

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2017

Coram

THE HONOURABLE Mr.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

W.A.No.1518 of 2012

E.V.Narayanasamy

... Appellant/Petitioner

Vs.

1. The Government of India,
Rep. by the Under Secretary,
Ministry of Home Affairs,
Freedom Fighters Division,
New Delhi - 110 003.

2. The State of Tamil Nadu,
Rep. by the Additional Secretary,
Public (P.P.I.) Department,
Fort St. George, Chennai.

... Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 25.04.2011 made in W.P.No.23831 of 2010, on the file of this Court.

W.P.No.23831 of 2010 : This Writ Petition is preferred under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records pertaining to the petitioner's Freedom Fighters Pension 52/CC/TN/89/2006-FF(SZ) dated 07.04.2010 and to quash the impugned order of the 1st respondent dated 07.04.2010 and direct the 1st respondent to consider the representation dated 02.09.2009 in the light of the order passed by the State Government by its proceedings No.14020 dated 03.06.2009 to recognize the petitioner as Central Government Freedom Fighter and grant Freedom Fighter Pension as provided under the SWATANTRATA SAINIK SAMMAN (S.S.S.) PENSION SCHEME.

For Appellant : Mr.K.Balaji

For Respondents : Mr.K.Gunasekar
Senior Panel Counsel
(Central Government) for R1
Mr.V.Anandhamoorthy
Special Government Pleader for R2

J U D G M E N T

[Order of the Court was made by P.VELMURUGAN, J.]

The writ appeal is arising out of the judgment dated 25.04.2011 made in W.P.No.23831 of 2010, on the file of this Court.

2. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the writ petitioner aggrieved by the order passed by the first respondent pertaining to the petitioner's freedom fighter's pension 52/CC/TN/89/2006-FF(SZ) dated 07.04.2010 and for a direction to the first respondent to consider the representation dated 02.09.2009, in the light of the order passed by the State Government by its proceedings No.14020 dated 03.06.2009 to recognise the petitioner as Central Government Freedom Fighter and grant Freedom Fighter's Pension as provided under the Swatantrata Sainik Samman (S.S.S.) Pension scheme.

3. Facts culled out in brief for the disposal of the writ appeal are as follows:-

3.1 The petitioner was actively involved in the Freedom Struggle. During the pre-independence period he had actively participated in all agitations. When MAHATMA GANDHI called to the nation to participate in the "QUIT INDIA MOVEMENT" in the year 1942-1943, he along with other Congress activities organized hoisting Three Colour Flag in the Thiruppathur area and on 05.02.1943, he along with other went to Jolarpet Railway Station, to hoist Three Colour Flag a top of the Railway Station Building and the Police detained him in the Jolarpet Police Station under their custody and ill-treated him. On 07.02.1943, the Police took him to the Vellore Court for judicial custody from police lock-up and he had been detained at Central Prison, Vellore.

3.2 The petitioner on becoming aware that the Government of India is honouring the freedom fighters with pension and THIYAGI title, he made a representation to the Government in the month of August 2005 and gave another representation in the year August 2006, which was forwarded by the District Collector, Vellore to the second respondent, who in turn rejected the proposal sent by the District Collector, Vellore by proceedings dated 21.02.20016. The said order was put to challenge in a Writ Petition in W.P.No.22140 of 2006 and this Court, by an order dated 22.01.2009, directed the second respondent-Additional Secretary, Public (Political) Pension Department, Chennai, to consider the petitioner's case sympathetically and shall pass appropriate orders. Subsequent to the order dated 22.01.2009, the second respondent sanctioned pension for the petitioner under the State Freedom Fighter's Pension by his proceedings No.14020, dated 03.06.2009 and was granted only

State Freedom Fighter's pension and was not granted under the Central Government Freedom Fighter's Pension. Hence, the petitioner has filed the Writ Petition.

4. The learned Single Judge, on perusal of materials has come to the conclusion that the petitioner has not come forward within four corners of the scheme and dismissed the Writ Petition.

5. Aggrieved against the order of the learned Single Judge, the appellant / petitioner has filed the present Writ Appeal.

6. The learned counsel for the appellant / petitioner would submit that the learned Single Judge ought to have seen that the appellant had participated in the Quid India Movement and had undergone imprisonment and hence the appellant is eligible to get the (S.S.S.) Pension scheme of the Central Government. The learned counsel would further submit that the learned Single Judge ought to have allowed the writ petition filed by the appellant herein on the basis of co-prisoners certificate issued by Mr.V.S.Kandasamy Mudaliar and M.K.Ramasamy and the non availability of records certificate issued by the sub Inspector of Police, Jolarpettai. He would further submit that the learned Judge ought not to have faulted on the appellant for non mentioning of the imprisonment period undergone by the appellant / petitioner in the co-prisoners certificates and the non availability of records certificate issued by the Sub Inspector of Police, Jolarpettai.

