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**(2012) 11 DEL CK 0298**  
**In the Delhi High Court**  
**Case No : L.P.A. No. 372 of 2012**

Sh. Sukhai Thakur

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 02-11-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 82, 83  
Penal Code, 1860 (IPC) — Section 135, 147, 307

**Citation :** (2013) 133 DRJ 328

**Hon'ble Judges :** Rajiv Sahai Endlaw, J;D. Murugesan, J

**Bench :** Division Bench

**Advocate :** I.C. Mishra and Ms. Swati Chakraborty, for the Appellant; Neeraj Chaudhari and Mr. Ravjyot Singh for UOI, for the Respondent

**Final Decision :** Allowed

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## Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the judgment dated 11.04.2012 of the learned Single Judge dismissing the W.P.(C) No. 2022/2012 preferred by the appellant. The said writ petition was filed seeking a direction for grant of Swatantrata Sainik Samman Pension (SSS Pension) to the appellant by quashing the rejection letter dated 14.12.2007 of the respondent No. 1 UOI. It is the case of the appellant that he had participated in The Quit India Movement, 1942; that he and his colleagues Mr. Rama Nand Das and others had captured the Railway Station, Post Office and Police Station and disconnected the communication of the British Government from Madhubani and District Headquarter Darbhanga as well as Patna; that in this connection a criminal case was registered against the appellant and his colleagues vide GR No. 834 on 18.08.1942 in the name and style of Emperor Vs. Rama Nand Das & Others, under Sections 307, 147 and 135 of the Indian Penal Code, 1860 (IPC) read with Rule 38(4) of the Defence of India (DI) Rules; that the appellant absconded due to apprehension of his arrest and the Court had issued Non Bailable Warrant (NBW) of his arrest since 25.09.1942, though he was never arrested; consequently, coercive action u/s 82/ 83 of the Criminal Procedure Code, 1973

(Cr. P.C.) was also taken and the movable property of the appellant was attached on 22.06.1944 and he was declared a Proclaimed Offender (PO); that the said case was finally withdrawn on 31.05.1946 when the appellant was discharged; that though he was not eligible under the Freedom Fighters Scheme, 1972 but upon introduction of the SSS Pension Scheme in the year 1981, being an absconder for more than six months in the said case, became eligible for pension; that he applied for pension under the said Scheme on 24.07.1981 stating the said facts duly supported by documents but his application was rejected vide letter dated 14.12.2007. It is further the case of the appellant that though the State Government of Bihar had, after due verification of records and local verification from the District Magistrate, recommended grant of the said pension to him on 11.10.2004 and while many of the persons still alive and mentioned in GR No. 834/1942 were receiving the said pension, he had been wrongly denied the same. The appellant in this regard cited the instances of one Mr. Anandi Mahto son of late Mr. Sukhdeo Mahto and of one Mr. Panak Lal Sahu, in whose favour the said pension had been sanctioned.

2. The learned Single Judge dismissed the writ petition without even inviting any counter affidavit from the respondents, observing that for a person to be eligible for pension under the Scheme, he should have on account of participation in the freedom struggle remained underground for more than six months for the reason of being a PO or one on whom an award for arrest or head was announced or one for whose detention, order was issued but not served; that the Scheme further required documentary evidence, by way of Court's/Government's order proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention, to be produced and in the absence of such primary evidence, a Non-availability of Records Certificate (NARC) to be produced from the concerned State Government/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum of two years and who happened to be from the same administrative district; that without the said formalities being complied, the Central Government could not consider a claim for such pension; that the appellant had not furnished primary evidence duly verified by the State Government in support of his claim; that though he had submitted a copy of an extract of the order sheet of GR No. 834/1942 but the same had not been verified by the State Government from official records; that the order sheet of GR No. 834/1942 furnished by the appellant also did not indicate the exact period of his underground suffering and did not indicate whether the appellant absconded, on being a PO, or one on whom an award for arrest/head was announced or one whose detention order was issued but not served-the same also did not indicate the parentage of the appellant; that the appellant had also not furnished a valid NARC from the State Government; though the appellant had furnished a PKC but the issuer of the said Certificate had also not furnished any record/evidence of his own jail suffering of a minimum of two years. The learned Single Judge also found the PKC furnished by

the appellant to be doubtful because the issuer thereof was certifying underground suffering of the appellant for the period when the issuer himself claimed to be in jail. The learned Single Judge thus held that the appellant had not satisfied the prescribed requirements for being eligible for pension.

