
(2009) 04 CAL CK 0077
In the Calcutta High Court
Case No : F.M.A. No. 897 of 2007

Sri Paritosh Goswami

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Citation : (2009) 04 CAL CK 0077

Hon'ble Judges : Prasenjit Mandal, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Asoke Kumar Mukherjee, for the Appellant; Kamal Kumar Chattopadhyay, P.B. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This appeal is directed against the judgment and order dated 17.03.2005 passed by the learned Single Judge in W. P. No. 17135(w) of 2000 whereby the learned Judge dismissed the writ application.

2. The writ petitioner claims himself to be a freedom fighter. He applied for pension stating, inter alia, that he had suffered imprisonment for 7 months as an undertrial prisoner leading to his acquittal. He also suffered by internment for one year. He applied to the concerned authority for pension under the Swatantrata Sainik Samman Pension Scheme formerly known as Freedom Fighter Pension Scheme, 1972. But his application was not favourably considered. For that reason, he filed one earlier Writ Petition No. 8095(w) of 1996 which was disposed of by the Hon'ble Court directing the Government of India to verify the claim of the petitioner and to take a decision. Then after holding verification, the Government of India took the decision rejecting the claim of the petitioner by its decision dated July 13, 1998. Thereafter the petitioner filed another writ application which was dismissed by the impugned judgment and order.

3. Mr. Asoke Kumar Mukherjee, learned Advocate for the appellant, contends that the State Government recommended the claim of the appellant for grant of

freedom Fighters" Pension under the scheme of Swatantrata Sainik Samman Pension Scheme, after making necessary investigation and enquiry. So it was not proper on the part of the Government of India to reject the prayer of the appellant and consequently the learned Single Judge was not justified in dismissing his subsequent writ petition. He also contends that the Central Government did not challenge the findings of the State Government and so the Central Government was obliged to accept the recommendation of the State Government and so the pension should have been granted under the said Scheme. The learned Single Judge should have considered the ratio of the decision of the Hon'ble Apex Court reported in Gurdial Singh Vs. Union of India and Others, He also contends that when the materials showing detention in jail were not available the certificate of a genuine freedom fighter should have been considered by the learned Single Judge. The learned Judge should have taken a liberal view in granting the pension of a freedom fighter. So the impugned judgment and order should be set aside and the writ application should have been allowed by the learned Single Judge.

4. On the other hand, the learned Advocates for the Union of India and the State of West Bengal support the judgment and order.

5. Having considered the submissions of the learned Advocates of both the sides and on perusal of the materials on record, we find that the lis between the parties is whether the appellant is entitled to get pension as a freedom fighter. In this respect, the Government of India framed a scheme namely Freedom Fighter Pension Scheme, 1972 which had undergone several changes/modifications and now the scheme is Swatantrata Sainik Samman Pension Scheme. Such scheme had also undergone changes/modifications from time to time and the net result of such changes/modifications which are required for the purpose of this appeal is as follows:

i) The underground suffering recognizes for the purpose of pension from the inception of the Scheme provides that the person should have gone underground only after he was wanted by the Police for his activities relating to National Struggle for freedom viz. the freedom fighter should either be a proclaimed offender or on whom an award for arrest was announced or on whom detention orders were issued but were not served. In this context the fact that the freedom fighter was wanted by the Police for his activities relating to freedom struggle continues to be the essence of eligibility for pension on the basis of the underground sufferings. Voluntary abscondence, therefore, does not make a person eligible for Samman Pension.

ii) The pre-condition of eligibility upto 31.07.1980 has been that the fact of abscondence should be established from the official documents available with the State Govt. in the form of a judgment, arrest warrant or any other executive order, declaring a person an absconder. The liberalised pension scheme, however, provides with effect from 2.8.80 that in the absence of official records because of their non availability, a certificate from a prominent freedom fighter, who himself

had been in jail in connection with the National Freedom Struggle for not less than five years would be acceptable to substantiate the claim of abscondence, internment or externment this relaxation thus provides an alternative mode of evidence and before relying upto the same it would be necessary for the Govt. to satisfy itself that the applicant was a genuine freedom fighter and official records of that period are not available. Further, the genuineness of the certificate itself has to be verified by making a reference to the jail suffering of 5 years, claimed by the Certifier and that there is no complaint about indiscriminate certification against him.

6. Such scheme had undergone further changes and now a genuine freedom fighter who had undergone imprisonment for two years or more in connection with the national freedom movement and having other eligibility is competent to issue certificates on the basis of sufferings by internment/externment/detention.

