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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.381 of 2016

C.M.P.(MD)No.2512 of 2016

1. The District Collector,
Madurai District,
Madurai.

2. The Secretary to Government,
Public (Political Pension) Department,
Government of Tamil Nadu,
Chennai.

.... Appellants/Respondents

vs.

L.S.Ramdoss

.... Respondent/Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order made in W.P.(MD)No.14069 of 2011, dated 27.02.2014.

Prayer in WP(MD). 14069/ 2011 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS, directing the Respondents to grant freedom fighter Pension to the Petitioner within a time frame fixed by this Court.

For Appellants	: Mr.M.Alagathevan, Special Government Pleader
For Respondent	: Mr.T.R.Jeyapalan

JUDGMENT

(Judgment of the Court was delivered by Justice S.MANIKUMAR)

Challenge in this appeal is to the order made in W.P.(MD) No.14069 of 2011, dated 27.02.2014, by which, the Writ Court has directed the appellants to consider the case of the respondent, for Freedom Fighters' Pension and extend the benefit, within the time frame.

2. It is the case of the respondent/writ petitioner that during childhood, he joined the "Vaanara Sena", promoted by Mahatma Gandhi and participated, in Quit India Movement. According to him, he was arrested on 09.11.1945 and convicted under Sections 147, 149, 332, 333 and 435 of the Indian Penal



Code, in Crime No.X667 of 1945. At that time, he was aged 16 years. He was remanded to Observation Home, Madurai. He was released on bail on 10.11.1945 and according to him, he was kept under House arrest for one year. He made representations to the appellants, for grant of Freedom Fighter's Pension. Since no action was taken on the said representation, he filed W.P.No.14069 of 2011, for a Mandamus, directing the respondents to grant freedom fighter's pension to him.

3. Before the Writ Court, the District Collector, Madurai, 1st appellant herein, has filed a detailed counter affidavit, contending *inter alia* that the respondent/writ petitioner was arrested during freedom movement on 09.11.1945 and at that time, he was a minor and hence admitted in Juvenile School, for one day. On 10.11.1945, he was released on bail. He was not confined in Jail. No document has been filed to prove that he was in confinement. For grant of Freedom Fighters' Pension, following conditions have to be satisfied,

"(a) The minimum days of imprisonment prescribed for granting such pension is 21 days.

(b) Documents relating to harassment in the jail, while imprisonment.

(c) Documents, such as, First Information Report, Arrest Warrant and Court Order, if any, must be produced.

(d) Birth Certificate or Family Card or Voter ID Card or Transfer Certificate must be produced for age verification. Because, for granting such pension, the applicant must have completed the age of 18 years at the time of absconding."

4. Referring to the judgment of this Court in W.P.No.7194 of 1991, dated 16.12.1993, the District Collector, Madurai, has submitted that for grant of freedom fighter's pension, there are further conditions, viz., (a) The applicant must produce the respective pages in the Book, viz., "Yaar Ever" containing details of punishment, period of imprisonment, the name of Jail; (b) The applicant must produce the copy of award, "Taamira Pathiram" by Central Government and (c) The applicant must produce the copy of details of Central Government Freedom Fighters Pension details, have to be satisfied.

5. Adverting to the above pleadings and submissions and taking note of the judgments of Kerala High Court in W.A.1462 of 2008, dated 19.12.2012 and Guahati High Court reported in Shanti Ranjan Bhattacharjee v. Union of India [2005 (2) Gau.L.R. 68], the Writ Court has directed the appellants to consider the case of the petitioner for freedom fighter's pension.



6. Assailing the correctness of the order, the District Collector, Madurai and another, have filed the instant appeal.

7. Referring to G.O.Ms.No.2064, Public (General-C) Department, dated 28.09.1966, Mr.M.Alagathevan, learned Special Government Pleader appearing for the appellants submitted that in 1966, the Government have framed Madras Freedom Fighters' Pension Rules and as per Rule 4, "a Freedom Fighter" means a person, who has been sentenced to imprisonment or held under detention for not less than three months, or who was killed in action or was awarded capital punishment or became permanently incapacitated due to firing or lathi charge, on account of participation in the National Movement, the last campaign of which was launched between 1942 and 1944.

