

(2019) 10 PAT CK 0090

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 72 Of 2014

Ram Narayan Azad

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 PAT CK 0090

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Pawan Kumar Singh, Prashant Kashyap, Arvind Kumar, Raj Kamal

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for directing the respondent no.5 to sanction Swatantrata Senani Samman Pension to the petitioner.
2. The brief facts of the case, according to the petitioner herein, is that he is one of the prominent freedom fighter who took active part in the freedom movement in the year 1942 for the country and participated in disrupting the railway track and was wanted by the then British Force, but he remained underground and further participated in the freedom movement actively. After coming into force the new scheme for Swatantrata Senani Samman Pension in the year 1980, the petitioner in order to apply for grant of freedom fighter pension, had procured a Non- availability of Record Certificate (NARC) from the competent authority and for this purpose, he had applied on 25.07.1981 through Chirkut and in token thereof he was given the said certificate certifying that the petitioner had participated in the freedom movement. The petitioner had also obtained personal knowledge certificate on 28.07.1981 duly issued by one Sahdeo Singh, a prominent Freedom Fighter who also certified that the petitioner is a bonafide Freedom Fighter, who had remained underground for more than six months for the period from August, 1942 to 1946 and was a proclaimed offender. The petitioner is stated to have then applied to the State Government for

recommending his case for grant of Swatantrata Senani Samman Pension on 03.09.1981 and thereafter he had also sent a copy of the application along with the documents to the Union of India. The State authorities had given registration No.32013 dated 30.11.1981 to the petitioner herein for future communications.

3. The respondent State of Bihar is said to have recommended the case of the petitioner vide letter dated 16.02.1986 and had sent a specific recommendation to the respondent Union of India. However, till today, the petitioner has not been sanctioned Swatantrata Senani Samman Pension.

4. Per contra, the learned counsel for the Union of India, referring to the counter affidavit filed on behalf of the respondents No. 1 to 3, has submitted that only such freedom fighters who fulfill the conditions of the Swatantrata Senani Samman Pension Scheme, 1980, by furnishing the proof of claim for suffering of the nature and in the manner specified in the Scheme itself, are only entitled for freedom fighter pension. It has been further submitted that the Government of India vide its Circular dated 13.04.1982 has laid down the detailed instructions in case of underground/ internment/ externment suffering. This Court deems it fit and proper to reproduce the relevant portion of the said circular herein below:-

"a. Before recommending the cases for sanction on the basis of secondary evidences, the State Government must satisfy themselves that the applicant was a genuine freedom fighter and the official records of that period were not available.

b. The certifier issuing PKC should ordinarily belong to the same district as that of the certifier;

c. There should be no complaints about indiscriminate certification against the certifier.

d. All cases based on secondary evidence like PKC should be submitted for consideration to the State Advisory Committee and extract of the proceedings of the State Advisory Committee should be forwarded along with the recommendation to the Central Government for consideration".

5. It is further submitted by the learned counsel appearing for the respondent Union of India that as per the provisions of Swatantrata Senani Samman Pension Scheme, 1980, the claim of freedom fighter for grant of pension is to be forwarded to the State Government in the prescribed application form along with the verification report and specific recommendation for consideration of the claim. It is categorically stated in the counter affidavit filed by the respondent Union of India that the letter of the State Government dated 16.02.1986, recommending the case of the petitioner, is not available with the respondent Union of India. Nonetheless, it is submitted that as per the list of the rejected cases, maintained in the register by the Ministry, the claim of one Shri Ram Naryan, resident of Village Helapur, P.O. Ibrahimpur, P.S. Kurtha, District Gaya, Bihar was examined as per the Swatantrata Senani Samman Pension Scheme,

1980 and had been rejected on 08.03.1986, whereafter, no representation of the petitioner, either by himself or through the State Government has been received. Lastly, it is submitted that after the writ petition was filed, communication has been made with the State Government, however, the State Government has informed that the file of the petitioner is not available with them.

6. The respondent Union of India has also annexed letter dated 30.06.2014 written to the Additional Secretary, Home (Special) Department, Government of India, Patna wherein the claim of the petitioner has been rejected on account of the following reasons:-

"(a) In the absence of Primary evidence, NARC as prescribed under the SSS Pension Scheme, 1980, has not been provided by the State Government, even after letter dated 24.3.2014 sent by this Ministry to the State Government.

(b) The GA record of the case has been destroyed.

(c) The personal Knowledge Certificate issued by Shri Sahdeo Singh and Shri Godani Singh has not been verified by the State Government.

(d) Shri Sahdeo Singh and Shri Godani Singh have not furnished copies of their own jail suffering for more than 2 years in order to enable them to be eligible certifiers".

7. The learned counsel for the State, referring to the counter affidavit filed on behalf of the respondents no. 4 and 5, has submitted that the Central Government is the final authority to grant/ reject/ suspend/ restore SSS Pension to any person. It has been submitted that the file/ record relating to the SSS Pension of the petitioner is not available in the department at this belated stage, hence no comment can be made upon the claim of the petitioner. Nonetheless, the State Government has forwarded a copy of the writ petition to the Ministry of Home Affairs, Government of India for necessary action, whereafter the Ministry of Home Affairs, requested the State Government to furnish the documents mentioned in the letter sent by him, whereupon the State Government vide letter dated 9.5.2014 requested the District Magistrate, Gaya to verify the claim of detention of the petitioner from the official record and also to verify the Jail certificate of Sri Godani Singh, who has submitted Personal Knowledge Certificate in the case of the petitioner regarding his own jail suffering. The District Magistrate, Gaya vide letter dated 11.6.2014 informed that as per the report submitted by the Superintendent, Central Jail, Gaya, vide letter dated 05.06.2014, the jail entry record pertaining to the date 16.11.1943 is not available, hence report cannot be submitted.

