

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.20743 OF 2012

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed impugning the action of the respondents in not considering the case of the petitioner for grant of Freedom Fighter Pension under Swatantra Sainik Samman Pension Scheme, 1980, from the Central Revenue *vide* File No.12/ 1434/ 74-FF-SZ pending before the 1st respondent.

2. I have heard the submissions of *Sri G.L. Narasimha Rao*, learned counsel appearing for the writ petitioner; and of *Sri B. Narayana Reddy*, learned Assistant Solicitor General, appearing for the respondents 1 and 2; and of learned Government Pleader for Revenue, appearing for the respondents 3 and 4. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner was born in an agricultural family in a remote village of Nalgonda District. At the age of 18 or 19 years, in the year 1947, being attracted to the aims and objectives of the agitators, who started a struggle against the then Nizam Government, the petitioner participated in the movement. The police arrested the petitioner also along with the other participants in the movement and took him away to Secunderabad jail and kept him in custody for a period of nine months. He struggled physically and mentally during such confinement. After independence, the petitioner and others were released from jails. In that movement, the petitioner lost everything and is passing on days without any source of livelihood. Since the Government introduced the

pension scheme, he submitted an application enclosing all necessary documents and certificates. The application is forwarded through the State Government to the Central Government requesting to grant pension under the central scheme. The 3rd respondent, the Secretary to the Government of Andhra Pradesh, Revenue (Freedom Fighters) (FF-2), Department, Secretariat, Hyderabad, *vide* letter No.341/ FFA4/ 86, dated 01.05.1987, recommended the case of the petitioner for grant of central pension. In that letter it was stated that the individual (petitioner) had worked against the Nizam Government during the year 1947 and was arrested by the police and was taken away to Secunderabad and was kept in jail for the period from 22.03.1357 F to 18.12.1357 F and that the individual (petitioner) submitted a jail certificate issued by the Superintendent, District Jail, Secunderabad and also submitted certified copy of the jail certificate under-trial No.540, under Section 33 Remanding Court, Atraf Balda, bearing order No.21/ 15/ 1357 F and date of disposal on 18.12.1357 F and that the above certificates produced by the petitioner have been verified with the Collector's report and found to be correct and that the case of the petitioner was recommended by the District collector, Nalgonda. Thus, the case of the petitioner was recommended several decades ago. In the said letter itself, the said Secretary stated that he was directed to recommend the case of the petitioner for grant of Central pension and that the orders of the Government of India may be communicated to the State Government at an early date. While so, the 1st respondent, the Deputy Secretary to the Government of India, Ministry of Home Affairs, Freedom Fighters Division, addressed a letter, dated 30.10.1987, to the Superintendent, District Jail, Secunderabad, asking for clarification about the date of release of the petitioner from jail and also for verification of the

certificates of the petitioner with the official records in the jail. In the said letter, it is stated that in the original jail certificate, dated 18.08.1973, produced in 1973 the jail authorities had given the date of entry in jail as 22.03.1357 F but no date of release with remarks was mentioned but the copy of jail certificate dated 21.12.1978 received through the State Government gives all the particulars about the applicant and, therefore, it create doubt about the authenticity of the jail certificate and hence, they may be verified and a report may be sent to the Ministry at an early date. Thus, the efforts of the petitioner have become futile. Even after recommendation by the 3rd respondent, the 1st respondent has not considered the case of the petitioner and not sanctioned the pension though the jail certificates make it clear that he was in custody and kept in Secunderabad jail for nine months and that he is entitled to grant of pension on that ground. The action in not sanctioning the pension is arbitrary and void. The petitioner is a well known and genuine freedom fighter in Munugodu Mandal. In Munugodu Panchayati Samithi Office, there is a stone inscription laid by the Samithi people with the names of freedom fighters in Munugodu mandal. In the said inscription, the very first name is that of the petitioner. The matter is now under correspondence between the respondents. The petitioner by now has attained the age of 87 years. Even by taking the advanced age of the petitioner into consideration, the case of the petitioner is not being considered favourably. Considering his pathetic situation, justice may be done.