7. Adding further, the Hon'ble Judge ought to have seen that the Hon'ble Supreme Court repeatedly held that the object of the scheme is to honour and mitigate the sufferings of freedom fighter and a technical approach should not be made. He would further submit that the learned single Judge failed to take note of the fact that already the State Government is granting pension under freedom fighters category and the appellant / petitioner is also receiving the same. Hence, the learned counsel prays for allowing this appeal.

8. The learned counsel appearing for the respondents would submit that for getting S.S.S.Pension Scheme, one has to satisfy the conditions of the Scheme evolved by the Central Government. It requires an imprisonment/detention certificate from the concerned jail authority, the District Magistrate or the State Government indicating the period of sentence, date of admission etc., If only, these materials are not available, a Non-Availability of Records Certificate will be obtained from the concerned authority along with two Co-prisoner certificates who have proven jail sufferings of minimum one year and that he was detained along with co-prisoners in the jail at least for a

minimum period of six months. He would further submit that the State Government forwarded the application of the appellant / petitioner without any recommendation. Though he has submitted Personal Knowledge Certificate from M/s.V.S.Kandaswamy Mudaliar and M.K.Ramaswamy and non availability of Records Certificate from the Sub- Inspector of Police, Jolarpettai, but nowhere the certifiers have specified the period of suffering of the appellant/ petitioner viz., underground and imprisonment suffering. Though the petitioner had stated that he had participated in the 1942 Quit India movement, he had not specified the period. Therefore, he was not considered to be eligible for S.S.S.Pension. Hence, the learned Single Judge, on through consideration of the materials, dismissed the writ petition and hence, prayed for dismissal of this writ appeal.

9. Heard Mr.K.Balaji, learned counsel appearing for the appellant; Mr.P.Gunasekar, learned Senior Panel Counsel (Central Government) for first respondent and Mr.V.Anandhamoorthy, learned Special Government Pleader appearing for the second respondent and perused the materials placed on record.

10. The Swatantrata Sainik Samman Pension Scheme, 1980 is a Central Government Scheme for the grant of pension to freedom fighters and their families from Central Revenues which was introduced by the Government of India to extend the benefit of pension to all the freedom fighters as a token of respect to them. The Scheme is detailed to the effect that it clearly specifies the persons who are eligible for the purpose of grant of pension under the Scheme; what are the movements/mutinies connected with the national freedom struggle; how to prove the claims; mode of payment of pension, etc. As per the provisions of the Scheme, the following conditions must be fulfilled for being eligible for grant of SSS Pension:-

(a) Imprisonment / 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, facts of the case and reasons for release

or

(b) In case records of the relevant period are not available, a Non-Availability of Records Certificate (NARC) from the concerned State / Union Territory Administration along with two co-prisoner Certificates (CPC) from freedom fighters who have proven jail sufferings of minimum one year and who were with the applicant in the jail for a minimum period of six months. In case the certifier happens to be a sitting or Ex.M.P./M.L.A only one certificate in place of two is required."

The main contention of the learned counsel for the appellant is that when the appellant has fulfilled all the requirements, viz., production of co-prisoners certificate, non-availability of records certificate from the Sub Inspector of Police, Jolarpettail, the learned Single Judge failed to consider the material placed before him by way of typed-set and dismissed the Writ Petition. It is seen from the records that the appellant has got certificates from two co-prisoners, viz., (1) V.S.Kandasamy and (2) M.K.Ramasamy. The co-prisoner certificate issued by Mr.V.S.Kandasamy, in in paragraph Nos.3 & 4, it has been stated as follows:-

"3. I suffered imprisonment during the Freedom Struggle and was lodged in Allipuram Central Jail in Bellary District during the period from 21.10.1942 to 28.04.1943.

4. I hereby certify that Shri. E.V.Narayanasamy of Shri Vedi resident at No. Ealagiri Village, Thiruupathur Taluk District is a bona-fide freedom fighter who was also imprisonment on account of his/her participation in the Quid India Movement during the freedom struggle, was tried by the Court of in the year and was lodged in the same jail along with me during the period from before the conviction at Vellore Jail."

As per the provision of SSS Scheme, the co-prisoners should have undergone one year imprisonment, but as per the certificate issued by (1) V.S.Kandasamy, it is crystal clear that he himself had undergone only around six months viz., 21.10.1942 to 28.04.1943 and there is no mention about the period in which the appellant / petitioner had undergone imprisonment. When he was examined by the District Collector he made a statement that he was detained in Vellore Jail for three months during that time the appellant was also remained there. Hence, we are of the considered view that the observation made by the learned Single Judge holding that "though the appellant / petitioner had stated that he had participated in the year 1942 Quid India Movement, he had not specified the period and therefore, he was not considered to be eligible for S.S.S.Pension" is justified.

