

Civil Appeal
Present:
The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Prasenjit Mandal
Judgment on: 30th April, 2010.
M.A.T. No. 1167 of 2009
With
C.A.N. 9924 of 2009
Union of India & Anr.
Versus
Sri Prahlad Kumar Roy & Ors.

Points:

FREEDOM FIGHTERS' PENSION –A person who remained absconding for sixteen months - whether entitled to Freedom Fighters' Pension-Swatantrata Sainik Samman Pension Scheme, 1980.

Facts:

The writ-petitioner applied for pension under the SSS Scheme on July 20, 1981 on the allegation that for participating in the freedom movement of our country, he had to go underground from October, 1942 to February, 1944 and in support of such claim he submitted a personal knowledge-certificate from Sri Sushil Kumar Dhara who certified that the writ-petitioner remained underground for a period from October, 1942 to February, 1944 as he was a proclaimed offender.

The State Government recommended the case of the writ-petitioner by its letter dated 19th December, 1984 on the basis of the aforesaid certificate granted by Shri Dhara presuming that the official records of the relevant time were not available by relying upon the general certificate given by the District Magistrate, Midnapore about the non-availability of the records relating to issue of warrant etc.

The Government of India by letter dated 28th July, 1986 conveyed to the writ-petitioner that his case for grant of pension under the SSS Pension scheme not be considered due to his failure to produce the evidence in

support of his suffering as per requirements of the Scheme and sufferings alleged by the certifier was not found to be genuine.

The State Government in August, 1992 sent a copy of the letter from Intelligence Branch, West Bengal which indicated that their office was the repository of all the records relating to the persons who figured as security risk vulnerable to the Government and in the month of November, 1993, it forwarded a report of the District Magistrate, Midnapore to the Ministry which stated that the earlier certificates were issued on the basis of non-availability of warrant register. He had further confirmed that there were other records where detailed of the persons who had taken part in the freedom struggle had been ascertained and the most important document was the Village Crime Note Book which contained the permanent records those were available in the police station from 1930 to 1946.

Being aggrieved by the refusal to grant pension under the SSS Scheme by the

Government of India, the writ-petitioner, in the past, filed another writ application being C.O. No.6135 (W) of 1994 before a learned Single Judge of

this Court and His Lordship was pleased to dispose of the said application on 4th September, 1995 with a direction upon the Central Government to consider the case afresh within 3 months from the date of receipt of the order pursuant to the recommendation of the State Government.

Subsequently, the Central Government examined the case and found that the writ-petitioner was ineligible for grant of pension under the SSS Scheme for the following reasons:

- i) The case of the writ-petitioner was recommended earlier by the State Government on the basis of personal knowledge certificate produced by the writ-petitioner from Sri Dhara but in the absence of non-availability of record certificate from the State Government the case of the writ-petitioner should not be considered under the provision of the Scheme for grant of pension.
- ii) The official records are available and the writ-petitioner has not been able to produce any evidence from such records in support of claim of suffering from abscondence.
- iii) The Ministry requested by a letter dated 6th November, 1995 to the State Government to send a copy of the warrant of arrest, if any, issued against the writ-petitioner or in its absence a non-availability of record certificate.

Held:

If a person comes forward with an absurd case supported by an evasive certificate not in conformity with the SSS Scheme authorizing the grant of pension and such defect in the application or the certificate escaped the notice of the Government at the earlier stage, the applicant cannot take advantage of the mistake of the Government by raising the pleas of estoppel by earlier erroneous decision or the principle of *res judicata*. Para 13

The assertion of the writ-petitioner that for involvement in the Freedom movement he remained underground and he cased to remain in underground from March, 1944 but was never arrested is an absurd story unless he was mistakenly involved in the criminal case or he was pardoned after acceptance of his apology. The averments of the writ-petitioner in the application for pension itself make him ineligible for the grant of pension as he never asserted that he was one on whom an award for arrest/head was announced or upon him any detention order was issued but not served.

Para 19

In the certificate although the writ-petitioner has been described as a proclaimed offender, yet, the certifier deleted the two clauses in the printed certificate that he was one on whom an award of arrest was announced or one for whose detention orders were issued but he evaded arrest. Moreover, the certifier was not prepared to vouch for the writ-petitioner as true to his knowledge that he did not secure reprieve by tendering any apology and such assertion “to the best of his knowledge and belief” is in the eye of law no certificate in support of such fact. A certificate is the testimony given in writing to declare or verify the truth of something. Such element is, thus, absent in respect of the above statements mentioned in the certificate.