4. On behalf of the respondents 1 and 2, a counter was filed stating, *inter alia*, as follows: 'The case file of the petitioner is not presently available in the Ministry of Home Affairs. Letter, dated 30.10.1987, reveals the doubts about the genuineness of the jail certificates

produced by the petitioner. Ministry of Home Affairs requested the Superintendent, District Jail, Secunderabad, to verify and report about the genuineness of the certificates submitted by the petitioner in view of the contradictions. But no confirmation is received about the genuineness of jail certificates from the jail authorities. The petitioner also filed an application before the Central Prison, Secunderabad. He was informed *vide* letter, dated 10.11.1997, that his name was not forthcoming in the left out papers of records. The said aspect proves that the jail certificate is not genuine. When the information is not available with the source of issue, how the petitioner secured the certificate is doubtful. The petitioner filed W.P.No.22832 of 2000 before this Court for direction to consider his claim. The said writ petition was allowed on 14.12.2001 with the following order: 'Following the judgment of the Supreme Court in Gurdial Singh v. Union of India and others 2001 AIR SCW 3843, wherein the Apex court in paragraphs 6,7,8 and 9 of the Judgment, granted pension to the freedom fighters holding that rejection of pension to the freedom fighters on hyper-technical grounds is not proper'. Sri C.V. Ramulu, the then senior standing counsel for Central Government was requested to draft and file an appeal. A draft appeal was forwarded by the said counsel. The fair appeal is sent to the said counsel along with documents. The final outcome of the writ appeal *vide* WASR.no.43835 of 2002 is not received by the Ministry of Home Affairs from the learned senior standing counsel. Further, the Government of Andhra Pradesh furnished report, dated 06.09.2011, under intimation to the petitioner also, recommending rejection of his claim as he was below age and was only 14 years of age at the time of Hyderabad Liberation Movement, as on March, 1947. The report was examined in the Ministry of Home Affairs for rejection of his

case. However, during examination of his case, it was noticed that WASR.no.43835 of 2002 was filed and the outcome of the writ appeal was awaited from the Government counsel, who did not respond inspite of repeated reminders. Suppressing wilfully and deliberately the said facts, the present writ petition is filed. Nothing has been forthcoming from the Central Government standing counsel as to the outcome and status of WASR.no.43835 of 2002. The 1st respondent has received a copy of the order, dated 24.02.2016, passed by this Court in WP.no.20743 of 2012, acknowledging its receipt by the Registry of the Ministry of Home Affairs, on 08.03.2016, with the following directions: 'Though this Court passed orders on 10.07.2012 directing the respondents to explain as to why contempt proceedings shall not be initiated, again the learned Government Pleader appearing for the respondents No.1 to 3 seeks time to file counter. Post after three (03) weeks for filing counter. If no counter is filed, respondent no.1 should appear before the Court.' In the circumstances stated and for non receipt of factual details, counter could not be filed earlier. Other averments in the writ petition are denied. The writ petition may be dismissed.'

5. The 3rd respondent filed a counter, *inter alia*, stating as follows:

It is true that the 3rd respondent forwarded the application of the petitioner to the Government of India *vide* letter, dated 01.05.1987. The Government of India, Ministry of Home Affairs, is the competent authority either to sanction or reject the claim of the applicant. This respondent is only concerned with conducting enquiry with regard to the particulars mentioned in the application of the claimant under the scheme. Government of India has sought clarification from the

Superintendent, District Jail, *vide* letter, dated 30.10.1987, about the date of release of the petitioner from the jail as certain certificates created a doubt about the authenticity of the jail certificates. This Government has not received any correspondence in this regard from the Government of India or prison department. No records are available in the department pertaining to the Office of the Collector, Nalgonda. However, the Collector, Nalgonda, has been requested to furnish his report *vide* Government memo, dated 18.07.2012. So far no report is received from the Collector. As and when the report is received the same will be forwarded to the 1st respondent. Sanction of pension to the petitioner is not within the jurisdiction of this respondent as this respondent is neither the granting authority nor the paying authority. As such, no action is pending from this respondent, that is, the State Government.

6. From the facts and submissions, it emerges that the petitioner's application with its annexures was first favourably considered and his case was recommended for grant of pension under the scheme. The 3rd respondent by his letter, dated 01.05.1987, addressed to the Deputy Secretary to the Government of India, Ministry of Home Affairs stated verbatim as follows: '...The individual had worked against the Nizam Government during the year 1947 and was arrested by the police and was taken away to Secunderabad and kept in jail for a period from 22.03.57 F to 18-12-1357 F. He submitted the jail certificate issued by the Superintendent District Jail, Secunderabad and also submitted certified copy of the jail certificate under trail No.540, u/s 33 Reminding Court Atraf Balda bearing Order No.21/ 15/ 1357 F and date of disposal on 18-12-1357 F. The above certificates produced by the applicant have been verified with the Collector's report and found to be

correct. The Collector, Nalgonda, recommended his case.' The contents of the above letter clearly lay bare that the petitioner is eligible for grant of central pension and, therefore, his case was recommended by the State Government to the Central Government for grant of central pension. Be that as it may. The Under Secretary to the Government of India addressed a letter to the Superintendent, District Jail, Secunderabad, on 30.10.1987, seeking clarification of discrepancies in jail certificate as regards the date of release of the petitioner from jail though his entry into jail, which was noted as 22.03.1957 F, is not in dispute but the date of his release is in dispute. Thereafter there was no proper inter departmental correspondence or proper correspondence between the State and Central Governments.