7. Now so far as the appellant is concerned, he claims that he was an accused in a case under D.I. Rules and he was arrested on the 25th August, 1942 and was acquitted in March, 1943. He also claims that he suffered by externment from Calcutta for one year. But we find that he failed to produce any scrap of paper in support of his claim. If he was acquitted by any Court of competent jurisdiction, he must have taken certified copy of judgment/orders, etc. to avoid future complications but he was not able to produce any scrap of paper in support of his acquittal by a competent Court. The appellant also claims that he was in the custody for a period of more than six months during the freedom struggle movement but we find that the appellant was not able to produce any scrap of paper in support of his claim.

8. The appellant's case is not that he was a proclaimed offender nor that there was an award on his arrest. There is no paper that any warrant of arrest was ever issued against the appellant in connection with freedom struggle movement. Therefore, the claim of the appellant cannot be considered at all to that score. Similarly the appellant has failed to produce any paper in support of sufferings by externment.

9. The only paper the appellant was able to produce is the certificate from a genuine freedom fighter namely Adwaita Charan Dutta of Medinipur and Calcutta district.

10. The appellant has claimed that he was in the custody with reference to the freedom struggle and that one genuine freedom fighter issued certificate in support of his claim and so such certificate should be considered when other documents are not available. But we are of the view that such issuance of certificate is nothing but the secondary evidence of the matter. So unless and until some sort of corroboration is furnished, it is difficult to accept such certificate in support of the claim of the appellant.

11. On the other hand, we find from the paper book that pursuant to the direction of the Government of India the different files of the Government of

West Bengal relating to activities of the freedom fighters were consulted to know whether the name of the appellant appeared in any such books or registers to show that he was very much connected with the freedom struggle movement during the pre-independence days and the result of such enquiry is that the I.B. Index Books for open and secret works of the political activists, Green Lists and Bengal revolutionary Books were consulted but the name of the appellant did not figure in the record, vide page 72 of the Paper Book. The S.B. Department of Kolkata was also directed to search and hold an enquiry over the matter and upon such direction the S.B., Kolkata submitted reports that all the records of S.B., Kolkata were consulted but the name of the above claimant (appellant) could not be found there, vide page 73 of the Paper Book.

12. Mr. Mukherjee, learned Advocate for the appellant, submits that the appellant was in the Presidency Jail, Alipore from 27.08.1942 to 29.02.1943 (might be 28.02.1943) as per report. But we find that no material is available in support of such claim. Even the records of the Alipore Central Jail was searched for the period from 25.08.1942 to March, 1943 but the name of Sri Paritosh Goswami had not been traced out. Though it was mentioned in the report appearing at page 41 of the paper book to the effect that "since records are too old and in deplorable condition almost eaten by insects every pages of the Admission Register cannot be verified." The primary responsibility of discharging the onus that he was in jail custody for the said period lies upon the appellant but we find that the appellant has failed to discharge his burden of proof.

13. The learned Advocate for the appellant has referred to the judgment passed in the case of Gokul Chandra Panja v. Union of India reported in (1) 1999 CLT 241 particularly the paragraphs 31, 32, 33, 34 and 35, the judgment and order dated August 22, 2007 passed by the Division Bench of which Justice Ashim Kr. Banerjee was one of the Hon"ble Judges in F.M.A. No. 1181 of 2007 in the case of Union of India and Ors. v. Satish Chandra Maity and Ors. and the decision in the case of Gurdial Singh Vs. Union of India and Others, and thus he submits that when the relevant records of a freedom fighter are not available, the certificate of a genuine freedom fighter must be taken as proof of the claim of the appellant in terms of the said Pension Scheme. As regards the decision reported in the of Gokul Chandra Panja (supra) and Satish Chandra Maity (supra) those two cases relate to the matter of the freedom fighters of District of Midnapore and in those cases the official records of the freedom fighter relating to their proclamation, the award on head or the papers of detention particularly in the District of Midnapore were lost or damaged by rain, flood, etc from the period of 1930 to 1946 and so those papers were not available. In that situation, the secondary evidence i.e. the certificate of a genuine freedom fighter was acted upon. But it is not the situation in respect of the present claimant who is a resident of Calcutta and a thorough search was made in respect of the claim of the appellant. In order to give due honour to him a thorough search was conducted but no paper could be traced out in respect of the appellant. In the instant appeal, all the papers relating to the freedom fighters of Calcutta are

available except the fact that some pages of the Admission Register of the Alipore Central Jail were damaged by insects, etc. So the case of the appellant is altogether different from the cases of Gokul Chandra Panja (supra) and Satish Chandra Maity (supra). The other decisions reported in the case of Gurdial Singh lays down the proposition to consider the standard of proof required for decision of any claim under the said Scheme and it should not be as proved beyond reasonable doubt as is required in the case of criminal trials. It is true that the appellant having not required to prove his claim beyond reasonable doubt but he must produce some sort of evidence from which the Court can decide independently whether the appellant could not be categorised as a freedom fighter. Save and except the certificate of a freedom fighter, there is no material in support of externment. There is no material if the so-called externment was voluntary or under compulsion as a genuine freedom fighter. In absence of any specific evidence we hold that such contention of the appellant cannot be entertained at all.

