
(2000) 09 PAT CK 0064
In the Patna High Court
Case No : C.W.J.C. No. 4841 of 1999

Ramawatar Kedia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 302

Citation : (2001) 1 BLJR 380 : (2001) 1 PLJR 437

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner has prayed for quashing of the letter dated 16.7.1996, issued by the Under Secretary to the Government of India in the Minis tray of Home, contained in Annexure 1, whereby and whereunder his application for grant of Freedom Fighters Samman pension has been rejected and also to direct the respondents to grant the same to him with effect from 1980 and pay its arrears.

2. In the year 1972, Freedom Fighters" Pension Scheme was introduced and in the year 1980 the provision for Freedom Fighters" Samman Pension Scheme was launched and the same was to be given with effect from 1.8.1980. The date of submission of application was extended up to 31.7.1981 and later it was further extended up to 31.3.1982,. The petitioner claims to have participated in the freedom fighter movement in the year 1942 and was made accused in Case No. 10/42 State v. Nath Prasad, Sessions Case No. 62/42 The King Emperor v. Satya Narain Tebriwal registered u/s registered under Sections 147, 149/302, I.P.C. and 35(b) D.I.R. and Case No. 49/42-43 relating to looting of Picture Palace, Bhagalpur in which final report No. 458 dated 13.10.1942 was submitted.

3. The petitioner claims to have submitted his applications on 3.3.1981 for grant of pension. It is claimed that he also attached certificate given by Tej Chandra

Chaudhary, who spent jail custody as freedom fighter from 1928 and again 28.8.1942 to 1946 wherein it was certified that the petitioner remained underground from August 1942 to December 1945 and was declared absconder. The petitioner also claims to have subsequently submitted a certificate dated 17.03.1986 granted by another person, namely, Lakshman Sen (Annexure 4) that he remained under ground from 17th August, 1942 to 15th August, 1947. He has annexed a photo copy of the typed copy of the judgment in Sessions Cases No. 62 of 1942 in which his name among the accused-persons shown absconders is at serial No. (1) at page 2 of the said judgment.

4. It is claimed that the Government of Bihar, vide letter No. 6140 dated 30th March, 1987, contained in Annexure 6, recommended the names of all the accused-persons of the said sessions case in which name of petitioner also appeared at serial No. 10. It is also claimed that he submitted non-availability certificate dated 17.3.86 contained in Annexure 7, about the record of Sessions Case No. 10/42 already destroyed on 3.1.1985. It is also claimed that the State Government enquired from Lakshman Sen about the certificate issued by him and also about the issuance of the information dated 17.3.1986, pursuant to which Registrar, Bhagalpur Civil Court, vide No. 315 dated 21.4.1986, contained in Annexure 9, certified that the same has been issued from Bhagalpur.

5. According to the case of the petitioner, the Government of Bihar again recommended his case for grant of pension, vide letter dated 13.4.1989 (Annexure 10), which was rejected vide letter 3rd January, 1991 (Annexure 11) for want of evidence. It has further been stated that the State Government has also not recommended his case for grant of Freedom Fighter's pension. It is stated that on 9.5.1995 the State Government again recommended his case for pension, vide Annexure 12, to which the copy of the application, Court record, photo copy of non-availability certificate, copy of verification and photo copy of the certificate granted by Shri Lakshman Sen and its confirmation issued by the Shri Sen were attached.

6. Thus, it is contended that despite furnishing of relevant materials, the claim of the petitioner has been arbitrarily rejected by the impugned order when in similar case of Ramdeo Upadhaya, who was also accused in same Sessions Trial No. 62 of 1942, where pension was granted to him earlier was cancelled, the order was quashed by this Court, vide order dated 17.3.1997 passed in C.W.J.C. No. 4504 of 1996, contained in Annexure 15, and held that he shall be entitled to draw pension as per the initial order granting him pension. For delay of almost four years in approaching this Court since after the impugned order was passed, the explanation given is that he is old and diseased persons and in support of it, has annexed photo copies of the prescriptions and certificated granted by the Doctors as Annexure 16 series.