8. Inviting the attention of this Court to G.O.Ms.No.30, Public (Political Pension.II) Department, dated 07.02.1996, learned counsel for the appellants further submitted that the Government have modified the procedure for obtaining the Co-prisoners' Certificates. On the facts of this case, he submitted that the respondent was not imprisoned in any jail, as he was a minor, at the time of arrest. He therefore submitted that the certificate of an alleged co-prisoner, enclosed in the typed set of papers, by the respondent, would not lend any support to claim for freedom fighters' pension.

9. He also submitted that as per the Government Orders, he should have completed 18 years of age and should be certified as confined in Jail, for three months, by a Co-prisoner or a certificate issued by any competent authority, such as, jail records. He also submitted that the respondent has not satisfied the conditions for grant of freedom fighters' pension and therefore, the Writ Court ought not to have issued the directions.

10. Responding to the above submissions, Mr.T.R.Jeyapalan, learned counsel for the respondent submitted that the certificate, dated 31.12.1999, issued by the Joint Secretary, Madurai Children's Aid Society, would itself show that the respondent was arrested during the time of freedom movement, under Sections 147, 149, 332, 333 & 435 IPC., (Cr.No.X-667/45) and remanded to the Observation Home, Madurai and on 10.11.1945, he was released on bail. He further submitted that the respondent was under house arrest for one year and to that effect, a certificate has also been issued by one A.B.Nagian, a Freedom Fighter. He also submitted that the decision of the Kerala High Court, squarely applies to the facts of this case. For the reasons stated supra, he prayed to sustain the order passed in the Writ Petition.



Heard the learned counsel for the parties and perused the materials available on record.

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11. Government of Tamil Nadu have issued G.O.Ms.No.2064, Public (General-C) Department, dated 28th September, 1966, and framed Madras Freedom Fighters' Pension Rules. As per Rule 4 of the abovesaid Rules, "Freedom Fighter" means a person, who has been sentenced to imprisonment or held under detention for not less than three months, or who was killed in action or was awarded capital punishment or became permanently incapacitated due to firing or lathi charge, on account of participation in the National Movement, the last campaign of which was launched between 1942 and 1944.

12. Subsequently, the Government have issued orders in G.O.Ms.No.30, Public (Political Pension.II) Department, dated 07.02.1996, modifying the procedure for obtaining the Co-Prisoner Certificate, in the matter of grant of State Freedom Fighters' Pension, as follows:

"(i) The Collector will form a District Screening Committee in each District consisting of Collector, as the Chairman and the District Revenue Officer as Vice Chairman. The Collector will also select a few prominent Freedom Fighters in the respective Districts to officiate as members of the District Screening Committee to examine the veracity of Co-Prisoners' Certificates. While selecting the members, the Collector will exercise extreme caution by examining the antecedents of social and financial status of the nominees who would not be yielding to personal or pecuniar status. The members should necessarily be in receipt of Freedom Fighters' Pension on account of their imprisonment vouched by original recorded evidences. These members should not be receiving the pension merely on the basis of other Co-Prisoners' Certificates. It is desirable and advisable to verify if these nominees are also in receipt of Tamarapatras issued by the Government of India.

(ii) The Collector of Each District should also by adopting the above mentioned stipulations nominate two other prominent Freedom Fighters as eligible certificates to issue Co-Prisoners' Certificates.

(iii) While selecting these two nominees mentioned above their own original records relating to their date, duration, place of imprisonment may



be obtained by the Collectors will in advance and kept as permanent records for proper verification of Co-prisoners Certificates issued by them in future. The conditions, qualifications and other stipulations prescribed for nominating the two members may also be scrupulously followed while selection the certificates.

(iv) The Government in consultation with the Collector concerned will release the name of nominated member of District Level Screening Committee and the eligible certifier of each District as prescribed in item (i) and (ii) above.

(v) The Committee should be personally satisfied about the documents produced and identify of the Freedom Fighter as proposed by them to Government."

13. Madras Freedom Fighters' Pension Rules do not stipulate any condition that a Freedom Fighter should have completed the age of 18 years. It only states about the person, who has been sentenced to imprisonment or held under detention for not less than three months, or who was killed in action or was awarded capital punishment or became permanently incapacitated due to firing or lathi charge.

