



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2017

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.18758 of 2013
and M.P. (MD) No.2 of 2013

V.Nagamalai (Died)

1.Rakkammal

2.Pushpa

3.V.Annapoorni

4.Sakthivel

(petitioners 1 to 4 are substituted of the deceased
sole petitioner vide Court order dated 30.01.2017
in WMP. (MD) No.451 of 2017)

.. Petitioner

Vs

1. The Under Secretary,
Government of India,
Ministry of Home Affairs/Grih Mantralaya,
(FFR Division),
1st Floor, Lok Nayak Bhavan,
Khan Market, New Delhi 110 003.

2. The Secretary,
Government of Tamilnadu,
Public (PP.(I) Department,
Secretariat, Chennai-9.

3. The District Collector,
Trichy District.

.. 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 impugned order of the 1st respondent in his proceedings No.29/1/2009-FF (INA) dated 04.03.2009 and quash the same consequently direct the 1st respondent to grant Swathantrata Sainik Samman Pension to the petitioner from the date of the application.

For Petitioner : Mr.B.Jameel Arasu

For R1 : Mr.K.R.Laxman

<https://hcservices.ecourts.gov.in/hcservices/>
For R2 & R3 : Mr.T.R.Janarthanan
Addl.Govt.Pleader.



O R D E R

The petitioner had made an application to the respondents seeking for Freedom Fighters Swathantrata Sainik Samman Pension and by the proceedings dated 04.03.2009, the first respondent had rejected his claim on the ground that the petitioner had not produced any evidence substantiating his claim. Challenging the action of the first respondent, the present writ petition has been filed.

2. The petitioner had served in the Indian Independence League Thanakin Branch, Pegu District, Rangoon, Burma and had undergone many imprisonments. The petitioner was arrested by the British and detained in Central Jail from May 1945 to December 1945. The petitioner had sent his first application dated 27.02.1986 under Swathantrata Sainik Samman Pension Scheme. Subsequently on 10.06.1999 the petitioner had made another application to the first respondent, since his earlier application was not considered. Both the applications were acknowledged by the 1st respondent. The petitioner is also the recipient of the State Government Freedom Fighter's Pension granted by the second respondent in his proceedings No.13794 dated 04.09.2004. The petitioner while making an application seeking for the Central Government Pension, had enclosed more than 10 documents to substantiate his claim. Furthermore, he had also enclosed various co-prisoner certificates and other testimonials to establish his period of imprisonment. In spite of the same and total disregard to the enclosure made in the petitioner's application, the impugned order came to be passed on 04.03.2009 raising technical discrepancies. Challenging the same, the present writ petition is filed. During the pendency of the writ petition, the petitioner died and his legal heirs were substituted.

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 and it was not any expectation of grant of any Scheme at the relevant time. Moreover, in the partition of the country most of the citizens



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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 very 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.

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 Government has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom



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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 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.



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 Central 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."

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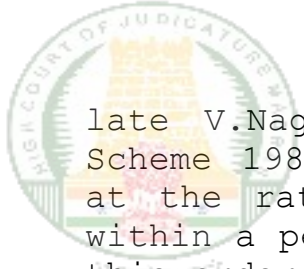
14. As I have already stated, the petitioner was granted freedom fighters pension by the State Government as early as in the year 1989 itself. When that be so, as held by the Division Bench of this Court and later on followed in many judgments of this Court, the respondent is bound to pay pension to 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 be 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 'Swantantrata Sainik Samman Pension' under the "Swantantrata 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 aforesaid order, this Court had set aside the reasoning of the respondents and directed for payment of Swatantrata Sainik Samman Pension together with interest. The above findings are self-explanatory and the facts therein are similar to the facts of the case in hand.

<https://hcservices.courts.gov.in/hcservices> 4. Hence, the impugned order dated 04.03.2009 passed by the first respondent is quashed. Consequently, the first respondent is directed to grant pension to the petitioner's legal heirs of



late V.Nagamalai under the "Swatantrata Sainik Samman Pension Scheme 1980" with effect from 10.06.1999, 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.

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In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

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Government of India,
Ministry of Home Affairs/Grih Mantralaya,
(FFR Division),
1st Floor, Lok Nayak Bhavan,
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2. The Secretary,
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3. The District Collector,
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KKD
TE/SKN : 03/04/2017 : 7P/4C

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