

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5215 OF 2009

Mahender Singh

.... Appellant (s)

Versus

Union of India

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) This appeal is directed against the final judgment and order dated 30.01.2006 of the High Court of Delhi at New Delhi in L.P.A. No. 710 of 2005 whereby the High Court allowed the appeal filed by the respondent herein and set aside the order passed by the learned single Judge.

2) **Brief facts:**

a) According to the appellant, he is a freedom fighter, who sacrificed his studies in the freedom struggle and had taken active part in the 1942 agitation and was forced to remain an absconder for more than four years i.e. from 20.08.1942 till September, 1946 as he was made an accused in G.R. Case No. 985 of 1942 and in Mokama P.S. Case No. 259 (8) of 1942 titled **State vs. Mahender Singh & Ors.**, relating to the incidents of burning and damaging of a post office, railway line etc. at Mokama during freedom struggle. In 1972, Freedom Fighters' Pension Scheme was introduced by the Government of India for the grant of pension to living freedom fighters and their families. In 1980, the benefit of the Swatantra Sainik Samman Pension Scheme, 1980 (formerly known as 'the Freedom Fighters' Pension Scheme, 1972') was extended to all the Freedom fighters as a token of Samman (respect) to them.

b) On 07.09.1981, the appellant herein filed an application for pension under the Scheme which was

registered on 20.06.1981. After a detailed enquiry by the Bihar Government, the matter was placed before the Advisory Board on 12/13.12.1995 which recommended for release of pension to the appellant w.e.f. 01.08.1980. In the absence of any reply, the appellant again on 09.04.1997 sent a letter to the Government for releasing his pension. Thereafter on 19.09.1997, the appellant sent a notice through his advocate which remained unreplied. On 15.12.1997, the appellant filed a petition being W.P. No. 1248 of 1998 before the High Court of Delhi. Vide order dated 26.03.1998, the petition was withdrawn by the appellant on the assurance of the learned counsel for the respondents therein that as and when they got the clarifications sought for in the representation of the appellant, the representation shall be disposed of. The High Court further directed the Government to take a decision on the representation within three months of the receipt of the clarifications. Not getting any reply from the Government, on 17.07.1998, the appellant sent a

reminder to the respondent. On 10.12.1998, the appellant filed a Contempt Petition bearing C.C.P. No. 489 of 1998 before the High Court in which a show cause notice was issued to the Government for non-complying with its order. However, on 17.12.1998, the appellant got a registered letter from the Government refusing to grant him the freedom fighter pension. On 17.04.2001, the High Court dismissed the contempt petition and observed that if the appellant herein is aggrieved of the order of rejection of his grant of pension by the Government, he may pursue appropriate remedy provided in law.

c) Against the rejection of the freedom fighter pension, on 28.11.2001, the appellant filed W.P.(C) No. 7439 of 2001 before the High Court and the same was allowed on 24.11.2003 by the learned single Judge with costs quantified at Rs.10,000/- and also directed the Government to grant pension to the appellant under the Scheme w.e.f. 01.08.1980. On not being released the pension by the Government, the appellant filed a contempt

petition on 08.09.2004. Challenging the judgment of the learned single Judge dated 24.11.2003 in W.P. (C) No. 7439 of 2001, the Government filed L.P.A. No. 710 of 2004 before the Division Bench of the High Court. Vide order dated 30.01.2006, the Division Bench allowed the L.P.A. and set aside the order of the learned single Judge. Aggrieved by the said order, the appellant has preferred this appeal by way of special leave petition before this Court.

3) Heard learned counsel for the appellant as well as the respondent.

4) The only point for consideration in this appeal is whether the appellant has made out a case for grant of freedom fighters pension in terms of Swatantra Sainik Samman Pension Scheme, 1980 (hereinafter called “the Scheme”). According to the appellant, he remained underground for more than six months as a proclaimed offender. The Scheme provides for the manner of

application, availability of application forms, the time within which the applications are to be made, how claims are to be proved etc. In this case, the appellant made the application on 20.06.1981 which within the time prescribed.

