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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.13068 of 2013

and

M.P (MD) No.1 of 2013

M.Ayyathevar

...Petitioner

Vs.

1.The Joint Secretary to Government,  
Public (Political Pension) Department,  
Chennai 9.

2.The District Collector,  
Collector Office,  
Dindigul District.

3.The District Collector,  
Collectorate Office,  
Madurai District.

(R-3 impleaded as per order  
dated 17.10.2016 in  
W.M.P (MD) No.13558 of 2016)

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the 2nd respondent in Na.Ka.No.69390/2012/Y4 dated 17.10.2012 and quash the same as illegal consequently directing the respondents to provide Freedom Fighter Pension to the petitioner within the time stipulated by this Court.

For Petitioner

: Mr.Antony Jesu Rajan

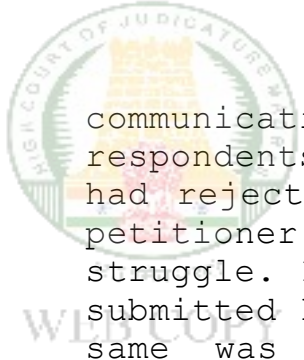
For Respondents

: Mr.T.R.Janarthanam,

Additional Government Pleader.

#### ORDER

The case of the petitioner is that he is a freedom fighter who had participated in the freedom struggle of the Quit India Movement and Temple Entrance Agitation with Vaithyanatha Iyyer. The petitioner is a strong follower of Gandhian principles and participated in all the freedom struggles. During such struggle, he was lodged in Allipuram Camp Jail, Bellary for participation in the Quit India Movement from 15.04.1943 to 24.09.1943. The petitioner's father also happens to be a freedom fighter. The petitioner had applied for Freedom Fighters Pension with the State Government along with certificates obtained from co-prisoners A.C.Periasamy and A.M.Lakshmannan. After a prolonged



communication of letters between the petitioner and the respondents, the second respondent by an order dated 17.10.2012, had rejected the petitioner's application on the ground that the petitioner had not attained 18 years at the time of freedom struggle. It was further stated therein that the birth certificate submitted by the petitioner did not carry his name and hence, the same was rejected. Aggrieved against the said order, the petitioner is before this Court.

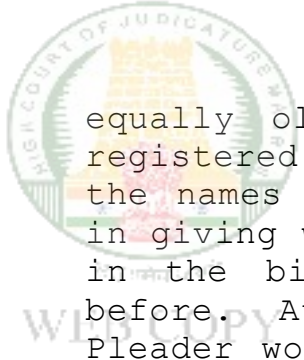
2. Heard Mr. Antony Jesu Rajan, learned counsel appearing for the petitioner and Mr. T.R. Janarthanam, learned Additional Government Pleader appearing for the respondents.

3. Learned counsel appearing for the petitioner submits that the petitioner had submitted all the relevant documents required along with his application seeking for the Freedom Fighters Pension. As a matter of fact, he had been making applications even prior to 1988 and that the respondents stand that the applicant seeking for Freedom Fighters Pension should be 18 years and above as per G.O. Ms. No. 2015, dated 16.11.1988 cannot be sustained since the Government Order will not have retrospective effect. Learned counsel appearing for the petitioner submits that the other documents like the co-prisoner's certificates have also been enclosed along with his application to the respondents and hence, is entitled to be considered for freedom fighter's pension.

4. Learned Additional Government Pleader appearing for the respondents would submit that the eligibility criteria for getting State Freedom Fighters Pension is that the person should have completed 18 years at the time of freedom struggle. Since the third respondent had sent a report to the first respondent stating that the petitioner had not produced documents with regard to the details of his arrest and document to prove his age as 18, his name was not recommended for the pension. Learned Additional Government Pleader would also submit that the birth certificate produced by the petitioner does not carry his name and therefore, no authenticity can be adduced to it.