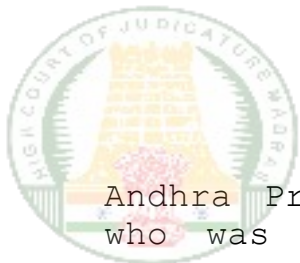
14. G.O.Ms.No.30, Public (Political Pension.II) Department, dated 07.02.1996, also does not state anything about the age. However, the Government Order states that in cases, where persons went underground during Freedom Movement and in cases, where the persons had participated in Madurai Conspiracy or Bombay Naval Mutiny and in cases, where the persons were kept in reformatory/senior model schools, their applications can be scrutinized and forwarded to the Government, only if they produce official documentary evidence, such as, Court Order, Arrest Warrant, copy of FIR, Certificate from the Model School, Dismissal Order, etc.

15. Vide Letter No.12273/96-20, Public (Political Pension.II) Department, dated 31.01.1997, the Government have directed the District Collectors to strictly adhere to the guidelines for the functioning of the District Level Screening Committee formed in each Districts. While scrutinizing the application for sanctioning State Freedom Fighters Pension, the District Collector, as Head of the District Level Screening Committee, has been instructed to verify, as to whether, the applicant has completed 18 years of age, at the time of conviction as certified in the co-prisoner certificate. Though rules have been framed in 1966, from the materials placed before us, for the first time in 1997, instructions have been issued to



verify whether the applicants had completed 18 years of age, at the time of conviction. The District Committee has been directed to verify the age, with school certificate or with the ration card and satisfy itself about the age of the applicant. In the guidelines, it is stated that, "The proof of age certificate from local medical practitioners need not be entertained. The members may question the applicants regarding their participation in the freedom Movement of the Nation and about imprisonment. All the Committee members should attest every application and should specifically indicate whether the case is recommended or not. If it is recommended they must specifically state the reasons for recommending the applications. All the applications scrutinized by the above committee should be attested by the Collector. In some cases, the jail records pertaining to the period claimed might be available but the name of the individual may not find place in it even though the certifier would have issued Co-prisoners' Certificate. The Collectors should therefore consult the jail authorities wherever necessary and ascertain the fact of imprisonment beyond any doubt." Further, it is stated that, "in cases where the petitioners went underground during Freedom Movement and in cases, who participated in Madurai Conspiracy or Bombay Naval Mutiny and in cases where the petitioners were kept in reformatory/senior model schools, the applications can be scrutinized and forwarded to Government only when they produce official documentary evidence, such as, Court Order, Arrest Warrant, copy of FIR, Certificate from the Model School, Dismissal Order, etc."

16. Instructions have been issued in Letter No.34645/PP.II/2006-1, dated 03.08.2006, by the Secretary to the Government, Public (PP.II) Department, Secretariat, Chennai-9, setting out the guidelines for the functioning of the District Level Screening Committees. The Government have taken note of instances, where the applicants, below the age of 18 years, at the time of conviction, had claimed Freedom Fighter's Pension, by furnishing Family Ration Card, with age corrections and Age Certificates, from the Local Medical Practitioners to substantiate their age. The Government have also taken note of the fact that Local Tahsildars have issued Birth Certificates to the applicants, after a lapse of several years, without indicating the exact date of registration of the birth of the individual in the relevant column of the certificate. However, the Government have directed the District Collector, as the Head of the District Level Screening Committee to verify the exact date of birth of the individual and the genuineness of documentary evidences, so as to avoid false claim. While doing so, the Government have taken note of an order of the Hon'ble



Andhra Pradesh, directing payment of pension to an applicant, who was only 8 years old in 1938, during the Independence Movement, and stayed by the Hon'ble Supreme Court, in a SLP., and therefore, directed the District Collector not to recommend those cases, to the Government, for sanction of Freedom Fighters' Pension, which do not satisfy the stipulated conditions. The Government have further stated that such cases shall be rejected, at the District level itself.

17. From the above, it could be deduced that there were instances, where persons, below the age of 18 years, and participated in the Freedom Fighter Movement, have been convicted. But some of them seemed to have produced certificates, which were not genuine and therefore, the District Collector, as Head of the District Level Screening Committee, has been directed to verify the exact date of birth of the individuals.

