

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19..07..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.32228 of 2014

V.Reithinabai

... Petitioner

-Versus-

- 1.Union of India,
Rep. by The Secretary,
Ministry of Home Affairs,
New Delhi-1.
- 2.The Additional Secretary to Government,
Personnel and Administrative Department,
General (Political Pension-3) Department,
Fort St. George, Chennai 600009.
- 3.The District Collector,
Vellore District,
Vellore-9.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance writ of certiorified mandamus calling for the records pertaining to the impugned order vide Letter No.29588/AO-3-2011-15 dated 07.06.2013 issued by the 2nd respondent - Additional Secretary (Political Pension-3) Department , Chennai 600 009, and order No.Na.Ka.F1/1249/2013 dated 27.06.2013 issued by the 3rd defendant - District Collector, Vellore, and to quash the same and to direct the respondents 2 and 3 to sanction the political pension granted to the freedom fighters and consequently direct the 1st respondent, the Union of India, Rep. by the Secretary, Ministry of Home Affairs, New Delhi-1, to sanction the political pension to the freedom fighters under the Swanthantra Sainik Samman Pension Scheme 1972 to the petitioner from the date of the representations made by the petitioner's husband V.M.Venkatesan recorded by the 3rd respondent with interest.

[prayer amended as per order dated 12.07.2017 made
in W.M.P.No.19088 of 2017]

For Petitioner : Mr.S.S.Jhothivani

For Respondents : Mr.G.Karthikeyan,
Addl. Solicitor General for R1
Mr.V.Kadhirvelu,
Spl. G.P. for R2 and R3

ORDER

This writ petition has been filed challenging the order passed by the 2nd respondent rejecting the application of the petitioner for grant of freedom fighters' family pension.

2. According to the petitioner, her husband one V.M.Venkatesan and father-in-law one Shri.V.Masilamani Mudaliar were involved in the freedom movement. Her father-in-law had established a Sangam known as 'Jawaharlal Nehru Sarkar Sangam' in the year 1930 at Arasamaram Pettai, Vellore and had administered the same. He was also the agent for Tamil Nadu Seithi Pathirikai, Sudhandira Sangu and Navasakthi and had indulged in freedom movement.

3. The petitioner further submitted that her husband also followed the footprints of his father and had involved in freedom movement. He had acted as "Sevathalam Thondar" in the conference conducted by the Congress Leader - Kavikuil Smt. Sarojini Naidu. In the year 1941, he had also participated in Sathyagraha Movement at Konavattam and at Chennai, therefore, he had been detained at Central Prison, Chennai for a period of one and half months and in the year 1942, he was detained at Sub Jail, Vellore for a period of one month and at Thorapadi Central Jail for six months. During his life time, he had filed an application seeking freedom fighters' pension from the year 1984, which was granted to the other freedom fighters. After having considered his request for pension, the 3rd respondent by and in his proceedings Na.Ka.F1/2756/2006 dated 23.05.2006 had recommended the the case of the husband of the petitioner for grant of pension. Subsequently, by way of another proceedings dated 26.09.2006 in Na.Ka.No.F1/36157/2006, the 2nd respondent once again recommended to the 2nd respondent for grant of freedom fighters' pension to the husband of the petitioner. But, those recommendations were not considered. Thereafter, on 13.11.2006, the husband of the petitioner died at the age of 85 years. While so, the petitioner being legal representative of the deceased V.M.Venkatesan pursued the application for freedom fighters' family pension and when she approached the authorities along with necessary certificates, the 3rd respondent sought

fresh particulars from the Tahsildar, Vellore, who, in turn, directed the petitioner to submit fresh materials. Thereafter, the petitioner submitted original co-prisoner certificates, death certificate, legal heir-ship certificate and other documents through the Tahsildar, Vellore. Upon considering the same, the 3rd respondent by impugned order dated 27.06.2013 in Na.Ka.F1/1249/13 rejected the claim of the petitioner for grant of freedom fighters' family pension and communicated the same to her. Challenging the orders of the respondents 2 and 3, the petitioner is before this court with this writ petition.

4. The 3rd respondent has filed a detailed counter affidavit, wherein, he, inter alia, contended that the husband of the petitioner at the time of filing the application for freedom fighters' pension did not produce co-prisoners' certificates from the eligible co-prisoners certified by the State of Tamil Nadu. In the year 1996, the Government of Tamil Nadu have prescribed revised procedure for examining the applications for sanction of State Freedom Fighters Pension and constituted District Level Screening Committees by nominating the District Collector of each District as its Chairman, District Revenue Officer as its Vice Chairman and two of the prominent freedom fighters of the District, who are in receipt of freedom fighters pension on account of their imprisonment vouched by original record of evidence as Members. A detailed instructions have also been issued with regard to the functions of the District Level Screening Committee.

5. It is further contended by the 3rd respondent that some bogus claims had been made by the persons who were not actually participated in the freedom fight movement and the District Collector being the Head of the District Level Screening Committee was directed to examine all those false claims. As far as the present case is concerned, the Government of Tamil Nadu has found that the co-prisoner - Shri.M.Venugopal who had issued co-prisoner certificate was detained from 08.04.1941 to 07.05.1941 at Central Prison, Chennai whereas, the certificate issued by him to the husband of the petitioner showed that he had been detained from 20.04.1941 to 05.06.1941. Since M.Venugopal had been released on 07.05.1941, it was improbable for Shri.M.Venugopal to have seen the husband of the petitioner languished in prison for another one month after Shri.M.Venugopal had been released. That apart, the other certificate was issued by yet another co-prisoner Shri.M.K.Ramasamy who was detained in Central Prison at Bellari between 24.08.1942 and 01.03.1943 and therefore, he was not eligible co-prisoner to issue co-prisoner certificate to the husband of the petitioner. Therefore, according to the 3rd respondent, the District Level Committee has found that the co-prisoners certificate issued to the husband of the petitioner

were not genuine and therefore, the claim of the husband of the petitioner was rejected on 19.08.2004 by the 3rd respondent. Pursuant to such rejection, the 2nd respondent also by letter No.46806/P.P.III/2006-1 dated 13.11.2006 rejected the request made by the husband of the petitioner for freedom fighters' pension. Therefore, the petitioner being the wife of the deceased V.M.Venkatesan is also not entitled for family pension under the scheme.