3. It being the case of the appellant that on the basis of the same document of GR 834/1942, Mr. Anandi Mahto and Mr. Panak Lal Sahu had been granted pension under the Scheme, notice of this appeal was issued and the respondents directed to file counter affidavit. In compliance thereof, a counter affidavit has been filed by the Director, Freedom Fighters and Rehabilitation Division, Ministry of Home Affairs, Government of India. It is pleaded therein (i) that the writ petition is highly belated-though the application of the appellant for pension was rejected on 14.12.2007 but the writ petition had been filed in the year 2012; (ii) that the appellant had only produced a photocopy of the extract of the order sheet of GR No. 834/1942; (iii) that the verification of the said photocopy was sought from the State Government of Bihar which reported that the records relating thereto had been destroyed though the names of the persons on the photocopy of GR No. 834/1942 appeared to tally with the list of disposed off records; (iv) that on subsequent inquiries, it was disclosed by the State Government of Bihar that the records of GR No. 834/1942 had been destroyed in 1987; (v) that the said document thus could not be considered as verified; (vi) that though the State Government of Bihar was requested to furnish the NARC but the same was not furnished inspite of repeated demands; (vii) that production of NARC is an essential requirement before pension on the basis of PKC can be sanctioned; (viii) that the PKC submitted by the appellant was also not valid since the issuer thereof himself was in jail between 18.08.1942 and 17.06.1946, though the period of underground suffering claimed by the appellant is from 18.08.1942 to 30.09.1943; (ix) that the issuer of the Certificate also could not provide any documentary evidence of his own jail suffering for two years which is also essential to be an eligible certifier; and (x) that the case of Mr. Raghubar Mehto and Mr. Sukhdeo Mehto were based on a different document i.e. extract of Court record of GR No. 822/1942 and pension was not granted to them on the basis of PKCs and therefore the comparison of the present case with the case of Mr. Raghubar Mehto and Mr. Sukhdeo Mehto was not appropriate.

4. The State of Bihar though impleaded as the respondent No. 3 has not been served. The counsel for the appellant states that since the rejection is by the Central Government and the Government of State of Bihar had in fact recommended his case, the State of Bihar is not a contesting party and need not be served.

5. The photocopy of document being an extract from the order sheet in the case of Emperor Vs. Rama Nand Das & Others in the Court of Mr. S.S. Prasad, Magistrate, 1st Class, Madhubani, District Darbhanga, GR No. 834/1942, on which the claim of the appellant hinges, shows that the 39 accused mentioned therein and in which Mr. Anandi Mahto, Mr. Panak Lal Sahu and the appellant

were included, were absconding and were discharged on 31.05.1946.

6. The counsel for the appellant has argued that considering that the GR is of the year 1942 and the 39 accused mentioned therein were said to be absconding till 31.05.1946, the factum of the appellant having remained absconding for more than six months as is required to be eligible for pension under the Scheme is writ large. He has based his case on the appellant being similarly situated as Mr. Anandi Mahto and Mr. Panak Lal Sahu who were granted pension on the basis of the same document, photocopy of which has been produced by the appellant.

7. The respondent Central Government, as would be apparent from a narration of the contents of their counter affidavit, has not denied sanction of pension to Mr. Anandi Mahto and Mr. Panak Lal Sahu. Rather there is no reference to Mr. Panak Lal Sahu in the counter affidavit and with respect to Mr. Anandi Mahto, it is stated that the sanction of pension was on different documents.

8. The counsel for the Central Government has produced the original file relating to Mr. Anandi Mahto before us and which has been scanned by us. We find the said file to be also containing the same photocopy i.e. the extract from the order sheet dated 07.12.1962 in GR No. 834/1942 on which the appellant basis his claim. The notings in the said file record that the original GR No. 834/1942 is on the file of Mr. Manohar Lal Yadav and on the basis thereof pension was sanctioned with effect from the year 1998, even though Mr. Anandi Mahto had also applied in the year 1981.

9. The counsel for the respondent has been unable to show as to why, when on the basis of the same document and facts, pension was sanctioned to Mr. Anandi Mahto, it should not be sanctioned to the appellant. We accordingly set aside the order dated 11.04.2012 of the learned Single Judge and allow W.P. (C) No. 2022/2012 filed by the appellant by quashing the letter dated 14.12.2007 of the respondents No. 1 & 2 of rejection of the claim for SSS Pension of the appellant. Though the appellant had claimed pension from the year 1981 and though pension on similar facts was sanctioned to Mr. Anandi Mahto with effect from 1998, but owing to the delay, laches and acquiescence on the part of the appellant in preferring the writ petition only in the year 2012 inspite of rejection of his claim on 14.12.2007, we direct payment of pension to the appellant with effect from the date of filing of the writ petition i.e. 01.04.2012. We further direct that subject to the appellant complying with the formalities if any required to be complied with in this regard, the arrears of pension be released to the appellant within six weeks from today and future pension be also disbursed as per the Scheme. The respondents No. 1 & 2 having rejected the claim of the appellant inspite of the appellant being similarly placed as Mr. Anandi Mahto, we also impose costs of Rs. 25,000/- payable by the respondents No. 1 & 2 to the appellant within six weeks from today.