Para 22

Cases cited:

Union of India and another
vs. Sm. Suvadra Bala Paul reported in 2006 CWN 805.

Smt. Gayatri Adhikari vs. Union of India & Ors. in C.O. No.19105(W) of
1992;

Gokul Chandra Panja vs. Union of India & Ors. reported in CLT 1999(1)
HC
241;

Union of India & Ors. vs. Gokul Chandra Panja in M.A.T. No.1604 of 1999;
Sakti Bala Samanta vs. Union of India & Ors. reported in 2000(1) CLJ 572;
Sakti Bala Samanta vs. Union of India & Ors. in F.M.A.T. No.2066 of 2000;
Sachinandan Maity vs. Union of India & Ors. in W.P. No.10996(W) of
1998;

Mukund Lal Bhandari vs. Union of India & Ors. reported in AIR 1993 SC
2127;

Gurdial Singh vs. Union of India & Ors. reported in 2001(7) Supreme 216;
Sudhangshu Maity vs. Union of India & Ors. in W.P. No.11583(W) of 1998;
Union of India & Ors. vs. Sudhangshu Maity reported in 2009(1) CLJ (Cal)
922;

Indu Bhusan Jana vs. Union of India & Ors. reported in 2009 (1) CHN 27;
Union of India & Ors. vs. Satish Chandra Maity & Anr. in F.M.A. No.1181
of 2007;

Sudhansu Bhusan Dutt vs. Union of India & Ors. in W.P. No.15298(W) of
2000.

For the Union of India/Appellants: Mr. Farook M. Razack,
(Addl. Solicitor General)

Mrs. Chandrima Bhattacharya,

Mr. Bhaskar Vaisya,

Ms. Priyanka Bhutoria.

For the Writ-Petitioners/Respondents: Mr. Jayanta Mitra,

Mr. Prasanta Mukherjee,

Mr. Milan Kumar Maity,

Mr. Basudeb Bag,

Mr. Ramdulal Manna.

For the State-Respondents: Sk. Oli Mohammad,

Mr. Subrata Mukherjee.

The Court:

This Mandamus-Appeal is at the instance of the Union of India and the Under Secretary, Government of India, Ministry of Home Affairs, Freedom Fighters' Division, and is directed against an order dated August 21, 2009 passed

by a learned Single Judge of this Court by which His Lordship disposed of the

writ-application filed by the respondents by setting aside the order dated 27th

May, 1996 passed by the appellant No.2 and directing him to grant freedomfighter's

pension to the writ-petitioner under the provisions of Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as the SSS Scheme) with

effect from the date of his application for obtaining pension *i.e.* 10th July, 1981

2) The learned Single Judge further directed that the arrears from the date of application should be paid within four weeks from the date of communication

of the said order with interest @ 10% per annum till the arrears are actually paid.

The learned Single Judge further awarded costs of Rs.10,000/- to be paid within

four weeks from the date of passing of the order in favour of the writ-petitioner.

3) Being dissatisfied, the appellants have come up with the present Mandamus-Appeal.

4) The facts giving rise to filing of the writ-application out of which the present Mandamus-Appeal arises may be summed up thus:

(a) The writ-petitioner applied for pension under the SSS Scheme on July 20,

1981 on the allegation that for participating in the freedom movement of our

country, he had to go underground from October, 1942 to February, 1944 and in support of such claim he submitted a personal knowledge-certificate from Sri Sushil Kumar Dhara who certified that the writ-petitioner remained

underground for a period from October, 1942 to February, 1944 as he was a proclaimed offender.

(b) The State Government recommended the case of the writ-petitioner by its letter dated 19th December, 1984 on the basis of the aforesaid certificate granted by Shri Dhara presuming that the official records of the relevant time

were not available by relying upon the general certificate given by the District

Magistrate, Midnapore about the non-availability of the records relating to issue of warrant etc.

(c) The Government of India by letter dated 28th July, 1986 conveyed to the writpetitioner

that his case for grant of pension under the SSS Pension scheme not be considered due to his failure to produce the evidence in support of his suffering as per requirements of the Scheme and sufferings alleged by the certifier was not found to be genuine.

