

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.01.2018
CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.18262 of 2017

V.Gandhi

...Petitioner

Vs

1.The Secretary to the Government,
Tamil Nadu Public (Political Pension-III), Department,
Secretariat, Chennai 600 009.

2.The District Collector,
Chennai District,
Chennai 600 001.

...Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus to direct the respondents to expensitive grant the freedom fighter pension to the petitioner herein without further delay, considering the age of 89 years.

For Petitioner : Mr.M.Purushothaman
For Respondents: Mr.D.Suriyanarayanan
Additional Government
Pleader

ORDER

The petitioner is 89 years old Freedom Fighter. After patiently waiting for a period of nearly 37 years and having seen no sign of any response from the respondents, he finally approached this Court and filed the present writ petition seeking for a direction to the respondents to consider his request for grant of freedom fighters' pension, which he made as early as in the year 1980!

2. Heard both sides.

3.The petitioner joined the Indian National Army floated by the great Leader Nethaji Subhash Chandra Bose and was a part of the Indian Independence League in Rangoon, Burma. In the struggle for freedom of this Country, the petitioner underwent imprisonment in Rangoon Central Jail from May 1945 to December 1945. The petitioner, with this background, thus made a request on 06.07.1980, for grant of freedom fighters' pension by the State of Tamilnadu. He waited for 12 years. As there was no response, he sent a reminder on 18.11.1992. Neither the original application nor the reminder were considered by the

respondents favourably. It is to be noted that the petitioner has not made the said claim without having any justification or proof. One K.Kalimuthu, a Co-Prisoner, has issued a Certificate to the petitioner, certifying that the petitioner is a bonafide Freedom Fighter and that he was also imprisoned on account of his participation in the freedom fight in World War II movement during the freedom struggle and was lodged in the same jail along with the said person during the period from May 1945 to December 1945 at Rangoon Central Jail, Burma. It is also seen that the said K.Kalimuthu is a recipient of freedom fighters' pension from the Government of India through Sanction Order No.29/MDS/1167/81-FF/INA II dated 13.03.1992. Apart from the said Co-Prisoner Certificate, the petitioner has also obtained another personal knowledge Certificate from Col.Lakshmi Sahgal dated 15.04.1994, which reads as follows:

"PERSONAL KNOWLEDGE CERTIFICATE

This is to certify that SHRI.V.GANDHI, I.N.A., son of Late. Valivittan Servai, Freedom Fighter, residing at No.83, 2nd Street, B.V.Colony, Vyasarpadi, MADRAS - 39 has been a genuine I.N.A. Freedom Fighter, who jointed the Indian Independence League in 1943 at Rangoon, Burma. He was attached to THENGANJUN BRANCH of tie I.I.L. in the Propaganda Department under the Chairman C.S.NAIDU and he played a very significant role in the I.I.L.

After surrender, he was arrested by the British Forces and imprisoned in Rangoon Central Jail from May, 1945 to end and affirmed under Oath his imprisonment along with him in Jail for a period of Six months, vide his Co-prisoner Certificate in lieu of Jail Certificate.

I know him personally from Burma and now in Tamilnadu. He is a genuine I.N.A. Freedom Fighter and was in active service. He is eligible for freedom fighter pension

under the Tamilnadu State Government F.F.Pension Scheme. He is a member of our Association. I wish him all the best.

JAI HIND

Dr. (Col.) LAKSHMI SAHGAL

(I.N.A.) "

4. Needless to say that the said person viz., Dr.(Col.) Lakshmi Sahgal is a known Freedom Fighter and was Colonel in I.N.A. worked under the great Leader Nethaji Subhash Chandra

Bose. She was born on 24.10.1914 in Madras (now Chennai) to Shri. S.Swaminadhan, a Lawyer and Smt.A.V.Ammukutty, a Social Worker and Freedom Fighter. She became a Doctor by profession. However, at the age of 26, she left for Singapore in 1940 and three years later, she met the great leader Subhash Chandra Bose, who changed the course of her life. A Women's Regiment called the Rani of Jhansi's Regiment, was set up and she became Captain Lakshmi, which name stood as her identity throughout her lifetime. Captain Lakshmi was arrested by the British Army in May 1945. She remained under house arrest in the jungles of Burma until March 1946. She married Col.Premkumar Sahgal, a leading figure in INA in 1947. After independence, she lead her life all throughout by serving the public. She was the presidential candidate for the left party in 2002. She died on 23rd July 2012 at the age of 97. Such is the short story of the said great personality viz., Captain Lakshmi Sahgal. She has chosen to give the above said Certificate to the petitioner, specifically indicating her personal knowledge about the petitioner's role in INA and his fight for freedom of this country.

