

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.1399 of 2012

Panch Beer

... Petitioner

Vs

1.Under Secretary to Government of India,
Ministry of Home Affairs,
Freedom Fighters Division,
First Floor, Lok Nayak Bhavan,
New Delhi.

2.The Deputy Secretary to Government,
State Government of Tamil Nadu,
Secretariat Office,
Chennai 600 009.

3.The District Collector,
Chennai Collectorate Office,
Chennai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the 1st respondent herein to sanction the Swatantrata Sainik Samman (SSS), Central Government Payable to the petitioner's father Mohammed Gani to the petitioner as the petitioner's father died pursuant to the representation dated 11.11.2011.

For Petitioner : Mr.T.Muruganantham

For Respondents : Mr.A.Kumaraguru, CGSPC for R1

: Mr.T.M.Pappiah,
Special Government Pleader for
RR2 & 3

O R D E R

Heard Mr.T.Muruganantham, learned counsel for the petitioner and Mr.A.Kumaraguru, learned Central Government Senior Panel Counsel appearing for the first respondent and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the second and third respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Mandamus, to direct the 1st respondent herein to sanction the Swatantrata Sainik Samman (SSS), Central Government Payable to the petitioner's father Mohammed Gani to the petitioner as the petitioner's father died pursuant to the representation dated 11.11.2011."

3. The case of the petitioner is as follows:-

The petitioner is the physically handicapped person and his father served as a member of the Indian National Army formed by Nethaji Subash Chandra Bose. According to the petitioner, his father was arrested by British force while he participated in the freedom movement as a member of Indian Independence League. After arrest, he was confined in Central Prison in Burma for the period from June 1945 to December 1945. After release, his father had come to India as a Burmese Repatriate, leaving all his belongings in Burma itself.

4. According to the petitioner, after settling down in Tamil Nadu, his father had applied for grant of pension payable by the State Government for freedom fighters in a prescribed format and submitted necessary documents. After consideration of his application, the State Government had sanctioned Freedom Fighters Pension on 23.05.2005, under the scheme floated by the State Government. As regards the Central Government is concerned, the petitioner's father had originally submitted an application as early as on 15.12.1995. However, the same was not sanctioned and the petitioner's father had been repeatedly approaching the authority concerned in that regard.

5. On 22.02.2009, the petitioner's father died. The petitioner herein being eldest son, had applied for grant of Freedom Fighter Pension to the first respondent which was due and payable to his father on the ground that he was physically challenged and his wife is also physically challenged and the other legal heirs of his father have no objection for grant of Freedom Fighter Pension to the petitioner. In fact, such request was made to the State Government, on consideration of the request, the State Government had passed G.O.Ms.No.14082, dated 19.07.2011, granted State Freedom Fighter Pension, payable to his father and to the petitioner.

6. Therefore, applying the same yardstick, the petitioner is also entitled to Freedom Fighter Pension payable under the scheme floated by the Central Government called Swatantrata

Sainik Samman(SSS). Despite an application is made, no orders have been passed by the first respondent - Central Government and therefore, the petitioner is before this Court, seeking issue of Writ of Mandamus.

7. Upon notice, learned counsels appearing for the respondents entered appearance and made their submissions.

8. According to the learned Central Government standing counsel appearing for the first respondent, under the Central scheme, the petitioner is not entitled as being a major son. However, the scheme framed by the State Government was different and therefore, he was granted Freedom Fighter Pension by the State Government. That principle cannot be applied for grant of pension under the Central Government.

9. This Court has considered the rival submissions of the learned counsel on either side. Although the learned counsel objected to grant of relief to the petitioner as the same was not provided for by the Central Government, this Court is of the considered view that the authority concerned has not considered the representation of the petitioner and passed orders by applying their mind to the facts and circumstances which formed the basis of the claim of the petitioner. It has to be seen that in this case, the petitioner is physically handicapped and so also his wife. That peculiar facts need to be taken into consideration while taking a decision one way or the other by the first respondent. The fact that the State Government has recognized such factum and granted him Freedom Fighter Pension, would further strengthen the claim of the petitioner, seeking parity in treatment by the Central Government.

10. For the above circumstances, this Court directs the first respondent to consider the application submitted by the petitioner, seeking Freedom Fighter Pension to him, on merits and in accordance with law. The first respondent is also directed to take into consideration the peculiar facts and circumstances of the case, in which, both the petitioner and his wife are physically disabled persons. It is also made clear that the petitioner is directed to submit a fresh application, in case, the earlier application is not available with the first respondent. The petitioner is therefore, directed to submit a fresh application, within a period of one week from the date of receipt of a copy of this order, before the first respondent and the same has to be disposed of by the first respondent, within a period of eight weeks thereafter. This Court hopes that the first respondent consider the request of the petitioner sympathetically, in view of the peculiar facts and circumstances.

11. With the above direction, the writ petition stands allowed. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

gsk

To

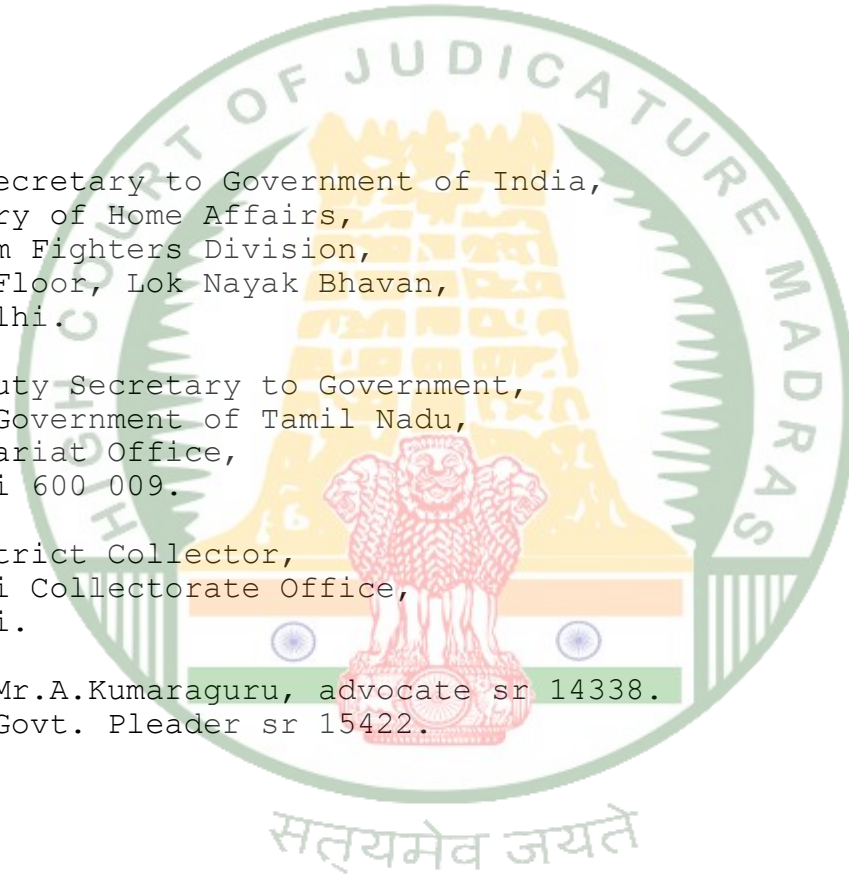
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+1 CC to Mr. A. Kumaraguru, advocate sr 14338.

+1 CC to Govt. Pleader sr 15422.



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SKS (CO)
SP(03/04/2018)