14. On the other hand, the decision in the case of Union of India and Ors. v. Subal Chandra Maity reported in (2007) 1 WBLR (Cal) 414 (Division Bench decision) and the decision in the case of Sakti Bala Samanta and Ors. v. Union of India reported in 2000(1) CLJ 572 lay down that a genuine freedom fighter having requisite eligibility may issue a certificate which might be considered as secondary evidence in support of the claim of the claimant provided official records were not available. For further elucidation the paragraph Nos. 8 & 9 of (2007) 1 WBLR (Cal) 414 are quoted below:

8. In our view, by taking aid of the liberalised scheme, an applicant can insist on acceptance of a certificate by a freedom-fighter having the requisite eligibility, as secondary evidence in support of his claim if the official records are not available. But in a given circumstance, the Central Government is entitled to reject such certificate if other contrary evidence is available falsifying the claim of the applicant or the contents of the certificate. Similarly, there may be cases where on the basis of the averments made in the application itself, the claim of the applicant may be shown to be apparently an absurd one and in such cases, those applications deserve outright rejection notwithstanding the fact that those are supported by the certificates of co freedom fighters. In other words, the certificate given by a competent freedom-fighter is not conclusive.

9. In the case before us, the writ petitioner stated in his application that he remained underground due to "quit India Movement" from 2nd October, 1942 till 25th July, 1944 but did not mention in his application whether he was a proclaimed offender or one on whom an award for arrest/head was announced or whether he was one for whose detention order was issued but not served as required under the scheme in order to get the benefit of underground for more than six months.

15. Similarly, the paragraph Nos. 13 & 14 of 2000 (1) CLJ 572 are also mentioned below to decide the lis of the present appeal:

13. The underground suffering for six months which is recognized as a ground for grant of pension provides that the person should have gone underground only after he was wanted by police for his activities relating to National Struggle for freedom. In other words, the freedom fighter should either be a proclaimed offender or on whom an award for arrest was announced or on whom detention order was issued but was not served; but voluntary abscondence or issue of warrant on any other ground than the one mentioned above will not make a person eligible for pension. Furthermore, it must be shown that the applicant did not secure reprieve on account of any oral or written apology tendered by him. The liberalized pension scheme however provides with effect from August 1, 1980 that in the absence of official record because of their non-availability, the certificate issued by a certifier who had undergone a minimum imprisonment for two years in connection with National Freedom Struggle may be accepted as a proof of the fact of abscondence for the purpose of the said scheme.

14. Therefore, by taking aid of the liberalized scheme, an applicant can insist on acceptance of a certificate by a freedom fighter having requisite eligibility as a secondary evidence in support of his claim if the official records are not available. But in a given circumstances, the Central Government is entitled to reject such certificate if other contrary evidence is available falsifying the claim of the applicant or the contents of the certificate. Similarly, there may be cases where on the basis of the averments made in the application itself, the claim of the applicant may be shown to be apparently an absurd claim and in such cases those applicants deserve outright rejection notwithstanding the fact that those are supported by certificates of co freedom fighters.

16. From the above observations, we are of the view that in order to entertain the claim of the appellant, the certificate of the freedom fighter requires some sort of corroboration without which the claim of the appellant is liable to be rejected. So the case of the appellant is quite distinguishable from the ones reported in Gokul Chandra Panja (supra) and Satish Chandra Maity (supra).

17. Mr. Mukherjee, learned Advocate for the appellant, contends that once the State Government recommended the case of the appellant for pension in 1991, it was not proper for the State of West Bengal to raise objection in the subsequent proceedings and he refers to the decision reported in 1972 S.L.R. 44. Such contention, we hold, cannot be accepted because the claim of the appellant was recommended by the State Government on the basis of secondary evidence but the said evidence was not supported with a non-availability of record certificate (vide page 31 of the paper book). But at this stage of consideration of the second writ petition of the appellant, in view of the fact of availability of the records and the earlier decisions of Subal Chandra Maity (supra) and Sakti Bala Samanta and ors. (supra), such contention of the appellant is not tenable at all.

18. In view of the above findings, we are of the considered view that the claim of the appellant for pension cannot be entertained at all. The appellant is, therefore, ineligible for pension under the Scheme. The learned Single Judge has

rightly dismissed the claim of the appellant.

19. We are of the view that there is nothing to interfere with the judgment and order impugned. Accordingly, the appeal fails to succeed. It is dismissed.

20. Considering the circumstances, there will be no order as to costs.

21. Urgent xerox certified copy of this order, if applied for, be made available to the learned Advocate for the parties on their usual undertakings.