

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4865 of 2015

A.Muthian

... Petitioner

vs.

1. The District Collector,
Nagapattinam District,
Nagapattinam.

2. The Commissioner and Secretary to Government,
Public (Political pension) Department,
Fort St. George,
Chennai-600 009.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Certiorarified mandamus to call for the records connected with the Rejection Order passed by the first respondent in Na.Ka.No.12411/2014/A1, dated 07.07.2014 and quash the same and further direct him to consider the application of the petitioner by placing it before the District Level Screening Committee for recommending State Freedom Fighters Pension to the Government and further direct the 2nd respondent to grant State Freedom Fighter's Pension by suitably relaxing conditions including the age in favour of the petitioner.

For Petitioner : Mrs.R. Roopa

For Respondents : Mr.Akhil Akbar Ali
Government Advocate

O R D E R

The petitioner has come forward with the claim for Freedom Fighters Pension. The petitioner has submitted that he has participated in the 'Quit India Movement 1942' in Mayiladuthurai and he was imprisoned in Sub- Jail, Mayiladuthurai from 07.10.1942 to 21.10.1942. Though the petitioner is said to have submitted his certificates, unfortunately the same were not accepted and the first respondent had rejected the request of the petitioner on the ground that in terms of G.O.Ms.No.951, Public (Political

Pension.II) Department, dated 18.05.1981, the petitioner would not be entitled to pension. It is submitted that the petitioner had actually participated in the freedom movement and the action of the respondents depriving Freedom Fighters' Pension to the petitioner is completely not correct.

2. The learned Government Advocate appearing for the respondents would submit that Freedom Fighters Pension is covered by the Scheme and that the petitioner should have been imprisoned for a minimum period of 21 days (three weeks) in terms of G.O.Ms.No.951, Public (Political Pension.II) Department, dated 18.05.1981, to qualify for sanction of pension. That apart, there is no evidence to prove that he had participated in the freedom struggle and that no Co-prisoner certificate from an authorised certifier along with the request was produced. Though the scheme for granting State Freedom Fighters' Pension was introduced in 1966, the petitioner has not chosen to approach the authorities concerned immediately and after many decades, he has chosen to seek for pensionary benefits. According to the respondents, the petitioner should have completed 18 years of age at the time of imprisonment. The respondents further submitted that the petitioner was not only under-aged, but also not suffered imprisonment for 21 days and in the absence of records hence and as per the Scheme, the petitioner would not be entitled for the pensionary benefits.

3. Heard both the sides and perused the materials available on record.

4. From the impugned order, it is clear that the request of the petitioner was rejected only on the ground that he has neither completed 18 years of age during detention nor he was imprisoned for 21 days. Hence, the petitioner has not proved by means of counter that he has undergone 21 days imprisonment. The petitioner has also produced documents with regard to imprisonment, which according to the respondents is not suffice to grant pensionary benefits. Though the documents produced by the petitioner clearly show that the petitioner was in prison for 15 days and not 21 days, as per G.O.Ms.No.951, Public (Political Pension.II) Department, dated 18.05.1981, the object of Freedom Fighters' Pension is to mitigate the sufferings of those persons, who have struggled to achieve independence for our country. The person, who is arresting a person is not going to ask whether he is either under 18 years of age or above. A group of persons, who have participated in the freedom movement, have been imprisoned, which is not disputed by the respondents. As far as the petitioner is concerned, the respondents are disputing his imprisonment on account of freedom struggle, only on the ground that he was not

in prison for 21 days and he was under-aged. Freedom Fighters' Pension under the scheme is not with regard to the age, but with regard to the struggle undergone by the freedom fighters. Therefore, as in the instance case, even minors would have participated in the struggle and if any evidence is shown, the same should be considered and rejecting the request for Freedom Fighters' Pension on technical grounds may not be correct.

5. A Division Bench of this Court, by judgment dated 12.03.2014 in W.A.No.2007 of 2013, has granted the relief to Freedom Fighters, who were below 18 years of age at the time of freedom struggle. Taking note of the fact that the petitioner had participated in the struggle for independence of our country, Freedom Fighters' Pension should be granted to him based on the documents produced by him.

6. In view of the above, I find that there is no justification on the part of the respondents in rejecting the request of Freedom Fighters' Pension to the petitioner.

7. Hence, in the interest of justice, I direct the respondents to sanction Freedom Fighters' Pension to the petitioner and as a sequel, the arrears of the same shall be disbursed to him from the date of his eligibility till date. The above exercise shall be completed within a period of 45 days from the date of receipt of a copy of this order. It is made clear that the respondents shall continue to pay Freedom Fighters' Pension to the petitioner forthwith. With the above direction, the Writ Petition is disposed of. No costs.

8. Before parting with the judgment, this Court expresses its regret that persons like that of the petitioner who have struggled for the independence of our country, for our well-being, are deprived of their legal entitlement, ever after 70 years of independence.

सत्यमेव जयते

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

dn/aeb

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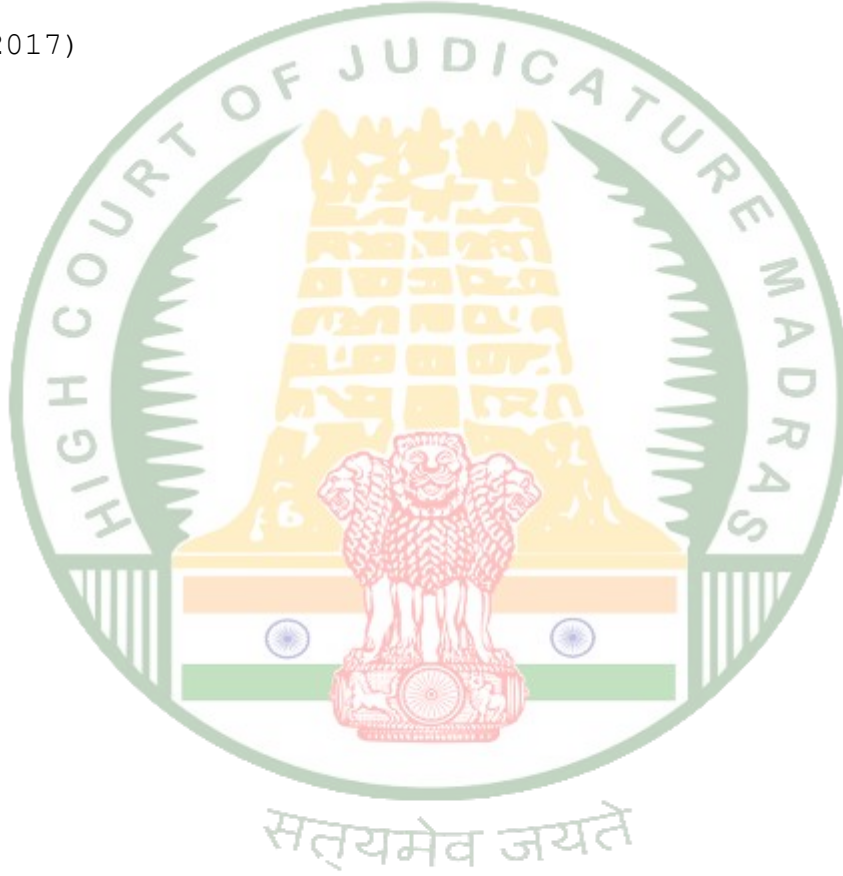
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+1cc to Mr.R.Roopa, Advocate SR.No.50868
+1cc to Government Pleader SR.No.52552

W.P.No.4865 of 2015

GN(06/09/2017)



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