7. A counter-affidavit has been filed on behalf of the Union of India and its officials (respondent No. 1 to 3) in which there is denial of the receipt of the letter of the State Government before 19.3.1996, whereafter the case of the

petitioner was examined and it was noticed that his application dated 9.3.1981 did not bear the date and registration number of the State Government, so it was not clear whether it was received by the State Government by deadline of the scheme, i.e. 31.3.1982. It is further stated that in his application dated 9.3.81 the petitioner indicated that information slip of G.R. No. 10/42 and PKC of Shri Lakshman Sen were enclosed but, in fact, these were obtained on a later date. It is thus, contended that had his application been in time, then the said two documents would have been obtained prior to 9.3.1981, i.e., the date of signing the application. But the NARC pertaining to G.R. No. 10/42 is dated 17.3.1986 and the PKC is also of 17.3.1986, therefore, according to the respondents, it is clear that the application was never submitted before 31.3.1982, i.e., the due date for filing of the application. It is further stated that the petitioner applied on the basis of his involvement in Case No. 10/42, but the State Government forwarded his case on the basis of his involvement in Case No. 62/42. The case was accordingly considered on the basis of the Court record in G.R. No. 62/42. Further stand of the respondents is that as per the CBI report, the absconders list in this documents is fabricated and interpolated. Apart from this, the petitioner did not mention the specific period or absconding in his application form and, accordingly, his claim was rejected vide impugned order. The respondents have also attached the photo copy of the report of the Inspector, C.B.I./S.P.E. Patna in which he opined that in course of the judgment with regard to the Sessions Case No. 62/42 and three others create doubt about their genuineness inasmuch as two of the said copies tallied with each other verbatim except for words especially name, places, date, etc. suggesting them of fabrication by some unscrupulous persons. The said report stated that all the four copies of the judgment appeared to be prima facie fabricated and long list of absconders shown therein also appeared to be interpolated.

8. Despite service of counter-affidavit on 23.3.2000, the petitioner has not filed any reply to the said counter-affidavit.

9. Learned Counsel for the petitioner contended that in view of the non-availability of record, certificate and the certificates granted by Swatantra Sainani, the respondents authorities were not legally justified in rejecting the claim of the petitioner. Learned Counsel for the respondents, on the other hand, submitted that in view of the fact that non-availability of certificate as well as the certificate granted by Lakshman Sen were obtained on a later date and yet they were mentioned in the application which the petitioner claims to have filed on 9.3.1981 make it clear that the application was never submitted before 31.3.1982, i.e., the due date for filling of the application and further also makes it, doubtful (sic) in view of the CBI report that the absconders list in regard to Court Record in G.R. No. 62/42 is fabricated and interpolated.

10. Learned Additional Standing Counsel appearing for the respondent also submitted that the application of the petitioner is fit to be rejected also on the ground that it suffers from gross delay and laches as he has filed the present writ

petition almost after four years of the passing of the impugned order.

11. This Court finds substance in the submission of the learned Additional Standing Counsel. The explanation for the delay of four years, in my opinion, is not satisfactory. Four years earlier, the petitioner was old and diseased person on account of which he could not move to this Court on claimed, about which even today the position remains the same and, in fact, it should be even worst as he has grown four years more older. It is not the case of the petitioner that he was bed-ridden and that he was not even in a position to sign the Vakalatnama and send someone to file the writ petition against the impugned order passed on 16th July, 1996. It is neither his case that he filed the present writ petition after his case from the alleged disease or the doctor allowed him to move out only when this writ petition could be filed. Moreover, it appears that it is only after the order was passed on 17.3.1997 by this Court in the case of Ramdeo Upadhaya that he felt encouraged without realising that it was a case where it was admitted that the matter regarding his claim was examined and pension was granted to him on examination of the same at various level but later merely on the basis of the said report of the Inspector of Police it was cancelled, for which this Court did not find any valid justification.

12. In the case of the petitioner of the present case, the authority has found that his application was never submitted before the due date as it did not bear the date and registration number of the State Government. Moreover, in his said application, the petitioner indicated that information slip of G.R. No. 10/42 and PKC of Shri Lakshman Sen were enclosed, but, in fact, they were obtained on a later date. Therefore, this Court does not find any infirmity in rejecting the claim of the petitioner which is based on such facts and, thus, this writ petition is fit to be dismissed with cost.

13. The writ petitioner is, thus, dismissed with cost of Rs. 1,000/- (one thousand) to be deposited by the petitioner with the Secretary, Patna High Court Council for Legal Aid and Advice within two weeks. Petition dismissed.