



For Petitioner : Mr.R.Sureshkumar

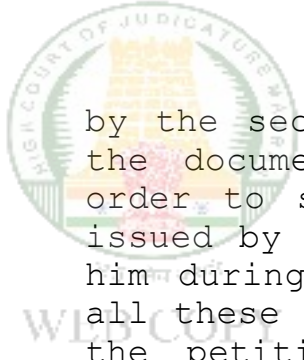
For Respondents : Mr.R.Murugappan
Central Govt. Standing Counsel
(for R1)
Mr.K.Maheshraja
Govt. Advocate
(for R2 and R4) and
Mr.P.Gunasekaran for R3

O R D E R

This writ petition has been filed by the petitioner challenging the impugned order, dated August 2006, of the first respondent and seeking for consequential direction to the first respondent to pay the petitioner monthly Freedom Fighters Pension under Swatantrata Sainik Samman Pension Scheme, 1980, called Samman Pension from the date of impugned order.

2. According to the petitioner, he is a freedom fighter participated in the freedom struggle through Indian Independence League constituted by Nethaji Subhash Chandra Bose in the Far East of the country. The petitioner joined in the Indian Independence League in the year 1943 at Rangoon, Burma headed by Nethaji Subhash Chandra Bose as a Leader of Indian National Army (INA). The petitioner was issued certificate dated 23.09.1964 by All India Burma Tamilian Association (H.Q), Rangoon. According to the petitioner, he played a significant role in the Indian Independence League as well in Indian National Army (INA) and he was in active service in the freedom movement. The petitioner was arrested by British forces and imprisoned in Rangoon Central Jail from May 1945 to December 1945 i.e., for a period of eight months.

3. The petitioner claims to have been issued certificate dated 31.12.1986 by All India INA committee. The petitioner is getting monthly Freedom Fighter Pension from January 2003 and now getting a sum of Rs.12,000/- per month as State Government Pension. However, the petitioner has not received monthly Freedom Fighter Pension under Swatantrata Sainik Samman Pension Scheme, 1980 from the first respondent, for which, he is fully eligible. In these circumstances, the petitioner said to have submitted an application on 31.03.2004 for sanction of pension under the said scheme. The documents were placed before the District Level Screening Committee and the fourth respondent has sent a report to the Government along with necessary documents. The report of the Collector of Thanjavur has also recommended the case for sanction of Swatantrata Sainik Samman Pension and based on the recommendation of District Collector, the State Government also recommended the case for sanction of Swatantrata Sainik Samman Pension. The reports were also submitted to the first respondent



by the second respondent along with letter dated 14.10.2005 with the documents submitted by the petitioner. The petitioner in order to substantiate his claim, has submitted two certificates issued by co-prisoners, who also suffered imprisonment along with him during the relevant point of time. But without considering all these aspects, the first respondent has rejected the claim of the petitioner by the impugned order on the ground that co-prisoners have suffered jail only for about seven to eight months and they are not eligible to issue co-prisoner certificates and only such freedom fighters receiving central samman pension, who have proven jail suffering of one year or more are eligible to issue co-prisoner certificate.

4. Heard the learned counsel appearing for the parties and perused the material available on records.

5. 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.

6. 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

<https://hcservices.ecourts.gov.in/hcse/vts/> (vii) W.A(MD)No.809 of 2012 dated 04.02.2013

7. 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.

"4. 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 the past or future notice inviting the claims, should be regarded more as a matter of administrative Convenience than as a rigid time-limit.

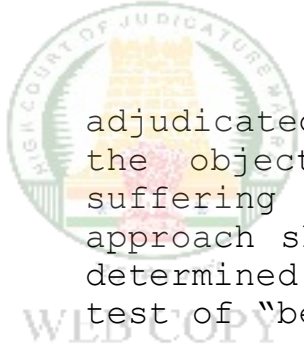


Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There 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."

8. 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.

9. 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.

10. 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 not the same as 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".

11. 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.

12. According to the learned counsel for the respondents, in the rejection order it is clearly stated that the certificates, which were issued by the co-prisoners, were not acceptable for the reason that both the certifiers have spent less than one year in jail notwithstanding that they are also in receipt of pension. In the impugned order, it was also pointed out that the petitioner could not produce Non-availability of Records certificate from the authority concerned, which is also one of the requirements.

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

14. It is an admitted fact of the petitioner is 90 years old freedom fighter. 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.

15. 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 that the Non-availability of Records certificate was not available, which is considered to be one primary evidence and the certifiers, who issued certificates, did not suffer imprisonment for one year or more. As far as first 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 90 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 <https://hcds.ecm.hq.gov.in/ecm-services> is 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 seeks pension at his ripe old age. 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.

16. 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.

17. In these circumstances, the impugned order passed by the first respondent, dated August 2016 is liable to be interfered with. Therefore, the same is set aside. The first respondent is directed to process the application of the petitioner and grant the pension under the Swatantrata Sainik Samman Pension Scheme, 1980, and grant pension with arrears from the date of application and till date. The pension shall be continued to be paid till the life time of the petitioner. 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.

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

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1. The Under Secretary to Government of India,
Ministry of Home Affairs (Freedom Fighter Division),
1st Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi - 110 003.



2.The Joint Secretary,
Public (Political Pension-1) Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.

3.The Accountant General,
(Accounts and Entitlement and Pension)
The Office of Accountant General,
No.36, Anna salai,
Teynampet,
Chennai - 600 018.

4.The District Collector,
The Office of District Collector,
Tamil University Road,
Thanjavur District - 613 010.

+One cc to Mr.R.Suresh Kumar, Advocate, SR.No.14844

+One cc to Mr.R.Murugappan, Advocate, SR.No.14935

+One cc to Mr.P.Gunasekaran, Advocate, SR.No.15454

skn

RL/8C/8P/SV/MMS/24.4.2017

W.P.(MD) No.17845 of 2016

15.03.2017