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**(2010) 01 P&H CK 0073**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Smt. Kaushalya Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Jan. 19, 2010

**Citation:** (2010) 158 PLR 441

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

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### **Judgement**

K. Kannan, J.

The case presents a poignant situation of the insensitivity of the State authorities in not responding to the wailing pleas of a widow of a freedom fighter under Swatantarta Sainik Samman Pension Scheme, 1980. The claim of the petitioner is that her husband had joined the Indian National Army and had suffered 3 years incarceration. He had been a Tamarpatra awardee and in the list maintained by the administration in the district of Hoshiarpur, the petitioner's husband has been referred to as having been involved for freedom struggle and associated with the Indian National Army and imprisoned for a term of 3 years. The petitioner after having made several representations, has approached this Court already by means of a writ petition which directed fresh representations to be given and beyond various representations, the petitioner has not been able to secure any better assistance than affidavits of co-prisoners: one, given by a person, who was an ex-Lieutenant, Diwan Chand, who has certified that the petitioner's husband served along with him in the Indian National Army and was imprisoned. Another person, Hans Raj has given a similar certificate, who has affirmed that he had taken a prominent part in the national freedom struggle and the petitioner's husband also suffered imprisonment in jail between the period commencing from 15.02.1942 to 1945.

2. The scheme requires the production of primary evidence such as the jail records showing the imprisonment and in case where it is not available, to produce an

affidavit of a co-prisoner to vouch for detention in prison. For participation in INA, the proof must be through a certificate of one co-prisoner. In this case, it is not one, but two persons have given such certificates. Along with this, the requirement in the scheme is that the State Government shall make enquiry and must make a recommendation as per the provisions of the scheme. The scheme itself provides that the verification and recommendatory report of the State Government are mandatory. When a person claims that he or her husband was a detainee, having taking part in the freedom struggle and that the requisite proof was not available for that person, it shall be the duty of the State to make appropriate enquiries and make the due recommendations. If the State Government were also to join issues by merely expressing its helplessness that it was unable to find out any record, the very purpose of the scheme will be lost. Unfortunately, for the petitioner that is the attitude which is exhibited by the Deputy Commissioner to a plea by the petitioner for giving details of the imprisonment. The statement given by the Deputy Commissioner, Hoshiarpur, is far from satisfactory. The Deputy Commissioner says that there was no documentary proof found and as regards the genuineness of the claim that the petitioner's husband was a freedom fighter, he had examined the son of the petitioner and said that he had no record other than the Tamarpatra presented to his father on 15.08.1972 by the then Prime Minister of India. The scheme requires something more. The State Government is bound to make enquiry if records are not available, it must include communication with the prison authorities where a particular person was reported to have been imprisoned and make a genuine attempt to find whether records are available or not. A Deputy Commissioner cannot look just old files around his office, and report that there are no records. The reply of the Deputy Commissioner shows his lackadaisical approach to the whole situation of how the pleas for pension must be attended to with the sensitivity that the case demands. The letter addressed to the Union Government was an expression of helplessness by a State authority and it could hardly be seen as a letter of recommendation. When the writ petition is filed by the petitioner, we find the statement from the State authorities expressing that they have recommended the case of the petitioner. I am unable to fathom how a letter of helplessness expressed becomes a letter of recommendation.

3. The Union has good enough reasons not to consider the claim of the petitioner because they are guided by the terms of the scheme and the terms are not fulfilled. In either ways, there is utter lack of sensitive approach to a claim by a person for what is legitimately due. If, under the normal industrial jurisprudence, we see pension as a deferred wage, we must see the pension granted to freedom fighters is in some way a public expression of gratitude to persons who shed their blood and life for our country.

4. I cannot still breach the terms of the scheme and give a direction by way of mandamus. I only direct that the State Government to make an appropriate effort to collect the material regarding the imprisonment and if it is still unable to do, to

make local enquiries to ascertain themselves about the claims made by the petitioner regarding the freedom fighter's status and the imprisonment that she claims that her husband suffered and make an appropriate recommendation, if the case deserves, immediately to the Central Government, for it to act in that regard. The entire exercise by the State Government shall be done without any further more effort of the petitioner and it shall be concluded within a period of 4 weeks from the date of the receipt of the copy of the order and it shall in turn communicate to the appropriate authorities of the Central Government with copies marked to the petitioner. The petitioner will be required to make no further petitions and the Union shall take a decision within a further period of 4 weeks from the date of the receipt of the communication from the State Government. The whole process shall be completed within a period of 8 weeks. The writ petition is ordered on the above terms and the petitioner will be at liberty to approach this Court afresh if there has been any delay occasioned in the conduct of the enquiry and the certification that becomes necessary under the scheme.

5. A copy of the order be given to the parties dasti on payment of usual charges.