

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2016

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.31387 of 2014

***R.Murugamalai (Deceased)**

M. Balammal

W/o. Late R. Murugamalai

No.7 Justice Jambulingam Road

Mylapore, Chennai-600 004

: Petitioner

Vs.

Union of India,

Rep. by its Secretary to Government,

Ministry of Home Affairs, Grih Mantralaya,

FFR Division (SZ Section),

2nd Floor, NDCC II Parliament Street,

New Delhi-110 001.

: Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent vide his impugned letter No.52/CC/TN/ 39/2011-FF(SZ) dated 13.11.2014 and quash the same as highly illegal and unconstitutional and further direct the respondent herein to pay the Freedom Fighters Pension as per the Swatanthra Sainik Samman Pension Scheme with the arrears from 01.11.1986 with immediate effect.

For Petitioner

: Ms.Karthikaa Ashok

For Respondents

: Mr.V.T.Balaji CGSPC for R1

ORDER

The writ petitioner, being a freedom fighter, continued to fight till his last, though without getting the benefits due to him as he died during the pendency of this writ petition, at the ripe age of 93. The lis is being continued by his grieving wife, who is also stated to be aged about 85 years.

2. This is the third round of litigation between the parties. The fight for pension was started by the writ petitioner on 15.08.1981 by applying for pension under the Swatantrata Sainik Samman Pension Scheme, being a freedom fighter, who went underground during the freedom struggle. The application for pension was rejected on the ground of non availability of adequate documentary evidence. Thereafter, he gave another application on 31.01.1985 along with the earlier certificate issued by one Dr.T.Kannan, freedom fighter and personal knowledge certificate along with proforma from one Thiagi S.Gangadhara Parasuram. Though the personal knowledge certificate and the proforma attached to it was signed by the very same person, as seen from the very same records, there appears to be a little discrepancy in the name in the personal knowledge certificate issued on 20.01.1986. The letter head shows as Thiagi S.Gangadhara Parasuram. It also speaks about the proceedings of the respondent dated 12.07.1972 along with the address. However, in the typed proforma, which was inclusive of both typed and unwritten materials, it has been written as Parasuram Gandharam. There is no dispute over the fact that both have been signed by the very same person as could be seen from the naked eye and they form part of the same document, apart from signed on the very same date viz., 20.01.1986.

3. Despite the fact that the application was made in the year 1986, it was kept pending for the reasons best known. Thus, the petitioner has filed writ petition in W.P.No.17403 of 2009, in which, an order was passed on 04.08.2010 directing the respondent to pass appropriate orders in the light of the discussion made thereunder. This Court has recorded the fact that not one, but four freedom fighters have given certificates in favour of the writ petitioner. The certificate issued by S.Gangadhara Parasuram has been dealt with in the following manner.

"15. The petitioner again made a review petition in 1986 enclosing another certificate from one Mr.Gangadhara Parasuram. In the typed set, a certificate of suffering undergone by Mr.Gangadhara Parasuram is enclosed at page No.33. As per this certificate, he suffered actual imprisonment for more than 5 years during the freedom struggle and was lodged in various jails. The petitioner also stated in the affidavit that he produced certificate from Dr.T.Kannan, a freedom fighter, who was also imprisoned for more than 5 years. The certificate of suffering relating to Dr.T.Kannan is enclosed at page No.17 of the typed set of papers. He suffered imprisonment for more than 5 years during the freedom struggle and was lodged in various jails. It is stated that after 1986, the petitioner made certain representations and there was no response from the respondent and thus he

approached this Court."

4. As the compliance was not forthcoming, the writ petitioner filed a contempt. Thereafter, an order was passed granting pension on 21.10.2010. Since the petitioner was not given the pension for the preceding period, he again filed a writ petition in W.P.No.10646 of 2011 before this Court, in which an order was obtained on 31.01.2012. The respondent took it on appeal in W.A.No.2718 of 2012 and failed by judgment dated 20.03.2014. Not satisfied with the said attempt, a further challenge was made before the Apex Court. The Special Leave Petition was dismissed in limini at the admission stage itself on 07.11.2014.

