

(2011) 08 PAT CK 0132

Patna High Court

Case No: LPA No. 940 of 2011 in CWJC No. 1880 of 2010

Navin Kumar and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision: Aug. 10, 2011**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (2012) 4 PLJR 18**Hon'ble Judges:** R.M. Doshit, C.J; Birendra Pd. Verma, J**Bench:** Division Bench

Advocate: Behzad Akhhtar, for the Appellant; Mithilesh Kumar Rai, Gopesh Kumar for the Respondent Nos. 1, 2 and 3, M/s Avnish Nandan Sinha, Jay Prakash Sharma for the Respondent Nos. 4, 5, 6, 7 and 8, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Feeling aggrieved by the judgment and order dated 8th April, 2011 passed by the learned Single Judge in above CWJC No. 1880 of 2010 the writ petitioners have preferred the present Appeal under Clause 10 of the Letters Patent. The appellants are the children of one Kishori Lall. The said Kishori Lall claimed that he had participated in 1942 Quit India Movement and had suffered incarceration for three months. He, therefore, claimed Freedom Fighters" Samman Pension. His claim was not accepted. The said Kishori Lall passed away in 1994. His wife Shanti Devi passed away in 2007. After passing away of the said Kishori Lall, his wife Shanti Devi and the present appellants approached this Court under Article 226 of the Constitution in CWJC No. 9440 of 2001. According to the appellants the said Kishori Lall was a Freedom Fighter and had actively participated in 1942 Quit India Movement. He was, therefore, entitled to Freedom Fighters" Pension. The said writ petition was disposed of on 10th September, 2001. This Court (Coram: Mr. Nagendra Rai, J.) held

that the application made by the said Kishori Lall was not rejected. The Court directed the respondent Central Government to decide the matter within six weeks from the date of the receipt of the relevant materials from the State Government. After considering the relevant materials the application made by the said Shanti Devi came to be rejected under communication dated 2nd April, 2002.

2. Feeling aggrieved the present appellants filed CWJC No. 5760 of 2003 under Article 226 of the Constitution. By order dated 2nd February, 2009, this Court (Coram: Justice Mihir Kumar Jha) allowed the said writ petition. The court held that Freedom Fighters' Pension could not have been cancelled or refused merely on the ground that the deceased Kishori Lall was at the relevant time 12 years of the age. The learned Judge, therefore, directed the Central Government to consider the matter afresh. The claim was once again rejected under order dated 23rd September, 2009. Once again the appellants approached this Court in above CWJC No. 1880 of 2010. The learned Single Judge has rejected the writ petition. Therefore, the present Appeal.

3. Learned Advocate Mr. Behzad Akhhtar has appeared for the appellants. He has vehemently argued that the minority of the deceased cannot be the reason for rejecting the claim of Freedom Fighters' Pension. He has further submitted that the appellants being the heirs and legal representatives of the deceased freedom fighter are entitled to the arrears of pension payable to the deceased freedom fighter. He has also submitted that at the relevant time there was no age bar for claim for Freedom Fighters' Pension. The age bar cannot apply to the case of late Kishori Lall.

4. We have perused the records. The application for freedom fighter pension made by the deceased Kishori Lall has been rejected by the Government of India for the reasons:--

(i) The claimed undertrial and subsequent jail suffering has not been verified by the State Government and in the absence of verification, the one certificate of under trial prisoner for three months and 13 days cannot be accepted.

(ii) Government has taken the view that participation of the applicant in freedom movement at a tender age of 11-12 years is inconceivable.

(iii) The pension cannot be sanctioned merely on the basis of C P Cs (Co-Prisoner's Certificate). Even these have to be verified by the State Government. But these are valid only alongwith NARC (No Available Record) submitted by the State Government indicating that after due enquiry, relevant records to prove the claimed suffering are not available. The due procedure has not been followed in the present case.

5. We see no illegality in the impugned order dated 23rd September, 2009 made by the Government of India. We agree with the learned Single Judge. The appellants are not entitled to the reliefs prayed for. The Appeal is dismissed in limine.