5. I have given careful consideration to the submissions made by the learned counsel on either side.

6. The main ground on which the respondents have rejected the petitioner's claim for Freedom Fighters Pension is that the birth certificate produced by him does not carry his name and therefore, the petitioner has failed to prove that he had attained 18 years at the time of freedom struggle. I am unable to accept the reasoning of the respondents as stated in the impugned order. The Freedom Fighters Pension scheme has been introduced with the object of providing grant of pension to the freedom fighters and their family members. The object of the scheme is not to reward or compensate the sacrifice but to honour the freedom fighters. While dealing with the applications seeking freedom fighters pension, the respondents have to bear in mind that they are dealing with applicants who are very old and that the documents which the respondents seek in support of the application are also

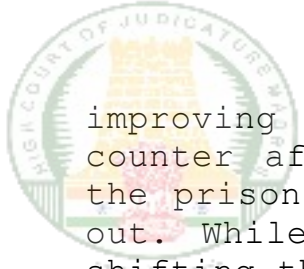


equally old. It is common knowledge that birth certificates registered at the time of birth about 50 years back did not carry the names of the child. Hence, the respondents are not justified in giving weightage to the non mentioning of the petitioner's name in the birth certificate which was registered about 70 years before. At this juncture, the learned Additional Government Pleader would submit that the petitioner was one among the eight children of his father and therefore, genuineness of the birth certificate is in question. It is to be borne in mind that it is not the birth certificate alone but the other criteria cited by the respondents that the persons who have attained 18 years alone at the time of freedom struggle are eligible for the pension, is itself questionable. Learned Additional Government Pleader submit that as per G.O.Ms.No.2015, dated 16.11.1988, the age of the applicant should be 70 and above. On a perusal of G.O.Ms.No.2015, dated 16.11.1988, it is found that the age limit prescribed is not mandatory but has been made as yardstick for scrutinizing such applications. The relevant portion of the Government Order reads as follows:-

*"Government accordingly direct that applications for the grant of State Freedom Fighters Pension may be received for consideration from persons who are aged 70 and above as on 15.10.1988 and who produced Co-Prisoner's certificate." (emphasis supplied)*

7. In the recital of the aforesaid Government Order, it has been observed that the last date for receiving Freedom Fighters Pension applications have been extended time and again. The object of the Government Order, is to accommodate all the Freedom Fighters and leave no application unconsidered. Prior to passing of the Government Order, there was no age bar for making an application. As such, it can only be concluded that the age limit prescribed in the said Government Order is only directory in nature and not mandatory. Furthermore, the Government Order also requires the applicants to produce co-prisoner's certificate which has been done in the present case. However, the authenticity of the co-prisoner's certificate is not the reason for rejection in the impugned order. Hence, the reliance on the birth certificate without the petitioner's name may not carry much importance. In the given circumstances, the respondents are bound to rely upon the co-prisoner's certificate produced by the petitioner and scrutinize his application.

8. The respondents have been insensible to the fact that the petitioner's struggle to establish his involvement in the freedom struggle has been more rigorous than his actual involvement in the freedom fight against the English. The respondents in their counter affidavit have stated that the co-prisoner's certificate produced by the petitioner is false. The said statement is not based on any enquiry on the authenticity of the certificate. However, it is also not the reason for rejection in the impugned order. The respondents are not justified in



improving the reasons adduced in the impugned order through a counter affidavit. It is also submitted by the respondents that the prison records between 1943 to 1944 have been completely torn out. While that being so, the respondents are not justified in shifting the onus on the petitioner to prove his age.

9. In my view, the petitioner having waited all these years and knocked the doors of the respondents only to be slapped with a rejection order on the ground that he has not attained the age of 18 years at the time of his imprisonment, is not only arbitrary but also whimsical. Hence, I am constrained to hold that he would be eligible for Freedom Fighters Pension.

10. In view of the observations made above that the petitioner is entitled for the Freedom Fighters Pension, the impugned order of rejection passed by the second respondent in Na.Ka.No.69390/2012/Y4, dated 17.10.2012 is quashed. The respondents are directed to reconsider the petitioner's application for freedom fighter's pension in the light of the observations made in this order, as expeditiously as possible. The respondents shall bear in mind that the petitioner is aged 86 years now and any further delay would cause serious prejudice to him. Hence, it would be appropriate that the petitioner's application is scrutinized and the pension paid to him within a period of two weeks from the date of receipt of a copy of this order.

11. The writ petition is accordingly allowed. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS)  
Madurai Bench of Madras High Court,  
Madurai-23.

To

1. The Joint Secretary to Government,  
Public (Political Pension) Department,  
Chennai 9.

2. The District Collector, Collector Office,  
Dindigul District.

3. The District Collector, Collectorate Office,  
Madurai District.

+2cc to M/s. Antony Jesu Rajan, Advocate in SR.81502

+1cc to the Special Government Pleader, in SR.81574

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