(d) The State Government in August, 1992 sent a copy of the letter from Intelligence Branch, West Bengal which indicated that their office was the repository of all the records relating to the persons who figured as security risk vulnerable to the Government and in the month of November, 1993, it forwarded a report of the District Magistrate, Midnapore to the Ministry which

stated that the earlier certificates were issued on the basis of non-availability

of warrant register. He had further confirmed that there were other records where detailed of the persons who had taken part in the freedom struggle had been ascertained and the most important document was the Village Crime Note Book which contained the permanent records those were available in the

police station from 1930 to 1946.

(e) Being aggrieved by the refusal to grant pension under the SSS Scheme by the

Government of India, the writ-petitioner, in the past, filed another writ application

being C.O. No.6135 (W) of 1994 before a learned Single Judge of this Court and His Lordship was pleased to dispose of the said application on 4th September, 1995 with a direction upon the Central Government to consider the case afresh within 3 months from the date of receipt of the order pursuant to the recommendation of the State Government.

(f) Subsequently, the Central Government examined the case and found that the

writ-petitioner was ineligible for grant of pension under the SSS Scheme for the following reasons:

i) The case of the writ-petitioner was recommended earlier by the State Government on the basis of personal knowledge certificate produced by the writ-petitioner from Sri Dhara but in the absence of non-availability of record certificate from the State Government the case of the writ-petitioner should not be considered under the provision of the Scheme for grant of pension.

ii) The official records are available and the writ-petitioner has not been able to produce any evidence from such records in support of claim of suffering from abscondence.

iii) The Ministry requested by a letter dated 6th November, 1995 to the State Government to send a copy of the warrant of arrest, if any, issued against the writ-petitioner or in its absence a non-availability of record certificate. It also requested to send a report based on official records in the case at the earliest to enable the Ministry to comply with the direction.

iv) The Ministry by its speaking order dated 27th May, 1996 intimated the writ-petitioner that the Government of India was still ready to consider his case if he could produce evidence from official records in support of his claimed sufferings and a certificate from the State Government indicating that the record produced is genuine, that it related to him and that the suffering was in connection with the freedom struggle.

5) The writ-application was opposed by the Union of India by filing affidavitin-

opposition thereby denying the material allegations made in the writapplication

and contending that in the absence of materials showing involvement of the writ-petitioner in the freedom struggle and complying with the requirement

of grant of pension under the SSS Scheme on the ground of alleged suffering of

abscondence, the Union of India was unable to grant such sanction.

6) As indicated earlier, the learned Single Judge by the order impugned herein has allowed the writ-application as mentioned earlier.

7) Mr. Razack, the learned Additional Solicitor General appearing on behalf

of the appellants, has made the following submissions:

8) The writ-petitioner in his application having admitted that he never suffered any imprisonment and at the same time, there being no allegation of issue of any warrant of arrest or detention order upon him, plea that he was a proclaimed offender is an absurd plea. Moreover, the writ-petitioner himself having admitted that he was not absconding any further from March 1944, a duty is cast upon him to explain the reason for not absconding any further from the month of March, 1944 and such allegation is plausible only if the warrant of arrest allegedly issued against him ceased to have any effect and that is possible if the government earlier mistakenly involved him in a criminal case and ultimately absolved him as he was wrongly implicated. It may also be possible if due to apology tendered by him, he was given reprieve. In either of the cases, the writ-petitioner is not entitled to get Pension. Moreover, the certificate itself indicated that the certifier did not take the responsibility of asserting that the writ-petitioner did not tender any apology by vaguely certified that “to the best of the knowledge and belief” of the certifier the writ-petitioner did not tender any apology. In the absence of statement that such fact was “true to his knowledge”, the certificate did not conform to the requirement of the scheme.

9) In support of his contention, Mr. Razack placed strong reliance upon a Division Bench decision of this Court in the case of Union of India and another vs. Sm. Suvadra Bala Paul reported in 2006 CWN 805.

10) Mr. Jayanta Mitra, the learned senior advocate appearing on behalf of the writ-petitioner/respondent, has, on the other hand, opposed the aforesaid contention of Mr. Razack and has contended that in view of the certificate granted by Sri Sushil Kumar Dhara certifying that the writ-petitioner suffered absence for more than 6 (six) months and that he was a proclaimed

offender, the Union of India was bound to grant pension under the SSS Scheme.