18. In Madras Freedom Fighters' Pension Rules, "Freedom Fighter" means, "a person, who has been sentenced to imprisonment or held under detention for not less than three months, or who was killed in action or was awarded capital punishment or became permanently incapacitated due to firing or lathi charge, on account of participation in the National Movement, the last campaign of which was launched between 1942 and 1944." In Letter No.34645/PP.II/2006-1, dated 03.08.2006, the Government have taken note of the instances, where applicants, below the age of 18 years, have been convicted. Children are not to be confined in jail. The Government, while defining a freedom fighter, have said that he should be a person, who has been sentenced to imprisonment or held under detention for not less than three months, which has been subsequently reduced to three weeks, as per G.O.Ms.No.951, Public (PP.II) Department, dated 18.05.1981.

19. While issuing the abovesaid letter, dated 03.08.2006, the Courts have been taken note of a SLP, wherein, the Hon'ble Supreme Court has stayed an order of the Andhra Pradesh High Court, directing payment of pension to the claimant, who was only 8 years old in 1938, during the Independence Movement and the Government have directed the District Collector, not to recommend those cases to the Government for sanction of Freedom Fighters' Pension, who do not satisfy the stipulated conditions. However, at Paragraph 4 of the said letter, the Government have ordered as follows:

"4. I am, therefore, to request you to adhere the norms prescribed by the Government strictly while scrutinizing the request of the applicants for the sanction of Freedom Fighter Pension and to recommend



only such cases supported by valid documentary evidences to establish age and jail sufferings, as prescribed by the Government from time to time. Mere recommendation of the District Level Screening Committee and the District Collector without valid documentary evidences as prescribed by the Government for the sanction of Freedom Fighter pension to the claimants will be viewed seriously in future."

20. No materials have been produced by the appellants before this Court, as to the outcome of the SLP., referred to above. The abovesaid Government Order only indicates that there were claims, by those below the age of 18 years, at the time of conviction.

21. It is the case of the respondent that he has been arrested on 09.11.1945, during the time of freedom movement, under Sections 147, 149, 332, 333 & 435 IPC., (Cr.No.X-667/45) and remanded to Madurai Children Aid Society (Observation Home), Madurai. As per the certificate issued by the observation home, he was released on bail on 10.11.1945, with due admonition, under the supervision of good behaviour, for one year.

22. One Mr.R.V.Swaminathan, a Former Member of Parliament (Lok Sabha), seemed to have issued a Certificate, dated 13.07.1973, certifying that the respondent was a Freedom Fighter, and participated in freedom movement and courted arrest. He has recommended that the respondent may be given Freedom Fighter's Pension.

23. Mr.A.B.Nagian, stated to be a freedom fighter, has also issued a Certificate, stating that in the year 1945, the respondent was arrested and sentenced for one year by a First Class Magistrate, Madurai. He has also certified that the respondent was sent to "Madurai Children Aid Society, Madurai", for detention and that the respondent was in house detention, for the full period.

24. Mr.A.G.Subburaman, Former Member of Parliament (Lok Sabha), has issued a letter, dated 19.08.1985, to the then Hon'ble Minister of State, Ministry of Home Affairs, Government of India, New Delhi, stating that the respondent had taken part in Freedom Struggle, in his early school days. Certificate issued by the authority, Observation Home, Madurai, that the respondent was admonished, under the supervision of good behaviour, for one year, has not been disputed. Arrest and remand have been made on 09.11.1945 and thereafter, he has been released on bail on 10.11.1945.



25. As per the then existing law, the children's Court, on enquiry, is satisfied that a child has committed an offence, then, notwithstanding anything to the contrary, contained in any other law for the time being in force, the children's Court may, if it so thinks fit:-

(a) allow the child to go home after advice or admonition;

(b) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person on such parent, guardian or other fit person executing a bond, with or without surety as that court may require, for the good behaviour and well-being of the child for any period not exceeding three years;

(c) make an order directing the child to be sent to a special school,--

(i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;

(ii) in the case of any other child, for the period until he ceases to be a child: Provided that the children's court may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit: Provided further that the children's court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl;

(d) order the child to pay a fine if he is over fourteen years of age and earns money."