5. Further, it is seen that one K.Gurumurthy, the President of All India Freedom Fighters' Successors' Organization, has also sent a communication to the respondents on 04.08.2015, indicating that the claim of the petitioner is genuine, especially, when Dr.(Col.) Lakshmi Sahgal had issued the Personal Knowledge Certificate, which will vouch for the credential of the petitioner's participation in the Freedom Fighters Movement and sufferings. He also specifically stated that it is a rare fortune and only to genuine persons, Dr.(Col.) Padma Bhushan Lakshmi Sahgal issues Certificate. He has further stated in the said communication that the petitioner is in poverty and he has to be rescued from such pathetic condition by providing freedom fighters' pension. He, in fact, in the said communication concluded his request with folded hands.

6. On receipt of the above communication from the said K.Gurumurthy, the first respondent forwarded the same to the second respondent to take necessary steps regarding the request of the petitioner. As nothing had happened, again a reminder was sent by the said Gurumurthy on 20.01.2016. The very same answer was given by the first respondent to the said Gurumurthy that his request was again forwarded to the second respondent. Except doing so mechanically, these respondents have done nothing effectively or positively to consider the petitioner's request for freedom fighters' pension, even though it was brought to their knowledge that there is an urgent need of extending such monetary support, which is certainly not a charity, but conferment of an honour on such selfless freedom fighter. Unfortunately, these respondents failed to note that but for such selfless contribution and participation in the

freedom struggle by the persons like the petitioner, we would have not been in the present position to deal with this matter like this. It is a sorry state of affair and saddening factor to note that a person, who fought for freedom of this country is again driven to fight now, even after freedom, unfortunately to get some financial assistance for his sustenance by way of such pension. In my considered view, persons like the petitioner, who fought for freedom, should have been conferred with such due honour and dignity by extending the invitation to them and not by waiting for them to make their application.

7. A counter affidavit dated 16.08.2017 is filed in this case, coincidentally the very next day of the independence day celebration, however only to state that the respondents found certain discrepancies in the age mentioned in the petitioner's Elector's photo identity card and the Ration Card and therefore, they wanted the petitioner to submit a document to determine his age, which he has not produced so far. Consequently, it is stated that the request of the petitioner was not considered by these respondents favourably only on the reason that there is a discrepancy in the age of the petitioner in those two documents.

8. I am totally unable to either comprehend myself or conceive the above reasoning of the respondents for rejecting the claim of the petitioner, that too, especially when the same is not going to the root of the matter. When the factual aspect of the matter viz., the factum of participation of the petitioner in the freedom struggle, is vouched by a Co-Prisoner, who issued a Certificate and by the great personality Col. Lakshmi Sahgal, who issued the Personal Knowledge Certificate as discussed supra, there cannot be even a little doubt in the mind of the respondents about the bonafide of the petitioner. The respondents admitted in the counter affidavit about the issuance of those two certificates and receipt of the same as well. Despite the availability of those two overwhelming evidence, it is very unfortunate, that the respondents have chosen to mechanically reject the claim of the petitioner with irrelevant and immaterial reason which only shows that they somehow wanted to wash off their hands and relieve themselves of their liability.

9. I wonder as to how such immaterial reasoning with regard to the age of the petitioner, even assuming to be true, is going to alter the claim of the petitioner with regard to the payment of freedom fighters' pension. It is very saddening to note that these respondents have chosen to rely on the irrelevant materials to deny the claim of the petitioner rather than accepting the genuine certificates proving the petitioner's participation in the freedom struggle, especially when these respondents did not dispute the genuineness of such

certificates. I fail to understand as to how the age of the petitioner at the relevant point of time is going to matter much while considering his claim for freedom fighters' pension now, when his actual participation in the freedom struggle, through INA, is proved and established through the undisputed Certificates issued by those two competent and eminent persons. What is relevant to be seen is as to whether the petitioner actually participated in the particular freedom movement or not and certainly not his age, at which he had participated in such freedom movement. Therefore, the respondents have indulged in fishing out a reason, only to reject the claim somehow.

