

In the High Court of Judicature at Madras

Reserved Date: 27-10-2015

Pronounced Date: 30-10-2015

Coram:

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P. No.29669 of 2012 and
M.P.No.1 of 2012

A.Ebrahim

.. Petitioner.

Versus

1. The Union of India
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
 2. The Under Secretary to Government
of India, Ministry of Home Affairs,
FFR Division, New Delhi.
 3. The Director,
Government of India,
Ministry of Home Affairs,
(FFR) Division, 1st Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi-110 003.
- .. Respondents.

Prayer: Writ Petition is filed to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in the proceedings F.No.52/CC/7/2009-FF(INA) dated 9.6.2010, and quash the same and consequently direct the respondents to grant Freedom Fighter's Pension under Swantarata Sainik Samman Pension Scheme to the petitioner without insisting co-prisoner's certificate from freedom fighters who have proven the jail suffering of minimum 1 year with effect from the date of original application filed on 7.2.1983 with all attendant benefits such as Thamarapatra Railway, Bus Travel Concession, Medical Health benefits, etc.,

For petitioner : Mr.K.Raja

For respondents : Mr.K.Ravindranath, SCGSC

ORDER

Heard the learned counsel appearing for the petitioner, as well as the learned counsel appearing on behalf of the respondents.

2. This Writ Petition has been filed praying that this court may be pleased to issue a Writ of Certiorarified Mandamus to call for the records and quash the order of the third respondent, dated 9.6.2010, and to consequently direct the respondents to grant Freedom Fighter's Pension, under the Swantarata Sainik Samman Pension Scheme, 1980, to the petitioner, without insisting on the co-prisoners certificate, from freedom fighters, who have suffered a minimum of one year jail term.

3. The learned counsel appearing on behalf of the petitioner has stated that the petitioner is a Burma Repatriate. He was a civilian member in the Indian Independence League, Thinganyum, Rangoon, Burma. He had joined in the Indian Independence League, in the month of January, 1943. He had been rendering service, as an electrician, in the National Army Transit Camp, Caffor Road, Thinganyum, Rangoon, Burma. He was a freedom fighter and having participated in the Indian National Army, he was convicted to undergo imprisonment in Rangoon Central Jail, from the month of May, 1945 to December, 1945, along with P.A.Muthu Romasingh and R.Royar.

4. It has been further stated that the Government of Tamil Nadu had granted Freedom Fighter's Pension to the petitioner, vide Order No.13707, dated 19.5.2003. However, the petitioner had made an application to the Central Government for the grant of the Freedom Fighter's Pension. The second respondent had rejected his claim, by his order, dated 22.11.2007. The petitioner had challenged the said order, by way of a Writ Petition, in W.P.No.1610 of 2008. By an order, dated 10.11.2008, this Court had granted permission to the petitioner to submit a representation before the State Government, for making an appropriate recommendation to the Central Government, for relaxing the rules and for the grant of Swatantrate Sainik Samman Pension. The first respondent had also been directed to consider the case of the petitioner, sympathetically. Even though the Government of Tamil Nadu had recommended the case of the petitioner, for the grant of pension, vide letter, dated 26.12.2008, the second respondent had rejected the claim of the petitioner. Therefore, the petitioner had preferred a writ petition before this court, in W.P.No.3980 of 2009. The said Writ Petition had been dismissed, on 30.4.2010. The Writ Appeal preferred by the petitioner had also been dismissed, confirming the order passed in the Writ Petition. However, the third

respondent had taken up the issue, suo motto and had passed the impugned order, dated 9.6.2010, rejecting the case of the petitioner. In such circumstances, the petitioner had preferred the present Writ Petition, before this Court, under Article 226 of the Constitution of India.

5. The learned counsel appearing on behalf of the petitioner had further submitted that the impugned order passed by the third respondent is arbitrary and illegal. The certificates given by the co-prisoners, who had been imprisoned, along with the petitioner, during the freedom movement, had not been accepted for the reason that they had not served the sentence of imprisonment for a minimum period of one year. However, certain similarly placed persons had been granted the pension, even though they had not been imprisoned for a minimum period of one year. In spite of the fact that all the necessary records had been furnished by the petitioner, the third respondent had rejected the claim of the petitioner, without proper application of mind and without giving sufficient opportunity to the petitioner to substantiate his claims.

6. A counter affidavit had been filed on behalf of the respondents 1 to 3, denying the claims made by the petitioner in his affidavit filed in support of the Writ Petition. Mr. Ravindranath, the learned counsel appearing on behalf of the respondents had submitted that the earlier Writ Petitions filed by the petitioner, in W.P.Nos.1610 of 2008 and 3980 of 2009, making similar claims, had been dismissed by this court and the appeal filed by the petitioner, in W.A.No.1377 of 2010, had also been dismissed, confirming the order passed by the learned single Judge, in W.P.No.3980 of 2009. While so, it is not open to the petitioner to prefer the present Writ Petition, before this Court once again, making similar claims. As such, the present Writ Petition is not maintainable.

7. The learned counsel had further submitted that the petitioner had not furnished the necessary documents for considering his claim for Swatantrate Sainik Samman Pension. He had further submitted that an applicant making a claim for the grant of Swatantrate Sainik Samman Pension ought to have suffered a minimum imprisonment of six months on account of his participation in the freedom struggle, subject to his furnishing of primary evidence, by way of imprisonment or detention certificate, from the concerned jail authority, District Magistrate or the State Government, indicating the period of sentence awarded, date of admission, date of release and other relevant facts. In cases where the relevant records are not available secondary evidence in the form of two co-prisoners' certificates ought to be obtained from freedom fighters, who had proven jail suffering of minimum one year. However, the petitioner has not produced the necessary certificates from the

co-prisoners, who had suffered jail term, for a minimum period of one year.

8. The learned counsel had further submitted that on examination of the claim of the petitioner it was found that the recommendations of the State Government were not supported by verification of reports or records. The co-prisoners certificates produced by the petitioner were not valid. No primary evidence had been submitted, in respect of the claims made by the petitioner, with regard to his suffering the jail term. Therefore, the petitioner was not eligible to get the pension under the Swatantrate Sainik Samman Pension Scheme, 1980.

9. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, it is noted that the petitioner, who is said to be a freedom fighter, has not been in a position to show that he had produced all the necessary records to substantiate his claim, for the grant of pension, under the Swatantrate Sainik Samman Pension Scheme, 1980. It is further noted that the petitioner had not produced the two certificates from the co-prisoners, who had served the jail term, for a minimum period of one year, as required for the grant of pension under the said Scheme. It is also noted that the petitioner had filed two Writ Petitions, before this Court, in W.P.Nos.1610 of 2008 and 3980 of 2009, making similar claims. The said Writ Petitions had been dismissed by this Court. The Writ Appeal filed by the petitioner, in W.A.No.1377 of 2010, had also been dismissed. In such circumstances, this Court is of the considered view that the claims made by the petitioner, for the grant of pension, under the Swatantrate Sainik Samman Pension Scheme, 1980, cannot be accepted. As such, the present Writ Petition, filed by the petitioner, deserves to be dismissed, as it is devoid of merits. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

csh

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Union of India
Ministry of Home Affairs,
New Delhi.

2. The Under Secretary
to Government of India,
Ministry of Home Affairs,
FFR Division, New Delhi.

3. The Director,
Government of India,
Ministry of Home Affairs,
(FFR) Division, 1st Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi-110 003.

+ 1 cc to Mr.K.Raja, Advocate SR 59316

ad(co)
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