5) Now, let us consider the manner in which the claim is to be proved which is provided in Para 9 of the Scheme which reads thus:

“9. HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED)

The applicant should furnish the documents indicated below whichever is applicable.

(a) IMPRISONMENT/DETENTION ETC.

Certificate from the concerned jail authorities District Magistrate or the State Government in case of non-availability of such certificates co-prisoner certificate from a sitting MP or MLA or from an ex-MP or an ex-MLA specifying the jail period (annexure I in the application form)

(b) REMAINED UNDERGROUND:

(i) Documentary evidence by way of court's/government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention

(ii) Certificates from veteran freedom fighters which had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

(c) INTERNMENT OR EXTERNMENT

- (i) Order of internment or externment or any other corroboratory documentary evidence.
- (ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available. (Annexure II in the application)

Note:

The Certifier veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganization of States and their area of operation must be the same.

- (d) LOSS OF PROPERTY JOB ETC.

Orders of confiscation and sale of property orders of dismissal or removal from service.”

As stated earlier, the appellant laid his claim only on the ground that he had remained underground for more than four years and from the aforesaid provision, it can be seen that there are two modes of providing the evidence for the same. The first one is by producing documentary evidence and the second where the official records are not forthcoming due to their non-availability, the claim is to be proved by certificates from the veteran freedom fighters who have themselves undergone imprisonment for five years or more. In the case of the appellant, he asserted that the official records are not traceable due to non-

availability and submitted a certificate from one Shri Jagdish Singh who was a veteran freedom fighter. Learned counsel for the appellant also brought to our notice the recommendation dated 09.04.1997 of the Government of Bihar recommending the case of the appellant for payment of freedom fighters pension under the Scheme w.e.f. 01.08.1980.

6) It is true that based on the particulars furnished by the appellant, the State Screening Committee, Bihar recommended the case of the appellant for payment of pension under the Central Scheme. However, the Central Government in the absence of any authenticated records particularly the details about “underground suffering” for a minimum period of six months and finding that the certificate issued by Shri Jagdish Singh is not sufficient rejected the claim of the appellant.

7) In the light of the controversy particularly, the claim of the appellant and the stand taken by the Government of India, we have carefully gone through the eligibility

provisions as well as relevant criteria to prove the claim under the Scheme. In his application dated 07.03.1981, the appellant had merely indicated that he remained underground from 1942 to 1946. As rightly pointed out by the respondent, he did not indicate the details of the case in which he had gone underground. Though the appellant has placed record of proceedings which show that the relevant records were not available with them, the fact remains the said Non-availability of Records Certificate (NARC) did not indicate the date of disposal of the case as well as the relevant provisions of the Indian Penal Code. In such circumstances, as rightly pointed out by the respondent, it is not clear whether the said case, if any, was related to freedom struggle and what was the duration of the claimed suffering of the appellant. Though the appellant had given an opportunity to furnish the name of co-accused in the same case, who are presently getting pension on the basis of GR NO. 985/1942, the appellant was unable to furnish such details.

8) Insofar as the Personal Knowledge Certificate (PKC) of Shri Jagdish Singh, it is the stand of the Government of India that the same is not acceptable as the certifier was in jail for most of the period of the claimed suffering of the appellant. In view of the same, it could not be possible for the certifier to verify the period as well as the reasons of the claimed suffering of the appellant based on his (Jagdish Singh) personal knowledge.

9) Though the State Advisory Committee and the Government of Bihar recommended the case of the appellant for Central Scheme, it is pointed out by the learned counsel for the respondent that the same is not binding on the Central Government in the absence of required proof for the same. In other words, the recommendation of the State Government is not final or conclusive and it is for the authority of the Central Government granting such pension to make further

inquiry in the matter in terms of various conditions prescribed in the Scheme and to take a final decision.

10) In the light of the above discussion, we conclude that the appellant has failed to establish his claim for freedom fighter pension in terms of the Central Scheme, on the other hand, we are in agreement with the conclusion arrived at by the Division Bench of the High Court. Consequently, the appeal fails and the same is dismissed. No order as to costs.

.....J.
(P. SATHASIVAM)

.....J.
(R.M. LODHA)

NEW DELHI;
SEPTEMBER 27, 2010.