26. Usage of word, "admonition" in the certificate dated 31.12.1999 issued by the Madurai Children's Aid Society, 'Observation Home', Madurai, indicates that the respondent has been found to have committed an offence and kept under the supervision of good behaviour, for one year. Though there are no details, as to the enquiry or any order, holding the respondent, guilty of the abovesaid offences and admonishing him, the appellants have not disputed the contents of the abovesaid certificate dated 31.12.1999. But, they have only disputed, on the grounds that he was not confined in jail. At this juncture, it is relevant to extract Paragraph 5 of the counter affidavit filed by the appellants before the Writ Court,

<https://hcservices.ecourts.gov.in/hcservices/> "5. The petitioner was arrested during freedom fighting movement on 09.11.1945 and since, the petitioner was a minor at that time, he was admitted in



Juvenile School for one day and on 10.11.1945, the writ petitioner was released on Bail. This fact has been stated by one M.K.Ramamoorthy in his statement. The writ petitioner himself has admitted that he was kept under custody in home, it is made clear that the writ petitioner was never put into jail. It is submitted that the petitioner had not produced any document for his age proof. Moreover, no document has been produced to prove that the petitioner was in jail, as per the report submitted by the Tahsildar concerned. The same has been forwarded to the Additional Secretary to Government."

27. Though it is the contention of the appellants that the respondent himself has admitted that he was in house arrest, from the perusal of the certificate, dated 31.12.1999, issued by the Joint Secretary, Madurai Children's Aid Society (Observation Home), Madurai, it is evident that the respondent was released on bail, with due admonition, under the supervision of good behaviour, for one year. Merely because the respondent was not in detention for a period of three weeks, it cannot be contended that he had not participated in freedom struggle nor the factum of his arrest and remand, can be ignored. From the certificate of the Observation Home, Madurai, it could be deduced that the Children Court, seemed to have admonished the respondent. On the facts and circumstances of this case, the question of producing a certificate for jail suffering, in the case of a minor, does not arise.

28. In *State of Orissa v. Choudhuri Nayak (D) Thr. L.Rs., and Ors.* Reported in AIR 2010 SC 3588, the Hon'ble Supreme Court, at Paragraph 8, held as follows:

"8. This Court in *Mukund Lal Bhandari v. Union of India* [1993 Supp. (3) SCC 2] : (AIR 1993 SC 2127 : 1993 AIR SCW 2508), *Gurdial Singh v. Union of India* [2001 (8) SCC 8] : (AIR 2001 SC 3883 : 2001 AIR SCW 3843) and *State of M. P. v. Devkinandan Maheshwari* [2003 (3) SCC 183] : (AIR 2003 SC 1136 : 2003 AIR SCW 680) considered the object of the Freedom Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme. We may summarize them as under :

(i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge



the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore they can not be expected to maintain and produce perfect records or documents about their participation in the freedom struggle.

(iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications are by old persons with no proper records.

(iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the scheme.

The above principles were spelled out to ensure that no genuine freedom fighter was denied pension under the scheme."

29. Though the Government of Tamil Nadu in Letter No.12273/96-20, Public (Political Pension.II) Department, dated 31.01.1997, have stated that the applicants have to complete 18 years of age, at the time of conviction, in their further letter, dated 03.08.2006, as stated supra, the Government have only indicated that there were applicants below 18 years, at the time of conviction also. But, when the documents produced by them were not genuine, directions have been issued to the District Collector, as Head of the District Level Screening Committee, to verify the exact date of birth of the individual and the genuineness of documentary evidences, so as to avoid false claim. Government have further stated where the applicants were kept in reformatory/senior model schools, their cases can be scrutinized and forwarded to the Government, if they produce official documentary evidence, such as, court order, arrest warrant, copy of the certificate from the model schools, dismissal order, etc. There is proof that the respondent was kept in the Observation Home, for a day.



30. Writ Court has considered a decision of the Guahati High Court in Shanti Ranjan Bhattacharjee v. Union of India reported in 2005 (2) Gau.L.R. 68, wherein, it is observed as follows:

"Now, if we have a look to the Scheme of 1972 and 1980, it would be clear that confinement in Prison was not the only criteria for determining the actual imprisonment for a period of six months. Even in Clause IV(c) of the Scheme provides that a person in termed in his home or ex termed from his district for a period of six months or more was also eligible for pension under the Scheme. The respondent presumed that as he was 15 years old, he was not in Prison, he might have been in a Borstal Jail or Juvenile house or reformatory house. The word "Borstal Jail" has been used by the respondent in its counter affidavit and this leaves no doubt that it was also treated as Jail. Whatever may be the position, there is no controversy that wherever he was placed during the period of one year nine months, he was certainly under confinement. If confinement in one's own house can be treated as imprisonment for the purpose of pension Scheme, it stands to no reason why confinement in a Borstal Jail or a Juvenile or reformatory house should not be treated as imprisonment for the purpose of this Scheme."