10.No doubt, the respondents have stated in their counter affidavit that a communication was sent to the petitioner on 24.12.2016, stating that his request could not be considered favourably due to the differences in the age as stated supra. Assuming that any such communication is sent to the petitioner, still this Court is of the view that the said communication will not stand in the way of this Court to consider the claim of the petitioner, as the reasons said to have been stated therein are found herein, as not acceptable, as the same are totally irrelevant and immaterial. I can only say to the writ petitioner "Sorry sir, you are made to suffer at the hands of our people too, as, unfortunately, this is how the bureaucratic dogmatism with wooden approach works, at times, in this country, for which you fought to get freedom".

11. Considering all these aspects, I find every justification in allowing the writ petition by issuing the following directions:

The respondents shall pass orders on the petitioner's claim for grant of freedom fighters' pension, by granting such pension from the date of his original petition and serve such order to the petitioner at his door steps, apart from communicating the same to the petitioner through other modes. Such exercise shall be done by the respondents within a period of two weeks from the date of receipt of a copy of this order. The arrears of pension shall be calculated and disbursed to the petitioner within a period of four weeks from the date of issuance of the order granting pension. Accordingly, the writ petition is allowed with the above directions. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government,
Tamil Nadu Public (Political Pension-III), Department,
Secretariat, Chennai 600 009.

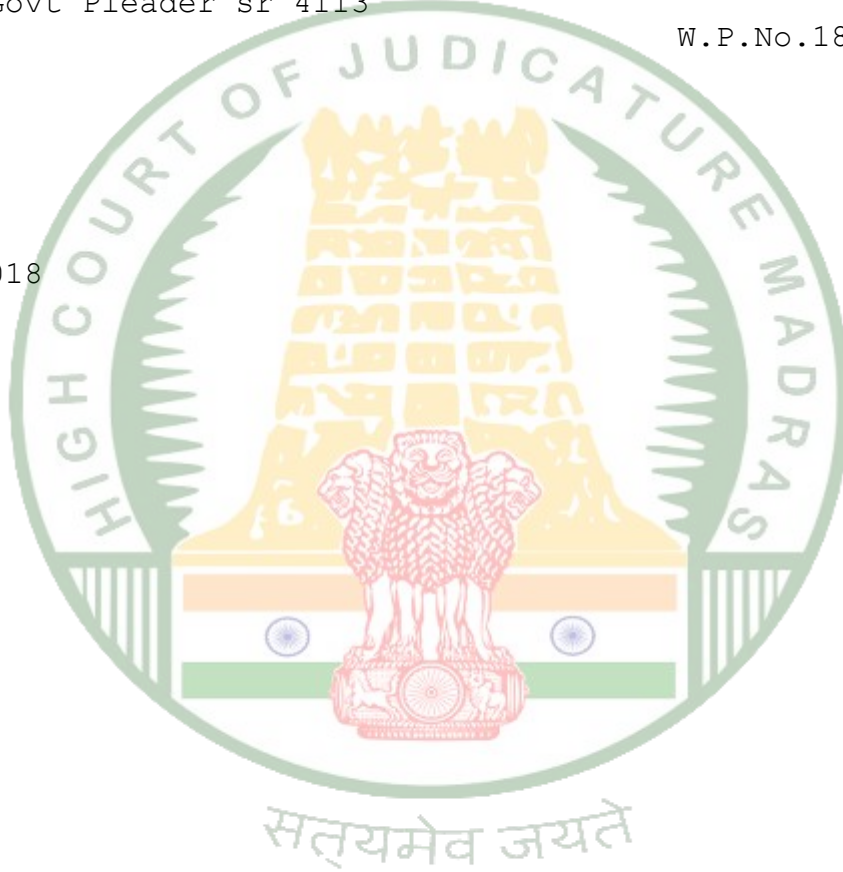
2.The District Collector,
Chennai District,
Chennai 600 001.

+2 ccs to Mr.M.Purushothaman Advocate sr 3443

+1 cc to Govt Pleader sr 4113

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