5. In the meanwhile, the respondents sought for certain clarification from the State Government allegedly on the ground that there is an apparent discrepancy in the name as shown in the annexure and the certificate issued by S.Gangadhara Parasuram. On 21.01.1986, though the said document in possession of the respondent, it was not furnished and disputed before the Apex Court. However, two days after the dismissal of the Special Leave Petition, the order impugned has been passed referring to the proceedings of the Principal Accountant General of Tamil Nadu and Government of Tamil Nadu by a letter dated 12.09.2014. Thereafter, a review application has also been filed before the Division Bench of this Court by the respondent and it is pending. In such circumstances, challenging the order impugned dated 13.11.2014, the writ petitioner has come before this Court. Pending the writ petition, due to old age, the writ petitioner died and his wife was impleaded.

6. The learned counsel appearing for the petitioner submitted that it is a case of legal malice on the part of the respondents. The writ petitioner was agitating his right, right from the year 1981. Though the Certificate was issued on 20.01.1986, an unjustified and belated attempt has been made to question the same after accepting it earlier, after 28 years. The findings rendered by this Court on the earlier occasion in W.P.No.17403 of 2009 is binding on the respondents. The certificate has to be seen along with the proforma. There is no finding of fraud. There is no finding to the effect that both the documents were not signed by the same person nor issued by any other, other than S.Gangadhara Parasuram. Having accepted the document earlier, it is not open to the respondent to contend to the contra. The proforma has to be seen in the context of personal knowledge Certificate and not otherwise. In other words, the proforma is only an incidental one to the personal knowledge certificate. The fact remains that four freedom fighters have given their letters in favour of the deceased writ petitioner. There is no basis for reviewing the order. Therefore, the writ petition will have to be allowed.

7. The learned counsel appearing for the respondent submitted that the earlier order of sanction was passed without scrutinising the relevant records in view of the pendency of the contempt petition. The said order itself indicates that it is not final and subject to review. It further states that in such an eventuality, there is no question of affording an opportunity to the petitioner. The impugned order has been passed by taking into consideration of the communication sent by the Government of Tamil Nadu. Therefore, no interference is required.

8. These facts as narrated above speak for themselves. The petitioner was made to run from pillar to post. It is not a concession to be thrown by the respondent. The petitioner being a freedom fighter is entitled to get the benefit which is due to him. When he has produced the certificates in the year 1986, the same cannot be questioned after a quite long period. It is not as if the respondent was not aware of the facts. Everything was placed before it. There were continuous proceedings between the parties. Perhaps the prolonged proceedings including that of the contempt application must have prompted the respondent to pass this order. It is unfortunate that though a National litigation policy has been promulgated, vexatious litigation like this are sought to be prolonged at the instance of the Government. 80% of the litigation in this Country involves the Government both at the State and Central level. Probably, this can be a classical example.

9. Coming to the merits of the case, as rightly submitted by the learned counsel appearing for the petitioner, the proforma has to be seen in the context of the personal knowledge certificate. In other words, the entire document has to be taken as such as a single one. Both the parts have been signed by the very same person. Now it is interesting to note that there is no dispute on the signature of S.Gangadhara Parasuram. The Government of Tamil Nadu did not say that the document was forged or obtained by fraud. When there is no dispute that there is only one freedom fighter by name S.Gangadhara Parasuram, this Court is at a loss to understand about the necessity to find out the existence of a person by name Parasuram Gandharam. The respondent did not make an enquiry as to whether the document in question was signed and executed by the freedom fighter S.Gangadhara Parasuram or not. The enquiry sought by the respondent before the State Government must have been pertaining to this aspect. Consequently, the respondent has not raised this issue in the earlier litigation upto the Apex Court. Therefore, the very approach of the respondent in passing the impugned order, as if, a fraud has been detected at the instance of the respondent, as found out by the Government of Tamil Nadu and the Principal Accountant General is totally misconceived. Suffice it to state that the letter of the Office of the Principal Accountant General dated 12.09.2014 merely states that as per the office records Mr.Gangadhara Parasuram S/o Sivanarayanan was an authorised Central Freedom Fighter pensioner. It is nothing but

to reiterate the fact, which is not in dispute by any one of the parties. One more aspect also to be seen for coming to the conclusion that the document in question is indeed signed by S.Gangadhara Parasuram is the document relied upon by the respondent himself. The letter of the Principal Accountant General dated 12.09.2014 which forms the basis for the impugned order also states the father name of the Gangadhara Parasuram. The very same name is also reiterated both in the certificate issued by him as well as proforma. Thus, looking from any angle, there is absolutely no ground to sustain the impugned order on merit.