31. While explaining the object of the scheme, and grant of Freedom Fighter's Pension, the Hon'ble Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others reported in AIR (1993) SC 2127, observed as follows:

"The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since



we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now."

32. The Hon'ble Supreme Court in Gurdial Singh Vs. Union of India and others reported in 2001 (8) SCC 08, while setting out the broad guidelines as to how an application for grant of freedom fighter's pension should be considered, the approach and difficulties faced by genuine freedom fighters to secure the supporting documents, at para 5 of the judgment held as follows.

"The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the schemes are supposed to be such persons who had given the best part of their life for the country."

33. As regards standard of proof, required for considering the request for grant of pension, the Hon'ble Supreme Court at para 7 held as follows:

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. 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 a technical approach is required to be followed while determining the merits of the case of a person seeking pension under



the Scheme. It should not be forgotten that the persons 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. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabalised 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"

34. In M.A.Kandasamy Pillai Vs. the Government of Tamilnadu rep. by its Secretary (Public Political Pension) IV Department, Fort St.George, Chennai, and another reported in 2002 (3) CTC 487, though the petitioner therein, has produced a Co-prisoner's certificate issued by a freedom fighter approved and recognised as a Certifier as per the Government order, the screening committee rejected the application of the claimant on the ground that, no proof of age was furnished by him. While testing the correctness of the order, following the judgment of the Hon'ble Supreme Court in Gurdial Singh Vs. Union of India and others reported in (2001) 8 SCC 08, and I.V.K. Malaichamy (deceased) and another Vs. the Government of India and others, reported in 2001 W.L.R. 549, this Court set-aside the order of the Government, rejecting the request of the freedom fighter and consequently, allowed the Writ petition as prayed for.

35. In K.Appanraj Vs. The Secretary to Government of India, Ministry of Home Affairs Freedom Fighters Division and others reported in 2004 W.L.R 606, this Court, while considering the claim for pension, at paragraph 7 of the judgment held as follows:

"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. 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 a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten



that the persons 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. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabalised 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"

36. In the case on hand, from the materials on record, it could be deduced that there was confinement in the Observation Home, for a day and the respondent has been released on the next day. But the certificates, dated 13.07.1973, 20.12.1979 and 02.01.1981, indicate that the respondent was found guilty and admonished, and was under supervision of good behaviour, for one year.

37. Children should not be kept in prison and can be allowed to go home, after advise or admonition, which appears to have been done in this case. As stated supra, at this old age, production of all the documents relating to enquiry and order of admonition, cannot be expected. But at the same time, the certificate dated 31.12.1999, issued by the Observation Home, cannot be ignored. The certificate indicates arrest and admonition. Some of the offences, referred to above, registered against the respondent, indicate that more than five persons have participated in the freedom movement and that there was also registration of a case for the involvement in freedom struggle as, "Crime No.X667 of 1945".

38. Having regard to the observations of the Hon'ble Supreme Court in Choudhuri Nayak's case (cited supra) and in particular, the object of the scheme to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country, we do not find that the Writ Court has committed any error, in directing the appellants to consider the case of the respondent.



39. In the light of the above discussion and decisions, stated supra, we are not inclined to interfere with the order of the learned single Judge. Hence, the Writ Appeal is dismissed. No costs. Consequently, C.M.P.(MD)No.2512 of 2016 is closed.

Sd/-

Assistant Registrar(CS I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai District,
Madurai.
2. The Secretary to Government,
Public (Political Pension) Department,
Government of Tamil Nadu,
Chennai.

+1 cc to M/s.T.R.Jeyapalam, Advocate in SR No.25518

W.A(MD)No.381 of 2016
29.04.2016

SKM/NBI
ANR/SK-SKN/03.11.2016/16P/4C