



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2017

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.3341 of 2011

Samsugani (Died)

Rahima Beevi

(name of the petitioner is substituted of
the deceased sole petitioner vide court
order dated 25.01.2017 in M.P.No.1 (MD)
2013)

.. Petitioner

Vs

The Under Secretary to the Government,
Ministry of Home Affairs,
Freedom Fighters Division,
1st Floor, Lok Nayak Bhavan,
New Delhi.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the proceedings of the respondent herein vide his proceedings No.F29/10/2004-FF (INA) dated 07.01.2005 and quash the same consequently direct the respondent to pay the freedom fighters pension forthwith.

For Petitioner	:	Mr.P.Mahendran for Mr.T.Murugananthan
For Respondent	:	Mr.R.Raja Gopal

ORDER

The Brief facts of the case is as follows:

The petitioner's claim for grant of Freedom Fighters Pension under Swatantrata Sainik Samman Pension Scheme, 1980 was rejected on the ground that the co-prisoners certificate submitted by the petitioner does not evidence their imprisonment for over one year. Challenging the same, the present writ petition has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The learned counsel for the petitioner submitted that the



petitioner had served in IIL of Indian National Army at Burma and joined freedom struggle by strengthening the hands of Nethaji Subash Chandra Bose. The petitioner was arrested and confined in Central Prison, Rangoon from May 1945 to December, 1945. In the prison, the petitioner was accompanied with the other cadres of INA viz., Rathinam Pillai and K.Krishnan. After independence, the petitioner settled at Trichirappalli and applied for the Freedom Fighters Pension before the State Government along with the requisite documents. The State Government after consideration of all the documents submitted by the petitioner, granted the State Freedom Fighters Pension and the petitioner was receiving the same. Subsequently, the petitioner had applied for pension under "Swatantarta Sainik Samman Pension Scheme, 1980" before the Central Government. The said application was forwarded through the State Government along with the application of the petitioner, wherein, the petitioner had enclosed all the relevant documents including the co-prisoner certificates and personal knowledge certificate from Dr(Col.) Lakshmi Sehgal. However, the respondent had rejected the petitioner's application, by an order dated 07.01.2015 citing that the co-prisoner, who had given the certificate had undergone imprisonment in the freedom struggle for less than one year and hence, the petitioner was not eligible under the said scheme. Challenging the same, the present writ petition has been filed. Pending the writ petition, the petitioner died and his legal heirs were brought on record.

3. This Court, in identical circumstances had passed an order dated 14.03.2009 in W.P.No.9740 of 2008 , which reads as hereunder:

" 9. In **Gurdial Singh v. Union of India** (2001 (8) SCC 8), the Hon'ble Supreme Court while dealing with an identical situation, in respect of a claim of the freedom fighter under the Scheme in paragraph Nos.6 & 7 has held as follows:-

"The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. Millions of masses of the country had participated in the freedom struggle without any expectation of grant of any Scheme at the relevant time. Moreover, in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is cumbersome and expensive. Therefore, in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical



approach is required to be adopted. It is also to be kept in mind that the claimants under the Scheme are supposed to be such persons who had given the best part of their life for the country.

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The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. The case of the claimants under the Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

10. Following the said judgment, a learned single Judge of this Court in **K.Appanraj v. The Secretary to Government of India & Others** (2004 Writ L.R 606) has held as follows:-

"7.The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once



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on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

11. Applying the principles laid down by the Hon'ble Supreme Court and followed by this Court in the above judgments, if the facts of the present case are analysed, I am of the view that the rejection of the claim of the petitioner is not at all correct. As observed by the Hon'ble Supreme Court, if the object of the Scheme providing grant of pension to the freedom fighters is kept in mind, certainly it would emerge that demanding a certificate from a co-prisoner who has completed at least one year of imprisonment would not be rational at all. At this length of time, it would be impossible for the petitioner to search for some other co-prisoner who would have completed one year of imprisonment. Demanding such a certificate, which is impossible, cannot be countenanced at all. Admittedly, Mr.Kuppusamy, the Certifier has been granted pension under the Scheme by the Government of India accepting his claim that he was imprisoned during freedom struggle. When that be so, hardly, I find any reason to disbelieve the statement of such a respectable freedom fighter, who fought for the freedom of this great nation. Treating a freedom fighter who is now an octogenarian in a different manner directing him to run from pillar to post for a certificate from a co-prisoner who was imprisoned for more than one year would be only belittling the great services rendered for the freedom of this country. Granting pension to a freedom fighter is the privilege of the Government to honour the freedom fighter and such honour should be extended voluntarily without relying on unnecessary technicalities.

