

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Order Reserved ON: 24.04.2017****Order Pronounced DATE: 28.04.2017****CORAM****WEB COPY****THE HONOURABLE MR.JUSTICE V.PARTHIBAN****W.P(MD)No.4609 of 2014**

1.P.S.Periaiah (Died)

2.P.Selvaraj

3.P.Ravindren

4.Devayee

5.K.Jothi

6.AL.Chandra

7.Indira

(Petitioners 2 to 7 are impleaded as legal representatives of the deceased sole Petitioner as per order of this Court in W.M.P(MD) No.4142 of 2017, dated 12.4.2017) ..Petitioners

Vs

1.The Government of India,
represented by its Under Secretary,
Ministry of Home Affairs(FFR Div),
1st Floor, Lok Nayak Bhawan,
Khan Market, New Delhi - 110 003.

2.The District Collector,
Madurai District,
Madurai.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the second respondent in Mu.Mu.No.86785/2008/Y-4, dated 24.12.2013 and to quash the same and to direct the respondents to pay Suthandra Sainik Samman Pension to the Petitioner within the time stipulated by this Court.

For Petitioner :M/s.R.Subramanian

For Respondent-1 :Mr.C.Nandagopal

Central Govt.Standing Counsel

For Respondent-2 :Mr.D.Muruganandam

Additional Government Pleader

**ORDER**

The Petitioner has approached this Court seeking issuance of a Writ of Certiorari Mandamus calling for the records pertaining to the impugned proceedings of the second respondent in Mu.Mu.No.86785/2008/Y-4, dated 24.12.2013 and to quash the same and to direct the respondents to pay Suthandra Sainik Samman Pension to the Petitioner within the time stipulated by this Court.

2.The Writ Petition was originally filed by one Periaiah, aged about 91 years. Pending disposal of the Writ Petition, the Petitioner died on 8.6.2014. On the death of the original Petitioner, the present Petitioners have been impleaded as legal heirs of the deceased sole Petitioner.

3.The said Periaiah was a freedom fighter and was imprisoned at Alipuram Jail at Bellari in Karnataka State during the period from 5.3.1943 to 13.5.1946 for participating in the Quit India Movement Struggle. In recognition of his participation in the freedom struggle, the State Government had granted the Freedom Fighters Pension and he also received the same till his death. The first respondent has also floated a Scheme called Suthandara Sainik Samman Pension Scheme(hereinafter called the ''scheme'') which was brought into force on 1.8.1980. The said Periaiah had applied for grant of pension under the above scheme and according to him, necessary certificates were also submitted for consideration. However, without considering the application of the said Periaiah, the second respondent forwarded the decision of the first respondent rejecting the claim on the ground that no proper certificates were enclosed. which was conveyed by communication, dated 24.12.2013, which communication is impugned in this Writ Petition.

4.Upon notice, Mr.C.Nandagopal, learned Central Government Standing Counsel appeared for the first respondent and Mr.D.Muruganandam, learned Additional Government Pleader appeared for the second respondent.

5. A counter affidavit has been filed by the first respondent. According to the contentions of the counter affidavit that the original petitioner had not submitted any primary evidence as per the scheme and in the absence of proper evidence, the claim could not be considered favorably.

6.The second respondent has also filed counter affidavit. According to the second respondent's counter, the Co-Prisoner Certificate issued by one Periyasamy was not valid but in respect of another person one A.M.Lakshmanan, who had also undergone imprisonment in the same jail during the relevant period with the original petitioner was found to be valid. According to the counter statement, two certificates are required to be valid for



the purpose of consideration of his claim. Moreover, it is stated that the Birth Certificate was not submitted by the original petitioner in support of his age. It was stated that the scheme was introduced in the year 1980 and the application was given by the claimant only after a period of 27 years, in the year 2007.

7. In that view of the matter, it was contended that the claim for grant of pension under the above said scheme was not considered in favour of the claimant. The learned counsel appearing for the petitioner would contend that the rejection of the claim made by the petitioner is contrary to the law laid down by the Honourable Supreme Court of India and High Court of Madras. Therefore, the impugned order of rejection is liable to be interfered with. Moreover, the learned counsel appearing for the petitioner would contend that a pragmatic approach is imperative in the matter of pension, particularly, freedom fighter pension and no definite proof is required to be submitted beyond doubt. Any piece of evidence, which should support the claim of a person like the petitioner would be sufficient enough to enable them to become eligible for grant of pension under the samman scheme.

8. This is because of the fact that the freedom fighters who are living in their ripe old age in some nook and corner of the country cannot be in a position to secure definite piece of evidence or unimpeachable material in support of their claim, particularly, after the lapse of several decades and no proper records would also be available in their support. In support of his contention, the learned counsel appearing for the petitioner relied upon the following decisions:-

- (i) **(1991)4 SCC 366** (Surja and others vs. Union of India and others)
- (ii) **AIR 1993 SC 2127** (Mukund Lal Bhandari vs. Union of India)
- (iii) **(2001)8 SCC 8** (Gurdial Singh vs. Union of India)
- (iv) **(2008)3 MLJ 1382** (N.Palaniappan) vs. State of Tamil Nadu)
- (v) **(2010)2 SCC 669** (State of Tamil Nadu and another vs. A.Manickam Pillai)
- (vi) W.A.No.388 of 2002 dated 18.08.2010
- (vii) W.A(MD)No.809 of 2012 dated 04.02.2013

9. The decision rendered by the Honourable Supreme Court of India reported in **AIR 1993 SC 2127** (Mukund Lal Bhandari vs. Union of India) would fortify the submission made on behalf of the petitioner in paragraph 4 of the said judgment, which is extracted below.