6. The 1st respondent has filed a detailed counter affidavit setting out the salient features of 'Swanthantra Sainik Samman Pension Scheme 1972. In the counter affidavit, the 1st respondent inter alia contended that the writ petition itself has been filed challenging only the order passed by the 2nd respondent refusing for grant state pension for freedom fighters. There has been no separate application filed for pension from Central Government and as such no leave could be granted to the petitioner to seek for pension from the Central Government.

7. I have heard the learned counsel for the petitioner, the learned Additional Solicitor General for the 1st respondent and the learned Special Government Pleader for the respondents 2 and 3 and also perused the records carefully.

8. The impugned order has been passed mainly on the ground that the petitioner has not filed any additional documentary evidence to substantiate her claim for freedom fighters family pension and that the application submitted by the husband of the petitioner for freedom fighters pension had already been rejected by the State by order dated 13.11.2006.

9. From the available records it could be seen that earlier the District Collector, Vellore, by order dated 23.05.2006 recommended to the Government for grant of freedom fighters pension to the husband of the petitioner. Subsequently, the husband of the petitioner died on 13.11.2006. Thereafter, the petitioner continued to press for family pension by producing a co-prisoner certificate issued by one Shri.M.Venugopal and another such certificate from from one Shri.M.K.Ramasamy, who have been authorized by the State of Tamil Nadu to issue such certificates.

10. It could also been seen from the available records that by order dated 11.10.2002, the Government of Tamil Nadu have reconstituted the District Level Screening Committee in which one Shri.M.K.Ramasamy, who had issued a co-prisoner certificate to the husband of the petitioner was one of the members and Shri.V.S.Kandasamy and Shri.M.Venugopal who had issued co-prisoner certificate, were authorized by the State to issue co-

prisoner certificate. Therefore, the persons who had issued co-prisoner certificates were all eligible to issue such certificate to the husband of the petitioner. The impugned order did not whisper anything as to the validity of those certificates, but, in the counter affidavit it has been stated that Shri.M.Venugopal who had issued co-prisoner certificate in the prescribed form was detained from 08.04.1941 to 07.05.1941, but, the certificate issued by him showed that the husband of the petitioner was detained from 20.04.1941 to 05.06.1941. Therefore, according to the 3rd respondent, Shri.M.Venugopal might not have had occasion to see the husband of the petitioner was being detained in prison from 20.04.1941 to 06.06.1941. During the relevant period, according to the 3rd respondent, Shri.M.Venugopal was also detained at Central Prison from 08.04.1941 to 07.05.1941, the period during which the husband of the petitioner was also detained in prison. That apart, insofar as two other co-prisoner certificates issued by M.K.Ramasamy and V.S.Kandasamy are concerned, both of them were certifiers authorized by the State to issue such certificate. Therefore, as per the requirement, the petitioner has obtained co-prisoner certificates from the authorized certifiers and one of them was also a member in the District Level Screening Committee headed by the 3rd respondent. In those circumstances, this court finds no reason to reject the co-prisoners certificate much less compelling reason to doubt the veracity of the same. It is not the case of the respondents 2 and 3 that the husband of the petitioner was otherwise not eligible to get freedom fighters' pension. In the above circumstances, I am of the considered view that the 2nd respondent without having considered the claim of the petitioner in a proper perspective has mechanically rejected the claim of the petitioner holding that already the application submitted by her husband got rejected. As already stated above, after the recommendations by the 3rd respondent on 23.05.2006 for the grant of pension and pending consideration, the husband of the petitioner died on 13.11.2006. Even though the impugned order is stated to have been passed rejecting the claim of the husband of the petitioner for pension on on the very same day, viz., on 13.11.2006, it is not made known to this court as to whether the respondents 2 and 3 had taken any steps to serve a copy of such order on any of his family members. On going through the material available on record, this court is of the considered view that the petitioner has established that her husband had participated in the freedom movement and he was detained in prison for more than a month. Therefore, the petitioner being the wife of the freedom fighters, is entitled for family pension.

11. In the light of the foregoing discussions, the impugned orders passed by the respondents 2 and 3 are liable to be set aside and this court is of the considered view that the 2nd

respondent is entitled for freedom fighters' family pension from the date of her application i.e., on 17.05.2011.

12. In the result, the writ petition is allowed and the respondents 2 and 3 are directed to grant freedom fighters' family pension to the petitioner from the date of her application i.e., on 17.05.2011 within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The Secretary, Ministry of Home Affairs, New Delhi-1.
- 2.The Additional Secretary to Government, Personnel and Administrative Department, General (Political Pension-3) Department, Fort St. George, Chennai 600009.
- 3.The District Collector, Vellore District, Vellore-9.

+1cc to Mr.S.S.JHOTHIVANI, Advocate, S.R.No.48235

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KK (CO)
TR(28/08/2018)

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