In support of such contention Mr. Mitra has relied upon the following decisions:

1. Smt. Gayatri Adhikari vs. Union of India & Ors. in C.O. No.19105(W) of 1992;
2. Gokul Chandra Panja vs. Union of India & Ors. reported in CLT 1999(1) HC 241;
3. Union of India & Ors. vs. Gokul Chandra Panja in M.A.T. No.1604 of 1999;
4. Sakti Bala Samanta vs. Union of India & Ors. reported in 2000(1) CLJ 572;
5. Sakti Bala Samanta vs. Union of India & Ors. in F.M.A.T. No.2066 of 2000;
6. Sachinandan Maity vs. Union of India & Ors. in W.P. No.10996(W) of 1998;
7. Mukund Lal Bhandari vs. Union of India & Ors. reported in AIR 1993 SC 2127;
8. Gurdial Singh vs. Union of India & Ors. reported in 2001(7) Supreme 216;
9. Sudhangshu Maity vs. Union of India & Ors. in W.P. No.11583(W) of 1998;
- 8
10. Union of India & Ors. vs. Sudhangshu Maity reported in 2009(1) CLJ (Cal) 922;
11. Indu Bhusan Jana vs. Union of India & Ors. reported in 2009 (1) CHN 27;
12. Union of India & Ors. vs. Satish Chandra Maity & Anr. in F.M.A. No.1181 of 2007;
13. Sudhansu Bhusan Dutt vs. Union of India & Ors. in W.P. No.15298(W) of 2000.

11) Therefore, the question that falls for determination in this appeal is whether the learned Single Judge was justified in passing the direction for payment of pension under the SSS Scheme in the facts of the present case.

12) In our opinion, in a case of this nature, even after passing of an order sanctioning pension, if it is detected that the previous decision was erroneous for the fraud practised by the applicant or that the claim of the applicant was an inherently impossible one or that the previous decision was taken by the appropriate authority overlooking any of the essential requirements of the SSS Scheme, the Government is entitled to revoke the pension granted earlier through mistake. If there was genuine error on the part of the Government, an applicant cannot take advantage of the fault of the Government and insist on continuance of misuse of public money simply because a mistake was committed by the Government in the past.

13) In our view, if a person comes forward with an absurd case supported by an evasive certificate not in conformity with the SSS Scheme authorising the grant of pension and such defect in the application or the certificate escaped the notice of the Government at the earlier stage, the applicant cannot take advantage of the mistake of the Government by raising the plea of estoppel by earlier erroneous decision or the principle of *res judicata*. An applicant for the freedom-fighter's pension should at all material times be answerable to any legitimate query of the Government justifying his claim, if occasion so arises.

14) The underground suffering for a period of six months which is recognised as a ground for grant of the pension provides that the person should have gone underground only after he was wanted by the police for his activities relating to National Freedom Struggle. In other words, as the SSS Scheme specifically provides, the freedom-fighter should either be a proclaimed offender or a person on whom an award for arrest/head was announced or on whom detention order

was issued but was not served; but voluntary abscondence for the causes other than the ones 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 liberalised pension scheme, however, provides that with effect from August 1, 1980, in the absence of official records because of their non-availability, the certificate issued by a certifier who had undergone a minimum imprisonment for two years in connection with the National Freedom Struggle may be accepted as a proof of the fact of abscondence for the purpose of the said scheme.

15) Therefore, 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 averment made in the application itself, the claim of the applicant may be shown to be apparently an absurd claim and in such cases, those applications deserve outright rejection notwithstanding the fact that those are supported by the certificates of co-freedom-fighters.

16) In the case before us, the writ-petitioner stated in his application that he remained absconding for sixteen months from October, 1942 to February, 1944 as a proclaimed offender certified by Shri Sushil Kumar Dhara, Ex M.P., who had suffered over 5 years actual imprisonment.

17) A person is declared as a proclaimed offender by a Court in accordance with the provisions contained in the Code of Criminal Procedure and is preceded

by issue of a warrant and is consequent to abscondence or concealment of such person with an intention that such warrant cannot be executed. Such proclamation continues so long such person is not arrested. Such proclamation may, however, cease to have any effect if the criminal case in which such warrant was issued is ultimately dropped in the absence of any material against such person or reprieve is given to such person after acceptance of apology.