10. The order impugned has got civil consequence. Admittedly, the review application is pending. It is not, as if, the petitioner has committed fraud. Therefore, the sanction order cannot be interpreted in such a way to take away the accrued right of the petitioner. If it is termed to be a review, such review has to be done by following the procedure known to law, atleast by putting the petitioner on notice. It is not a case of mistaken ground or false information. This Court is at a loss to understand that when both parts have been signed by the same person, then where is the necessity for having two different names. If the writ petitioner has committed fraud, he would commit fraud in creating the document, not committing in between two parts of the very same documents. It also defies reasoning and logic. Though it is not a case of malice in fact, certainly the action of the respondent constitute malice under law. A power cannot be exercised solely for the purpose of denying the relief to a party.

11. In the light of the above discussion, the order impugned is hereby set aside. Consequently, the respondent is directed to pay all the arrears to the petitioner, with costs, within a period of eight weeks from the date of receipt of a copy of this order. Since review petition is pending before the Division Bench of this Court, the amount involved therein would not cover the direction issued above.

raa

Sd/-

Asst.Registrar (CS VII)

Dated: 12.1.2016

*Corrected as per order

dated 22.4.2016

in W.P.NO.31387/14

Sd/

Assistant Registrar

Dated: 26.4.2016

/true copy/

Sub Asst. Registrar

To

The Secretary to Government,
Union of India,
Ministry of Home Affairs, Grih Mantralaya,
FFR Division (SZ Section),
2nd Floor, NDCC II Parliament Street,
New Delhi-110 001.

+ 1 cc to Mr.V.T.Balaji, Advocate Sr 1176

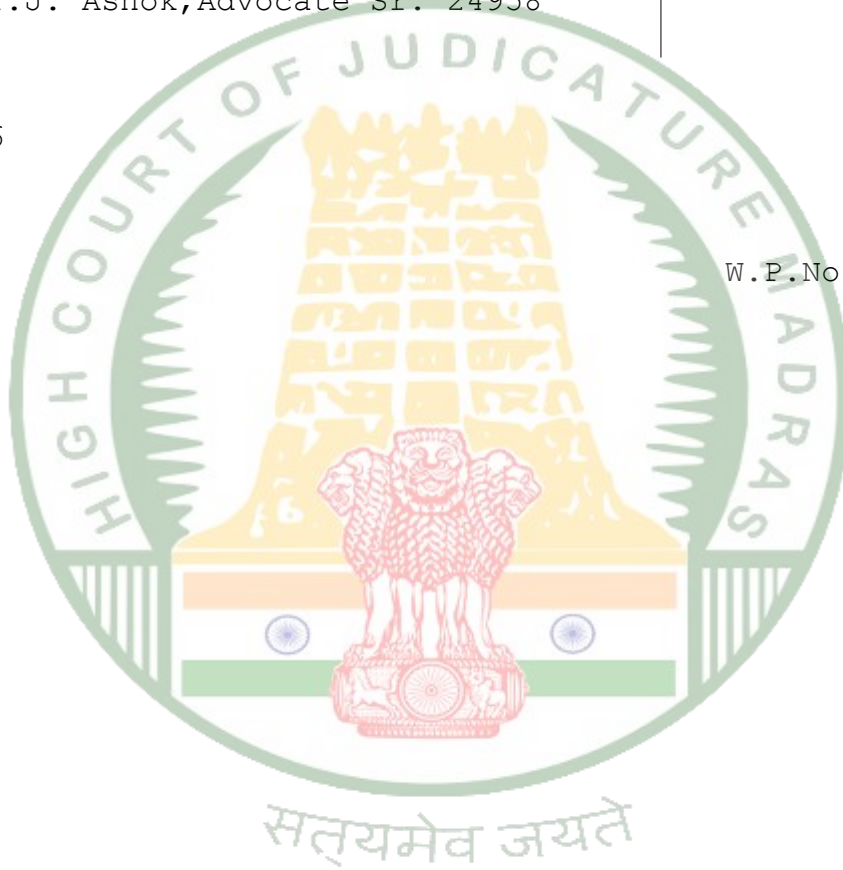
1 cc to Mr.J. Ashok, Advocate Sr. 24958

To be substituted to
the order already
despatched on
12.3.2016

SCD/CO
KR/12/1/16

kk 26/4

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