter of grant of pension so as to enable the appellant to avail the benefits at

least during her lifetime.

20. The issue as regarding "standard of proof" required for pension to underground freedom fighters again came up for consideration in the case of

State of Maharashtra v. Namdeo since reported in (2013) 14 SCC 225 and the Supreme Court in consideration of its earlier judgment

rendered in the case of Gurdial Singh (supra) has summed up the legal position in paragraph 18 of the judgment and has held that the claim of the

freedom fighters are to be dealt with sympathetically and that the authorities are not to be guided by the test of "beyond reasonable doubt" and the

over dependence on standard of proof based principle, has to be discarded. The Court has held that it is principle of probability which is to be

applied and eschewing the technicalities, the approach should be to uphold the entitlement.

21. It is rather unfortunate that even when the Supreme Court has repeatedly advised the concerned authorities including the Government of India

and the State Government concerned to have a liberal and not to take a technical approach while considering the case of grant of freedom fighters?

pension and for not insisting on proof of such standard as required in a criminal case rather for deciding the issue on preponderance of probability

without resorting to hyper technicality, yet the wisdom eludes the respondents.

22. I have already demonstrated above and the counter affidavit filed on behalf of the respondent nos.3 to 5 i.e. the Home (Special) Department of

the Government of Bihar leaves nothing for speculation that the papers required for grant of freedom fighters? pension have been communicated to

the Government of India and which are also present on the files so produced by the learned Additional Solicitor General and even the State of

Bihar in its Home (Special) Department has repeatedly reiterated their recommendations. The matter is yet put for adjudication simply because the

Government of India is not willing to relent and stands by their hyper technical approach.

23. In this regard I am reminded of a judgment of the Supreme Court since reported in AIR 1981 SC 1681 (Hindustan Sugar Mills v. State of

Rajasthan) and the observation of the Supreme Court would be an advice for the respondents. The relevant part of paragraphs 1 is reproduced

herein below:

..... . We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting to any legal

technicalities, for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the

citizen and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and

justice demand.

24. In my opinion, the petitioner has been unnecessarily subjected to undue harassment at the hands of the respondents for apparently no justifiable

reason.

25. For the reasons and discussions aforementioned the Government of India in its Ministry of Home Affairs, Freedom Fighters Department i.e.

the respondent nos.1 and 2 are directed to take necessary steps for grant of

freedom fighters? pension to the petitioner with effect from the date on which he had filed his application i.e. 31.3.1981 in tune with the position settled by the Supreme Court in the case of Mukund Lal Bhandari v.

Union of India since reported in 1993 Supp. (3) SCC 2 and for which the formalities be completed within a period of three months from today.

26. The writ petition is allowed. Let a writ of mandamus issue accordingly.

27. No order as to costs.

28. Let the records produced by learned Additional Solicitor General be returned to the custody of Mr. Kumar Priya Ranjan, learned Central

Government Counsel.