18) Thus, the writ-petitioner himself having admitted in his application that he did not abscond any further from March, 1944 nor was he ever arrested, even if we accept such case to be true for the sake of argument, the only conclusion that emerges out is that from March, 1944 there was neither any warrant nor any valid order of proclamation against him as the said case was dropped either because he was wrongly impleaded or due to tender of apology by the petitioner, he was given reprieve. In either of the circumstances, the applicant was not entitled to get the pension. If the abscondence continued till August 15, 1947, the petitioner could successfully contend that due to independence of the country, the case was not proceeded with after August 15, 1947. In the application, the writ-petitioner, however, did not claim that any criminal case was ever started against him for being involved in the freedom struggle nor did he assert that he was ever convicted.

19) Thus, the assertion of the writ-petitioner that for involvement in the Freedom movement he remained underground and he ceased to remain in underground from March, 1944 but was never arrested is an absurd story unless he was mistakenly involved in the criminal case or he was pardoned after acceptance of his apology. The averments of the writ-petitioner in the application for pension itself make him ineligible for the grant of pension as he never

asserted that he was one on whom an award for arrest/head was announced or upon him any detention order was issued but not served.

20) The next question is whether the application of the writ-petitioner was accompanied by a valid certificate given by a co-freedom-fighter in accordance with the SSS Scheme.

21) In the instance case, the certificate has been given by Shri Sushil Kumar Dhara whose eligibility to grant of certificate has not been disputed. The certificate runs as follows in a printed form:

“I hereby certify that Shri Prahlad Chandra Roy son of late Sashi Bhusan Roy resident of vill. Rajarampur, P.S. Mahishadal District- Midnapore, (West

Bengal) is a bonafide freedom fighter who-

a) remained underground for sixteen months from October 1942 to February, 1944 and he was:-

i) a proclaimed offender;

(Thereafter the two printed clauses viz. one on whom an award of arrest was announced and one for whose detention orders were issued but he evaded arrest, were deleted by the certifier.)

on account of his participation in the “QUIT INDIA MOVEMENT” during the

freedom struggle. He used to keep contact with me during his and my absconding period in 1942 to 1944 as a worker of the then National Government styled as TAMRALIPTA JATIYA SARKAR and or soldier of its

National Miljta “BIDYUTBAHINI-O-BHAGINI SENA and used to take direction

from me from time to time regarding his underground activities for the said freedom struggle.

To the best of my knowledge and belief, he did not secure reprieve on account of any oral or written apology tendered by him. He also did not go underground voluntarily or from fear.

Due to some inconvenience he could not apply for the Freedom Fighters’ Pension till date and now he is applying for it. He should be granted the said SWATAANTRATA SAINIK SAMMAN PENSION and TAMRAPATRA.”

22) In the certificate although the writ-petitioner has been described as a

proclaimed offender, yet, the certifier deleted the two clauses in the printed certificate that he was one on whom an award of arrest was announced or one for whose detention orders were issued but he evaded arrest. Moreover, the certifier was not prepared to vouch for the writ-petitioner as true to his knowledge that he did not secure reprieve by tendering any apology and such assertion “to the best of his knowledge and belief” is in the eye of law no certificate in support of such fact. A certificate is the testimony given in writing to declare or verify the truth of something. Such element is, thus, absent in respect of the above statements mentioned in the certificate.

23) The mere fact that on account of his participation in the “QUIT INDIA MOVEMENT” during the freedom struggle, he used to keep contact with the certifier during his and the certifier’s absconding period in 1942 to 1944 as a worker of the then National Government styled as TAMRALIPTA JATIYA SARKAR and or soldier of its National Miljta “BIDYUTBAHINI-O-BHAGINI SENA and used to take direction from the certifier from time to time regarding his underground activities for the said freedom struggle is not a ground of grant of pension under the SSS Scheme unless due to his such activities as a consequence of issue of warrant of arrest in a criminal case or due to passing a detention order under a preventive detention law, he was absconding for more than six months.

24) We find from the Scheme itself that mere involvement in freedom struggle or in a criminal case relating to freedom struggle will not enable a person to get pension unless the conditions mentioned in the Scheme are satisfied. Even if a person is imprisoned for less than the required period mentioned in the Scheme

for freedom struggle, viz. six months for general category and three months for women and Scheduled Castes and Scheduled Tribes, he will not be entitled to get pension.

25) We, therefore, find that the applicant not having explained why from 1st March, 1944 he did not remain underground, it is apparent that his case is an absurd one unless he was involved in a wrong case and was acquitted or was given reprieve on tendering unconditional apology.