11. The other submission of the learned counsel for the appellant is that a freedom fighter should be a freedom fighter for all, whether it is for the State Government or for the Central Government and the learned Single Judge has to look into overall aspect of the claim and not dissect the cases altogether and there is gross discrimination in the case of the appellant / petitioner. Initially, though the appellant / petitioner submitted an application to the State Government, it was rejected by the second respondent on the ground that it was not supported by documentary evidence to establish the jail

suffering and thereafter, the appellant / petitioner approached this Court by filing a Writ Petition in W.P.No.22140 of 2006 and this Court by an order dated 22.01.2009 disposed the writ petition by directing the second respondent and District Collector to consider the case of the appellant / petitioner sympathetically. Thereafter, by proceedings, dated 03.06.2009, the appellant / petitioner was granted pension. As per the provision of SSS Scheme, the appellant / petitioner has to fulfill the necessary criteria. From the records, it is seen that Thiru.V.Kandasamy, who said to have issued a co-prisoner's certificate is not a competent person as per the norms prescribed in the Scheme. So, the contention of the appellant / petitioner that when the appellant/petitioner has been granted State Government Pension, the central Government should automatically grant pension without any further enquiry or proof is not sustainable, since the appellant / petitioner does not fulfill the required conditions.

12. It is pertinent to point out that the learned Single Judge, in paragraph No.11 of the order, has held as follows:-

"11. There is no quarrel with the proposition of law laid down in those two judgments. Ultimately, as held by the Supreme Court cited elsewhere, it is only if the petitioner comes within the four corners of the Scheme, the question of grant of pension can be considered. Since the petitioner has not satisfied the authorities in this regard, there is no infirmity or illegality in the order passed by the respondents.

The learned Single Judge has given a categorical finding that "if the petitioner comes within the four corners of the Scheme, the question of grant of pension can be considered. Since the petitioner has not satisfied the authorities in this regard, there is no infirmity or illegality in the order passed by the respondents." Since the appellant/ petitioner has not fulfilled the criteria as required by the S.S.S. Pension Scheme, the learned Single Judge has rightly dismissed the writ petition. Therefore, we are of the considered view that the order passed by the learned Single Judge does not warrant interference.

13. In the result, the Writ Appeal is dismissed, confirming the order of the learned Single Judge, dated 25.04.2011 made in W.P.No.23831 of 2010, on the file of this Court. There is no order as to costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

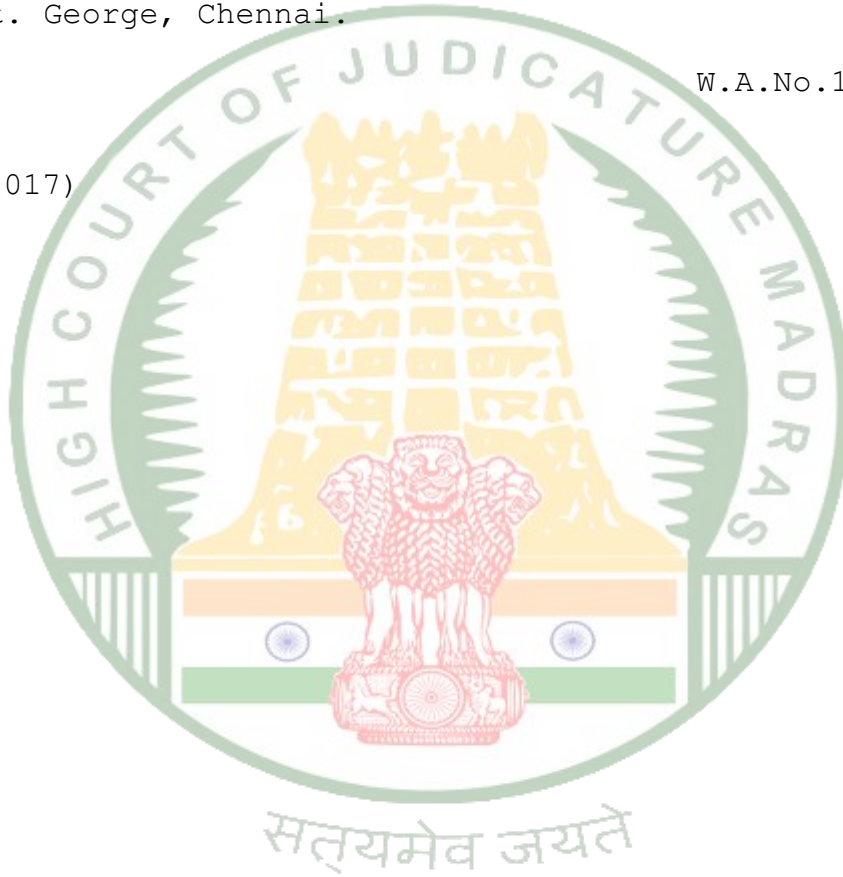
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To

1. The Under Secretary,
Government of India,
Ministry of Home Affairs,
Freedom Fighters Division,
New Delhi - 110 003.
2. The Additional Secretary,
State of Tamil Nadu,
Public (P.P.I.) Department,
Fort St. George, Chennai.

W.A.No.1518 of 2012

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