12. Indisputedly, accepting the claim of the petitioner, the State Government has granted freedom fighters pension to the petitioner vide pension order dated 17.11.1989. A Division Bench of this Court in **R.Thangavelu v. The Government of India, rep. by its Secretary, Ministry of Home Affairs and another** (1994 Writ L.W 137) after considering various Schemes of the Government of India and State Government, has formulated guidelines to be considered while granting pension. Such guide lines are thus:-



"The Government should also take into account the book published by them under the title "Who is Who" containing the names of freedom fighters and act upon the same. Equally, when once the Central Government grants the pension after satisfying themselves about the fulfillment of the conditions stipulated in the Scheme, it will not be fair for the State Government to reject the claim of the State Pension. Similarly, if the State Government grants pension to a freedom fighter, the same should be accepted by the Central Government and no further proof should be insisted upon. In other words, once either the State Government or the Central Government grants pension to a particular freedom fighter, he must automatically get the other pension either under the State or under the Central Government scheme without any further enquiry, on the claimants satisfying the guidelines, and the Government cannot reject the claim summarily that he is not a freedom fighter at all. Further, when once Tamara Patra has been granted recognising the valuable services rendered during freedom struggle, the concerned Government should automatically grant pension without any further enquiry or proof."

13. Following the above judgment, the Hon'ble Mr. Justice P. Sathasivam, (as he then was) in **W.P.No.36113 of 2003** by order dated 29.12.2003, while allowing the writ petition, directing the Central Government to grant pension under the Central Scheme has observed as follows:-

"7. Among the conditions, it is relevant to note that if the State Government grants pension to a freedom fighter, the same should be accepted by the Central Government and no further proof should be insisted upon. The said decision of the Division Bench has become final. As a matter of fact, based on the Division Bench decision, several orders have been passed by this Court directing both Central and State Governments to pass orders in accordance with the guidelines prescribed above. The said decision is directly applicable to the case of the petitioner."

14. As I have already stated, the petitioner was



granted freedom fighters pension by the State Government as early as in the year 1989 itself. When that be so, as held by the Division Bench of this Court and later on followed in many judgments of this Court, the respondent is bound to pay pension to the petitioner under the Scheme without insisting for any other certificate from a co-prisoner who was imprisoned for more than one year or more as the certificate issued by Mr.Kuppusamy would suffice.

15. Admittedly, the Scheme has been given effect from 15.08.1972. Though the claim was made by the petitioner on 12.12.1994, he is not able to get the pension so far due reliance on technicalities by the Central Government. The Hon'ble Supreme Court in **Gurdial Singh v. Union of India** (cited supra) while directing the Central Government to grant pension has held that it should be from the date of filing of the writ petition and not from the date coming into force of the Scheme. Further, the Hon'ble Supreme Court has directed payment of interest @ 12% p.a. Following the same, in my considered opinion, in the case on hand, the petitioner would be entitled for pension from the date of his application namely on 12.12.1994 with interest @ 12% p.a.

16. In the result, the writ petition is allowed and the respondents are directed to pay 'Swatantrata Sainik Samman Pension' under the "Swatantrata Sainik Samman Pension Scheme 1980" to the petitioner with effect from 12.12.1994. with interest @ 12% p.a. No costs. Consequently, connected miscellaneous petitions are closed."

In the said order, this Court on earlier occasion set aside the reasoning of the respondent and directed for payment of Swatantrata Sainik Samman Pension together with interest.

4. The above findings are self-explanatory and squarely applicable to the facts of the present case. In the case in hand also, the respondent had rejected the petitioner's claim stating that the petitioner's co-prisoner had suffered imprisonment for less than one year and that the State Government pension cannot be a criteria for consideration of the Central Government pension.

5. In the result, this writ petition is allowed and the impugned order dated 07.01.2005 is set aside. Consequently the respondent is directed to pay Swatantrata Sainik Samman Pension under the "Swatantrata Sainik Samman Pension Scheme 1980" to the legal heirs of late Samsugani with effect from 22.11.2004, together with interest at the rate of 12% p.a. The said exercise



shall be completed within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

To

The Under Secretary to the Government,
Ministry of Home Affairs,
Freedom Fighters Division,
1st Floor, Lok Nayak Bhavan,
New Delhi.

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TE/SKN-RSK : 28/03/2017 : 7P/2C

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