8. This Court by an order dated 03.04.2015 directed the Home (Special) Department to verify the veracity of the certificate issued by Sahdeo Singh as contained in Annexure-2 and Godani Singh, as contained in Annexure-5, who admittedly are stated to be freedom fighters and drawing the Swatantra Senani Saman pension from the Union of India and in response thereof the respondent

State has filed a supplementary counter affidavit dated 11.1.2016 wherein it has been stated that a letter dated 16.4.2015, enclosing a photocopy of the Personal Knowledge Certificate of the petitioner was sent to Shri Sahdeo Singh and Shri Godani Singh, who had issued the said Personal Knowledge Certificate, with request to verify the genuineness of the same, as granted by them and also a copy of the letter was sent to the petitioner with a request to get the personal knowledge certificate verified from the aforesaid two freedom fighters, however, the letter sent to Shri Sahdeo Singh was returned un-served by the postal Department with an endorsement that the addressee is no more. It has been further stated in the supplementary counter affidavit that the petitioner, vide his letter dated 13.05.2015 has informed that both Shri Sahdeo Singh and Shri Godani Singh, who had issued the personal knowledge certificate with respect to him have already expired. Thus, it is the stand of the State Government that since the aforesaid two persons, who had granted personal knowledge certificate to the petitioner herein, have died, verification of the personal knowledge certificates of the petitioner herein cannot be made, hence there is no proof of the fact that the petitioner had remained underground for more than six months on account of participation in freedom movement and was a proclaimed offender or had undergone suffering.

9. I have heard the learned counsel for the parties and gone through the materials on record and first of all I find that the petitioner has approached this Court belatedly i.e. after a lapse of about 33 years inasmuch as the petitioner is stated to have applied for grant of SSS pension under the SSS Pension scheme, 1980 on 03.09.1981 whereas he has approached this Court only in the year 2014 to agitate his claim by filing the present writ petition, thus this Court finds that the present writ petition is fit to be dismissed on the sole ground of delay and laches. In this Connection, it would be apt to refer to a judgment rendered by the Hon'ble Apex Court, reported in (2014) 4 SCC 108 (Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu), relevant paragraph whereof is reproduced herein below:-

"Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does

bring in hazard and causes injury to the lis"".

10. It would be worthwhile to refer to another judgment rendered by the Hon'ble Apex Court, reported in (2006) 4 SCC 322 (Karnataka Power Corporation Ltd. Through its Chairman & Managing Director & Anr. Vs. K. Thangappan and Anr), relevant paragraph whereof is reproduced herein below:-

"Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party".

11. It would be pertinent to refer to a constitution Bench judgment rendered by the Hon'ble Apex Court in the case of Moon Mun Mills Ltd. Vs. M.R. Maharaj & Anr., reported AIR 1967 SC 1415, paragraph-9 whereof is reproduced herein below:-

"It was, therefore, contended that the appellant itself had agreed with respondent 2 to pay bonus for 1953, 1954, 1955 and 1956 according to the terms of the bonus agreement. It was also pointed out that the appellant had not pressed its objection with regard to jurisdiction before the labour court or the industrial court. But it appears that the decision of this Court in Prakash Cotton Mills case 1962 (1) LLJ 108] (vide supra) was given on February 16, 1961 after the decision of K. K. Desai, J., on July 1, 1960 and before the decision of the Letters Patent Bench on February 6, 1962. In the circumstances of this case, we do not consider that there is such acquiescence on the part of the appellant as to disentitle it to a grant of writ under Art. 226 of the Constitution. It is true that the issue of a writ certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstance, cause prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sri Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell and John Kemp [Law Reports 5 P.C., 221 at 239] as follows :"

Now the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any

statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy".

12. In the opinion of this Court, the aforesaid principles of law as enunciated by the Hon'ble Apex Court, squarely applies to the present case, since the petitioner has failed to plead any circumstance justifying the delay or his conduct, hence no relief can be granted to the petitioner herein especially on account of the fact that due to delay and laches on the part of the petitioner in approaching this Court, has during the interregnum period, resulted in the records of the case of the petitioner having become untraceable, both in the office of the State Government as also in the office of the respondent Union of India. Thus, the present writ petition stands dismissed being grossly barred by delay and laches.

13. Even on merits, the petitioner has no case inasmuch as there is no proof of the fact that either the petitioner had remained underground and had undergone suffering as a freedom fighter or he had participated in freedom movement and had remained underground for more than six months and/or he was declared a proclaimed offender or an award for arrest of the petitioner was announced on his head or a detention order was issued with regard to the petitioner herein. Moreover, the personal knowledge certificate issued by Shri Sahdeo Singh and Godani Singh have also not been verified by the State Government authority on account of the death of the said two persons and moreover, there is no proof on record that the said Sri Sahdeo Singh and Godani Singh had underground jail suffering as a freedom fighters for more than two years so as to be eligible certifiers apart from the fact that authenticated NARC for the purposes of grant of SSS Pension Scheme, 1980 has not been provided by the State Government to the Union of India, thus, even on merits the petitioner has got no case inasmuch as he has not been able to fulfill the condition prescribed under the SSS Pension Scheme, 1980, hence, on merits also the writ petition stands dismissed.