7. The contention of the respondents particularly of the 1st respondent appears to be is that there is no clinching proof as to when the petitioner was released from jail. From the material on record there is ample proof that the petitioner was confined in jail though the date of release is doubted after the case of the petitioner was favourably recommended after all verifications were duly done by the State Government. In this regard, it is apposite to refer to the decision of the Supreme Court in Gurdial Sing v. Union of India and others¹. The facts of the cited case disclose that the petitioner therein claimed pension under the same pension scheme and in support of the claim, he produced a copy of driving licence issued in Thailand by claiming that at the relevant time he was a driver in Indian National Army raised by Netaji Subhash Chandra Bose; further, he sent his personal affidavit mentioning the names of the detention camps in Bangkok and Singapore where he was kept as INA prisoner of war for more than six months; the

¹ 2001 AIR SCW 3843

Government of Punjab accorded the grant of provisional pension with effect from 25.04.1998; not being satisfied with the grant of pension w.e.f., 29.04.1998 instead of from the date of the application, 12.03.1973, the petitioner filed W.P.No.12863 of 1999; the same was allowed with directions to the respondents to consider the case of the petitioner for grant of pension from the date of his application and decide his claim; instead of granting the relief to the petitioner for grant of pension with effect from the date of his application, the respondents therein issued show cause notice calling upon him to show cause as to why his pension shall not be cancelled on account of the discrepancies and contradictions that were found in the claim of the applicant. In that background, the Supreme Court 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. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of 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 the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted.' In the case on hand, none of the respondents are disputing that the petitioner was taken into custody and was lodged in jail for a considerable time. Simply because he is not able to clinchingly prove the date of release or that there is a

discrepancy in regard to the date of release from the jail, in the considered view of this Court, his claim for pension cannot be denied in the light of the facts of the case and also the precedential guidance in the decision of the Supreme Court. Further, the standard of proof required is not as is required in a criminal case and as the claim has to be probablised on the basis of evidence that the claimant had suffered imprisonment for the cause of the country and during freedom struggle. Hence, at this distance of time the case of the petitioner cannot be rejected on the mere ground that there is no proof beyond reasonable doubt with regard to the date of his release from the jail.

8. Dealing finally with the contention of the respondents that the petitioner was only 14 years of age as on March, 1947, that is, at the time of Hyderabad Liberation Movement, and that the petitioner was below the prescribed age of 15 years as on 01.03.1947 and that the District Collector, Nalgonda, has furnished his verification report along with revised check list recommending for rejection of seven cases including the case of the petitioner and hence, the petitioner is not entitled to claim the pension, it is to be first noted that this contention was not raised at the earliest and in fact the case of the petitioner was accepted for consideration on all aspects after thorough verification and a recommendation was also made by the State Government to the Central Government for sanction of pension under the scheme as already noted. In the considered view of this Court, the petitioner in his writ petition categorically stated that he was of 18 or 19 years of age at the relevant time. The said averment is not specifically denied in the counters. That apart, the petitioner, by filing WPMP.No.10565 of 2017, produced Voter Identity card showing his year of birth as 1927, household card showing his age as 84 years, and voters' list of the year

2016 of Munugodu Assembly Constituency of Telangana State wherein his age was mentioned as 88 years. The said documents are received on file. A perusal of the said documents make it manifest that his age is mentioned as 84 years in the household card and his year of birth was mentioned as 1927 in the voter identify card issued by the Election Commission of India. Even going by the age and year of birth mentioned in the said documents, it is amply clear that he was more than 15 years of age by the year 1947, that is, the year in which he participated in the freedom movement. Now, when the petitioner is at the age of 87 years and after a favourable recommendation was already made for grant of pension to the petitioner, it is quite unjust, unreasonable and unfair on the part of the respondents to raise this ground and it is not open to the respondents to raise this ground at this late stage. It is also not open to the respondents to take recourse to any new grounds which were available to them but were not taken earlier. To put it in other clear words, it is not open to the respondents to raise one ground after the other in succession in a disparate attempt to justify their obdurate stance notwithstanding the earlier recommendation made for sanction of the pension to the petitioner under the central scheme.

9. Viewed thus, this Court finds that the contentions of the respondents are untenable and are liable for rejection. And accordingly the claim of the petitioner is upheld and the untenable contentions of the respondents are rejected.

10. The writ petition is allowed accordingly with costs. The respondents without any further delay shall consider the case of the petitioner and grant him pension under the scheme from 1st May, 1987, onwards and pay him all the arrears of pension also within two months

from today by completing the necessary exercise expeditiously. Costs payable to the petitioner are quantified at Rs.10,000/-.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M. SEETHARAMA MURTI, J

10.03.2017
Vjl

