

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A. No.1409 of 2014

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Public(PP) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2. The District Collector,
Chennai

...Appellants/Respondents

Vs.

N.Subramaniam

...Respondent/Petitioner

Writ Appeal is filed under Clause 15 of the Letters Patent against the Order of this Court dated 18.02.2014 made in Writ Petition No.15316 of 2013.

WP.NO.15316/2013:

Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order made in Letter No. 42010/A.O.3/2012-3 dated 16.04.2013 issued by the 1st Respondent and quash the same and further directing the 1st Respondent to grant Political Pension to the petitioner under the Freedom Fighters Pension Scheme with effect from the date of the petitioner original application i.e. 25.04.1998.

For Appellants : Mr.V.Anandhamurthy,
Additional Government Pleader

For Respondent : Mr.A.Nagarathinam

J U D G M E N T

[Judgment of the Court was delivered by P.VELMURUGAN, J.]

This Writ Appeal is filed against the Order passed by the writ court dated 18.02.2014 in Writ Petition No.15316 of 2013

2. The respondent, who is claiming to be a freedom fighter, made an application dated 25.04.1998 to the second appellant for getting Freedom Fighters Pension under State Freedom Fighters Pension Scheme. Along with the application, the respondent had enclosed a certificate dated 25.04.1998 issued by his co-prisoner M.Subramani, an identity certificate issued by one Sevathiyam and a Personal Knowledge Certificate dated 15.02.1999 issued by the State President of Tamil Nadu, I.N.A. Forum stating that he had been a member of I.I.L and participated in the freedom struggle, as well as a certificate dated 17.01.2004 issued by the General Secretary of All India I.N.A. Committee stating that he was a political sufferer and a member of Indian National Army. Again the respondent made a representation dated 16.11.2011. The second appellant through letter dated 16.11.2011 informed the first appellant that the Chennai District Review Committee had already recommended the respondent's case for grant of pension as early as on 05.10.2005 itself. Again the respondent approached the second appellant and gave another representation on 28.02.2012. In view of nil response, the respondent filed a writ petition in W.P.No.33973 of 2012 seeking pension. On 19.12.2012, this Court had directed the first appellant to consider the claim of the respondent in the light of the recommendation already made by the second appellant and pass orders. The first appellant sent a letter dated 21.01.2013 directing the second appellant to furnish the original documents. The second appellant had sent only the certified copies of the said documents. On receipt of the documents, the first appellant passed an order rejecting the claim of the respondent, against which the respondent filed a writ petition in W.P.No.15316 of 2013 before this Court.

3. In the above writ petition, the second appellant filed a counter affidavit stating that the second appellant had recommended to the Government for sanction of State Freedom Fighters Pension on 05.10.2005. The Government rejected the request on 31.01.2006 on the ground that the Personal Knowledge Certificate issued by the Secretary, Tamil Nadu INA Forum was not issued on the basis of any supporting document and that the genuineness of the certificate issued by the Secretary, All India I.N.A. Committee could not be verified. Even after receiving the attested copies of the certificates, the Government had rejected the same by stating that it was not in

consonance with the Rules and no new materials were produced. After hearing both sides, the Writ Court has allowed the writ petition and directed the first appellant to grant pension to the respondent. Against the said order, the respondents in the writ petition has filed the present Writ Appeal.

4. Heard the learned counsel for the appellants and the respondent and perused the materials available on record.

5. The learned Single Judge, while deciding the matter, has referred to the decision of the Hon'ble Division Bench of this Court reported in 1994 Writ L.R.137, R.Thangaveu Vs. Government of India and Another, wherein paragraph 50 of the Order reads as follows:

"We are unable to accept the contention of the first respondent for the following reasons. The impugned order of the first respondent is in printed form. It only states that the documentary evidence sent by the petitioner along with his application does not prove his claim of suffering. We have held that the Government should adopt a pragmatic approach instead of being hyper technical in directing the applicants to produce the documentary evidence like imprisonment/detention certificate from the Jail Authorities or from the State Government. It is common knowledge that on account of the long passage of time, the freedom fighters may not be in a position to produce the certificates asked for. The Scheme itself provides for acceptance of Co-prisoner's Certificate and INA Board's recommendation. Therefore, when once a certificate from a co-prisoner or INA Board is produced, it will not be necessary, in our view, to insist on jail records / court records / Government records. In such cases, it will be but fair that the concerned Government should act on the co-prisoner's certificate."

6. The learned Single Judge has also referred to a decision of the Hon'ble Supreme Court in the case of Gurdial Singh Vs. Union of India and Others reported in (2001) 8 Supreme Court Cases, wherein the Hon'ble Supreme Court has observed that the Authorities concerned are required to adopt a rational and not a technical approach in appreciating the scheme for the benefit of Freedom Fighters Pension. Paragraphs 6 and 7 of the above Order are extracted hereunder:

"6. 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 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 very cumbersome and expensive. Keeping in mind the object of the Scheme, the authorities concerned are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country. This Court in *Mukund Lal Bhandari case*, 1993 Supp (3) SCC 2 observed : (SCC pp.7-8, para 9)

"The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the Scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now."

The Court categorically mentioned that the pension under the Scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

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 on the basis of evidence it is probalised 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."

7. Following the above decisions, the learned Single Judge has observed that it is the bound duty of the Government to confer pension on freedom fighters without causing any undue delay.

8. In this Writ Appeal, the appellants have raised the ground that the certificates submitted by the respondent have been issued without any supporting documents and the same could not be considered for pension as per Rules framed by the Government.

9. On the other hand, it is to be noted that the respondent's hut was burnt down on 18.11.1986, and the necessary certificates were all lost and that the said fact has been certified even by the Tahsildhar concerned. Further, there is no dispute that he is a freedom fighter. The second appellant has

also recommended his case. He has failed only to produce the necessary certificates from the authorised agency.

10. At this age of more than 87 years, it would be difficult for the respondent to obtain the necessary certificates once again. We are of the view that the issue was considered and decided by the writ court rightly and in accordance with settled legal principles.

11. In the result, the Writ Appeal is dismissed by confirming the Order passed by the learned Single Judge in W.P.No.15316 of 2013 dated 18.02.2014. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

TO:

1.The Secretary,
The Government of Tamil Nadu,
Public(PP) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2. The District Collector,
Chennai

+1cc to Mr.Mr.A.Nagarathinam, Advocate, S.R.No.19399
+1cc to the Government Pleader, S.R.No.19651

W.A. No.1409 of 2014

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