Now we propose to deal with the decisions cited by Mr. Mitra.

26) In the case of Smt. Gayatri Adhikari vs. Union of India & Ors. (C.O. No.19105 (W) of 1992 disposed of on 25th July, 1994), a learned Single Judge of this Court while considering a case of underground suffering held that under the

SSS Scheme there is no scope of challenging the certificate issued by the eligible

certifier particularly when the said certificate had been accepted by the State Advisory Committee. With great respect to the learned Single Judge, we are unable to accept such a proposition enunciated by His Lordship. We have already

pointed out that if it appears that the assertion of suffering of underground was

absurd or that the certificate was not in conformity with the law, the Union of

India has every right to reject such certificate even if accepted by the State Advisory Committee.

27) In the case of Gokul Chandra Panja vs. Union of India & Ors. reported in

1999(1) CLT (HC) 241, a learned Single Judge of this Court in the facts of that

case held that there was no record which would be held to be material on the question of the petitioner's political sufferings and in such circumstances, it was

the personal knowledge certificate alone which had to be accepted. In our opinion, the said decision cannot help the writ-petitioner in the present case where even on the basis of averment made in the application itself, an absurd

case of underground suffering had been made out which did not come within the purview of the SSS Scheme. Over and above, the certifier of the personal knowledge certificate did not take the responsibility of asserting that the petitioner did not apply for respite and such fact was based only on his belief. Therefore, the said decision is irrelevant for the purpose of point raised in this appeal.

28) In an appeal preferred against the order of Gokul Chandra Panja (supra), a Division Bench merely affirmed the order of the learned Single Judge by making the following observation:

“The Learned Single Judge, after elaborately dealing with the matter, had come to the conclusion that the petitioner was entitled to a pension in terms of the Government circular and accordingly, directed the Central Government to grant pension.

The learned Counsel for the petitioner-respondent submits that pension has already been released to his client.

In this view of the matter, we do not find any merit in his appeal and the application for stay and, consequently, both the appeal and the application for stay are dismissed”.

29) The aforesaid decision does not lay down any proposition of law on the question of grant of pension on the ground of underground suffering and, thus, the said decision does not help the respondent in anyway.

30) In the case of Sakti Bala Samanta vs. Union of India & Ors. reported in 2000(1) CLJ 572, one of us sitting singly (Bhattacharya, J.) took the same view

taken in this appeal in a similar fact of the case and a Division Bench of this Court on an appeal against such decision, dismissed the said appeal with the following observations:

“Ordinarily we could have allowed the writ application as the stands taken by the Central Government and the State ex facie appear to be not correct. But having regard to the admitted fact we are of the opinion that the learned trial Judge cannot be said to have erred in arriving at the aforementioned conclusion although we do not agree, with respect, with the learned Judge that there had been any suppression or commission of fraud on the part of the appellant’s husband and, thus, the decision of the Apex

Court in S.P. Caengal Varaya Naidu vs. Jagganath reported in 1994(I) SCC I would be applicable.”

31) Therefore, the except the finding of fraud arrived at in the case of Shakti Bala Samanta (supra), all other findings including the points decided by us in this appeal were approved by the said Division Bench and the ultimate conclusion that the writ-petitioner was not entitled to get Pension under the SSS Scheme was affirmed.

Therefore, the said decision does not help Mr. Mitra's client in anyway.

32) The case of Sachinandan Maity vs. Union of India & Ors. (W.P. No.10996

(W) of 1998 disposed of on 24th December, 2003) is based on facts of the said

case and no proposition of law, as such, was laid down. The learned Single Judge

by relying upon the decision of the Supreme Court in the case of Gurdial Singh

vs. Union of India reported in AIR 2001 SC 3883 held that the Union of India had

taken a technical vies of the matter in dealing with the case and as such, the writ-application should be allowed. The points involved in this appeal were not

raised in the said case nor was any observation made on those questions and, thus, the said decision cannot have any application to the facts of the present case.

33) In the case of Mukund Lal Bhandari vs. Union of India & Ors. reported in

AIR 1993 SC 2127, the Supreme Court held that there was no period of limitation

for lodging a claim for freedom-fighter's pension and that the benefit should be

given from the date of application not any date earlier. We do not for a moment

dispute the aforesaid proposition of law but unless the writ-petitioner is found to

be entitled to get the pension, the said case cannot have any application to the

fact of the present case.