<https://hcservices.ecourts.gov.in/hcservices/> 10. As regards the sufficiency of the proof, the Scheme itself mentions the documents which are



required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly.

As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting, the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill-behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Schemes has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative Convenience than as a rigid time-limit.

Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his



eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents, would be readily in possession of the required documents. In the very nature of things, such documents have to be secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time limit. What is necessary in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning, to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, Once the application is made, even if it is unaccompanied by the requisite eligibility date, the date of which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished."

10.The above passage from the Honourable Supreme Court of India would point towards the authority as to how the beneficial scheme should be applied and in liberal terms and how the benefits and the so called scheme should be made available to the pensioner without insisting on technicality.

11.In other decision reported in **(1991)4 SCC 366** (Surja and others vs. Union of India and others), the Honourable Supreme Court of India has clearly held the persons, who suffered minimum 6 month's imprisonment before independence, are eligible for receipt of pension under samman scheme.

12.In respect of another decision of the Honourable Supreme Court of India reported in **(2001) 8 SCC 8** (Gurdial Singh vs. Union of India), it was held that as far as determination of the eligibility is concerned, the standard of proof required for, is <https://hcservices.ecourts.gov.in/hcservices/> is required in a criminal case or in a case adjudicated upon rival contention or evidence of parties. Since the object of the Scheme is to honour and to mitigate the



suffering of the freedom fighters, a liberal and not a technical approach should be adopted. The claim under the scheme should be determined on the basis of probabilities and not by applying the test of "beyond reasonable doubt".

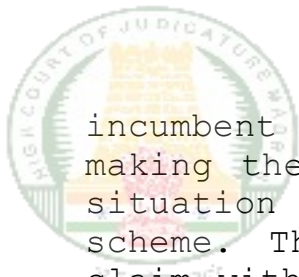
13. Per contra, the learned counsel for the respondents would submit that the rejection of the petitioner's claim was on the basis of the provision of the scheme itself. Any claim for pension must be claimed within the framework of the scheme and not outside the scheme. In such view of the matter, the impugned order issued by the first respondent cannot be faulted at all.

14. According to the learned counsel for the respondents, in the rejection order it is clearly stated that the certificates, which were issued by one of the certifiers, was not acceptable. In the impugned order, it was also pointed out that the petitioner could not produce valid birth certificate from the authority concerned, which is also one of the requirements.

15. I have given my anxious consideration to the rival submissions of the parties.

16. It is an admitted fact that the original petitioner is 91 years old freedom fighter, when he filed this Writ Petition. The status of the petitioner as freedom fighter has been recognized and pension is also sanctioned and being paid to the petitioner by the State Government. In fact, even his claim for grant of pension under the samman scheme was also recognized by the Collector of District committee constituted for the said purpose.

17. From the facts and circumstances narrated above, it is seen that the petitioner was indeed a freedom fighter and there cannot be two opinion, on that. The only reason that was held against him was no primary evidence was available. As far as the submission is concerned, the same cannot be countenanced in law, for the simple reason that the scheme itself is provided for production of secondary evidence in the absence of primary evidence and in the instant case, the petitioner being 91 years old person cannot be expected to obtain any documents from the jail authorities in support of his claim and therefore, insisting on production of such certificate is untenable to say the least. The other reason that the certifiers, who were not eligible to issue certificate, cannot also be appreciated because after all for grant of pension under samman scheme some proof has to be produced for the purpose of eligibility for grant of pension. When such a proof is available and it cannot be doubted merely because the two certifiers did not suffer imprisonment for one year or more. The said reasoning cannot be held against the petitioner and particularly when the petitioner sought pension at his ripe old age and is no more now. As stated by the Honourable Supreme Court of India in its decision, that it is imperative and



incumbent upon the State to honour the freedom fighter instead of making them to beg the Government for grant of pension. Such a situation does not advance the cause and objective behind pension scheme. The State cannot look down upon the freedom fighters' claim with pedantic approach, bringing it under their microscopic consideration with a view to reject the claim of the freedom fighters on hyper technicality. Strict construction or sticking to the rigidity of the provisions of the Samman Scheme should give way to the larger public interest of honouring our freedom fighter by repaying them, however, in small means as a fulfilment of our gratitude to their selfless struggle.

18. In such circumstances, I am in agreement with the contention raised on behalf of the petitioner and the decision relied on by the counsel for the petitioner.

19. In these circumstances, the impugned order passed by the second respondent, dated 24.12.2013 is liable to be interfered with. Therefore, the same is set aside. The respondents are directed to process the application submitted by the original petitioner Periaiah and grant the pension under the Swatantrata Sainik Samman Pension Scheme, 1980, and grant pension with arrears from the date of application till the date of the death of the claimant i.e., till 8.6.2014. The said exercise shall be completed and the pension shall be sanctioned within a period of eight weeks from the date of receipt of a copy of this order.

20. With above directions, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Under Secretary, Government of India,
Ministry of Home Affairs (FFR Div),
1st Floor, Lok Nayak Bhawan,
Khan Market, New Delhi - 110 003.

2. The District Collector,
Madurai District, Madurai.

+2 CC to M/s. C. NANDAGOPAL, Advocate, SR No. 53541, 54898

+1 CC to M/s. R. SUBRAMANIAN, Advocate, SR No. 54987

VSN

PSM/MMS/19.05.2017/7P/6C