

CASE NO.:
Appeal (civil) 3019 of 2006

PETITIONER:
Union of India

RESPONDENT:
Shri Avtar Singh

DATE OF JUDGMENT: 18/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.
(Arising out of SLP (C) No. 5367 of 2006)

Leave granted.

The Union of India calls in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the Letters Patent Appeal filed by it. Learned Single Judge whose order was assailed before the Division Bench had held that the respondent was entitled to freedom fighters pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (in short 'scheme').

Background facts in a nutshell are as follows:-

The respondent claimed that he had participated in the freedom struggle of the country and had suffered imprisonment and was, therefore, entitled to pension under the scheme. Earlier there was a Freedom Fighter's Pension Scheme, 1972 (hereinafter referred to as the '1972 scheme'). The later Scheme was introduced in 1980. Though initially pension was granted to the respondent, by order dated 18.12.2000, it was indicated on inquiry that the respondent had indicated two different versions while claiming pension under the Scheme. In the application accompanied by an affidavit filed before the State of Punjab, the period of imprisonment was indicated to be 20.10.1942 to 20.10.1943. But a different period i.e. 20.10.1942 to 15.8.1943 was indicated in the application and the affidavit filed before the Union. It was also noted that the respondent had accepted the above position to be correct, but attributed the same to his illiteracy. The pension sanctioned to him was cancelled and he was directed to refund the amount which had already been paid to him. A writ petition was filed before the Punjab and Haryana High Court. It was initially dismissed. The matter was carried before this Court in Civil Appeal No.8388 of 2001. Since the High Court's order was practically unreasoned, this Court directed the High Court to hear the matter afresh and dispose of the same by a reasoned order. The matter was heard afresh. The High Court noted the submissions of the present appellant that one of the persons who had certified the imprisonment of the respondent as a co-prisoner was black-listed. He had issued certificates to a large number of persons. Though the High Court accepted that there was difference in the dates indicated in the two affidavits, it was held to be inconsequential. Accordingly, direction was given for grant of pension. The matter was carried in appeal by a

Letters Patent Appeal, which as noted above, was dismissed.

In support of the appeal, learned counsel for the appellant submitted that the application filed by the respondent was incomplete. The requirement in law is that jail certificate is to be filed. In the instant case no such certificate was filed and on the contrary certificate from a person whose credentials were doubtful was filed. The jail certificate in support of jail suffering has to be based on official records of the jail. In case jail certificate is not available, a certificate called Non-Availability of Records Certificate (shortly known as NARC) from the concerned authorities has to be filed. Only if such certificate is filed the Co-prisoners Certificate from two co-prisoners of the enumerated category can be considered. Though the High Court relied on *Gurdial Singh vs. Union of India and Ors.* (2001(8) SCC 8) to hold that the strict rules of evidence are not to be applied in such cases, the true parameters to be adopted have been indicated in *W.B. Freedom Fighters' Organisation v. Union of India and Ors.* (2004 (7) SCC 716). Since the authorities on consideration of the material on record held that the respondent was not entitled to pension, the High Court should not have interfered in a writ petition, more particularly, when disputed questions of fact are involved.

Learned counsel for the respondent in response submitted that the requirement in law is imprisonment for six months. If facts stated in either of the certificates are taken into account, the period indicated is more than six months. A person who is practically illiterate and is of advanced age cannot be expected to remember all the details. The High Court has taken note of these facts and, therefore, no interference is called for.

The object of the scheme was highlighted by this Court in *Mukundlal Bhandari v. Union of India and Ors.* (AIR 1993 SC 2127). The same reads as follows:

"The object was to honour and where it was necessary also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated..."

Again in *Gurdial Singh's* case (supra), this Court observed:

"It should not be forgotten that the persons intended to be covered by the scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by

them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme...."

We are in respectful agreement with the view expressed in Mukundlal's and Gurdial Singh's cases (supra). The genuine freedom fighters deserve to be treated with reverence, respect and honour. But at the same time it cannot be lost sight of that people who had no role to play in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in the case of the freedom fighters, most of whom in the normal course are septuagenarians and octogenarians.

These aspects were highlighted in Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors. (2005 (7) SCC 605)

In W.B. Freedom Fighters' Organisation's case (supra), it was inter alia observed as follows:

"2. The Government of India had announced a scheme known as the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter called "the Scheme") under which freedom fighters were to receive pension as mentioned in the Scheme. Any person who had suffered a minimum imprisonment of six months in the mainland jails before independence or in the case of SC/ST freedom fighter who had suffered minimum imprisonment for three months is eligible to receive the pension. The manner of proving claims is as follows:

"The applicants should furnish the documents indicated below whichever is applicable in order to prove his claimed sufferings for grant of pension under the Scheme:

(A) Imprisonment/detention:

Certificate from the jail authority, District Magistrate or the State Government concerned, indicating period of sentence awarded, date of admission, date of release and reasons for release, a non-availability of records certificate (NARC) from the authorities concerned along with co-prisoners' certificates (CPC) as under:

(i) Two co-prisoners' certificates from the freedom fighter pensioners who had a proven jail suffering of one year

Or

(ii) One co-prisoner's certificate from a sitting MP or MLA or from an ex-MP or an ex-MLA specifying

his jail period and that of the applicant (Annexure I in the application form).

(B) Documentary evidence by way of court's/government's orders proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention. In the absence of such certificates from official records, a non-availability of records certificate from the authorities concerned along with a certificate from a prominent freedom fighter who had undergone imprisonment for a period of at least two years or more."

Thus, it is to be seen that the applicant has to furnish a certificate from the jail authority, District Magistrate or the State authorities indicating the period of sentence awarded, date of admission, date of release and reasons for release and in the absence of such a certificate a non-availability of records certificate (NARC) along with a co-prisoners' certificate (CPC), namely, two certificates from freedom fighters who had a proven jail suffering for one year or one certificate from a sitting MP or MLA or an ex-MP or ex-MLA. In case of persons having gone underground documentary evidence by way of proclamation of the applicant as an offender, announcing an award for his arrest or an order of detention. In the absence of official record a certificate from a prominent freedom fighter, who had undergone imprisonment for a period of at least two years, was to be given.

17. Having heard the parties, even presuming that the petition was in effect for payment of pension, we find that it is not possible for this Court to interfere as the Committee has come to a conclusion on the basis of available material. The decision of the Committee cannot be said to be perverse or one which no reasonable person could arrive at. We, therefore, see no reason to interfere."

Above being the position, the High Court was not justified in granting relief to the respondent-writ petitioner. One of the basic requirements was a certificate to the effect that the jail records were not available unless jail certificate was filed. That, as noted above, was not the case here. On that score the application was defective.

We, therefore, allow the appeal, set aside the order passed by the learned Single Judge and the Division Bench. However, the pension which has already been paid to the respondent shall not be recovered. It is made clear that if the respondent files requisite authentic documents and files a fresh application, the same shall be duly considered, uninfluenced by the findings recorded in this case on the factual scenario involved. No costs.