34) In the case of Gurdial Singh vs. Union of India & Ors. (supra), the Supreme Court in dealing with the question of standard of proof required for getting a pension under the SSS Scheme held that the standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. According to the Supreme Court, as the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not technical approach is required to be applied while determining the merit of the case of the person seeking pension under the scheme. It was further pointed out that it should not be forgotten that the person intended to be covered by the scheme had suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. The Supreme Court further held that once the country had decided to honour such freedom fighters, the bureaucrats entrusted with the job of the examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. It was further held that the cases of the scheme under the scheme was required to be determined on the basis of probabilities and not on touchstone of the test of beyond reasonable doubt. In the said case, it was further held that on the basis of evidence it was probable that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

35) In the case before us, the writ-petitioner never asserted that at any point of time any warrant of arrest was ever issued in connection with any criminal case for involvement in the freedom struggle and the certificate that was

produced was not really a certificate in the real sense of the term as the certifier did not assert that the writ-petitioner was ever involved in any criminal case for his attachment to freedom struggle nor did he certify that at any point of time any warrant of arrest was ever issued in connection with such criminal case and finally he did not take the responsibility of certifying that it was true to his knowledge that the writ-petitioner did not tender any apology.

36) Thus, the said decision cannot have any application to the fact of the present case.

37) In the case of Union of India & Ors. vs. Sudhangshu Maity reported in 2009(1) CLJ (Cal) 922, the attention of a Division Bench of this Court was drawn to the earlier decision of another Division Bench of this Court in the case of Union of India & Ors. vs. Smt. Suvadra Bala Paul & Ors. (supra) taking same view that we have taken in this appeal, but the Division Bench dealt with the said case by merely making the following observation in paragraph 7 of the judgment:

“Learned Counsel for the writ petitioner submitted that the aforesaid judgment of the learned Single Judge as well as the Division Bench were not brought to the notice of the Division Bench in Smt. Suvadra Bala Paul’s case (supra).”

38) The learned Single Judge’s judgment referred to was the case of Gokul Chandra Panja (supra) and in that decision, the point raised in this case or in the case of Smt. Suvadra Bala Paul (supra) were not at all raised and the Division Bench also independently did not deal with the points involved in the present case or in the earlier case of Smt. Suvadra Bala Paul. Thus, the said decision does not help Mr. Mitra in anyway.

39) In the case of Indu Bhusan Jana vs. Union of India & Ors. reported in

2009(1) CHN 27 before the Division Bench although Sakti Bala Samanta's case was referred to, yet, the Division Bench did not pronounce anything on the merit of the said decision nor did Their Lordships deal with the point involved in this appeal. Therefore, the said decision cannot be put forward in support of the claim which we propose to turn down for the reason assigned by us.

40) In the case of The Secretary, Ministry of Home Affairs, Freedom Fighters' Division & Ors. vs. Satish Chandra Maity & Anr. (F.M.A. No.1181 of 2007 disposed of on August 22, 2007), before the Division Bench although the earlier decision of the Division Bench in the case of Union of India vs. Smt. Suvadra Bala Paul (supra) was referred to, Their Lordships did not deal with the said decision and in the facts of the said case was of the view that the Central Government was not entitled to recall their own decision on the basis of two-lines communication which was quoted in the said judgment. Therefore, the said Division Bench decision does not lay down any proposition of law contrary to the one taken by us.

41) Apart from the aforesaid decisions two other decisions, namely, in the case of Sudhansu Bhusan Dutta vs. Union of India & Ors. (W.P. No.15298 (W) of 2000 disposed of on 9th July, 2004) and Subal Chandra Maity vs. Union of India & Ors. (W.P. No.12041 of 1998 disposed of on 26th April, 2005) by two different learned Judges were placed but in those decisions also the points involved in the present appeal was never raised and the learned Judges disposed of the writapplications after being satisfied that those were fit cases for grant of pension. Therefore, those decisions do not help the writ-petitioner in anyway.

42) On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned Additional Solicitor General of India that the learned Single Judge erred in law in allowing the writ-application with costs by not following the earlier Division Bench decision of this Court in the case of Suvadra Bala Paul (supra) notwithstanding the fact that the conditions for grant of Pension under the SSS Scheme have not been satisfied.

43) We, therefore, set aside the order passed by the learned Single Judge and allow this appeal by dismissing the writ-application. In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.)

I agree.

(Prasenjit Mandal, J.)