

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2018

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Writ Petition No.27687 of 2012

Issac Sam

... Petitioner

vs.

1. The Union Government
rep by the Secretary to Government,
Ministry of Home Affairs,
Grih Mantralaya,
Lok Nayak Bhavan,
Freedom Fighters Division,
New Delhi - 110 003.
2. The State of Tamil Nadu,
rep. by Secretary to the Government,
Public (Political Pension IV) Department,
Fort St. George,
Madras - 600 009.
3. The District Collector,
Nagercoil,
Kanyakumari District.
4. Selvi Sarojini Vijayakumar,
5. Victoria Prince,
6. Albert Sam

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the impugned proceedings issued by the first respondent in NO.129/889/81-FF(SZ) on 17.05.1994 and quash the same and further direct the respondent 1,2 and 3 to grant arrears of freedom fighter's pension entitled to the father of the petitioner, in pursuant to the order made in W.P.No.5645/1991 dated 07.12.1993 by this Court and to pay the same to the petitioner,

For Petitioner : Mr. J.Sam Japa Singh
For respondent 1 : Mr.J.Madhanagopal
For respondents 2 & 3: Mr. Inbanathan,
AGP, for R2 & R3
For respondents 4 & 5 : T.M.Arjun

ORDER

This writ petition has been filed challenging the order rejecting the petitioner's father's application for grant of Freedom Fighter Pension under the Swatantrata Sainik Samman Pension Scheme, 1972.

2. The petitioner is the son of one Ponniah. According to the petitioner, his father was a freedom fighter and he has undergone a substantial imprisonment for two times, each more than 6 months. During his life time, he had applied for grant of freedom fighter pension to the first respondent. Since jail records are not available as destroyed by the Government, he has produced two certificates from the co-prisoners, by name, one Gabriel Nadar and another, P.K.Krishna Sastry. Both of them were Ex.M.L.As. His father's application was processed by the State Government and forwarded to the first respondent, but the application was not considered by the first respondent. Hence, his father had filed a Writ Petition in W.P.No.5645 of 1991 and a Division Bench of this Court by an order dated 17.12.1993 directed the first respondent to consider his father's application afresh and pass appropriate order within a period of 3 months and if ultimately the claim sustained by the authorities, on fresh consideration, in the light of directions issued by the Division Bench, he will be entitled for pension from the date on which the liberalized pension scheme came into force, namely, 01.08.1980. Despite the order passed by this Court, the first respondent rejected his application by an order dated 17.05.1994. Thereafter, the petitioner has also filed another representation, which was also rejected by the first respondent by an order dated 28.07.1997, stating that already the application filed by his father has been rejected. Now, challenging the order rejecting the petitioner's father's application, this writ petition has been filed.

3. The first respondent filed a detailed counter affidavit stating that as per the Swatantrata Sainik Samman Pension Scheme, 1980, in case of imprisonment for more than 6 months, a certificate from the concerned jail authorities has to be

produced along with the application. In case, the records were not available with the State Government, a Non-Availability of the Records Certificate (NARC) in the prescribed format issued by the State Government along with two co-prisoners certificate from the freedom fighters, who have proven the jail suffering of minimum one year and who were with the applicant in the jail for a minimum period of six months should be submitted. In case, the certifier happens to be a sitting or Ex.M.P. or M.L.A., one co-prisoner's certificate in place of two is sufficient.

4. So far as the petitioner's father is concerned, no such Non-Availability Certificate was produced. Apart from that the petitioner's father's application has been already rejected as early as on 17.05.1994 for lack of corroborative evidence and unacceptability of CPC's and the claim of the petitioner's father was also not related to the Quit India Movement. Since the original petitioner, namely, the father of the petitioner, was not sanctioned with Freedom Fighter Pension under the SSS Pension Scheme, the application of the petitioner can not be considered. As per clause 1.5 of the Revised Policy Guidelines dated 06.08.2014, and no pension in the name of the Freedom fighter after his death will be granted to his legal heirs, hence the petitioner's application cannot be considered.

5. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and considered the rival submissions and perused the materials available on records carefully.

6. The petitioner claiming to be a son of a freedom fighter, namely Ponnaiah. Admittedly, the petitioner's father's application has been rejected by the first respondent as early as on 17.05.1994, now the above order sought to be challenged after a period of 88 years. Absolutely, there is no explanation in the affidavit for filing the writ petition with a long delay. Apart from that as per clause 1.5 of the revised policy guidelines for disbursement of pension, dated 06.08.2014, the petitioner is not entitled for any pension. The revised policy, which reads as follows :

"1.5 No pension shall be sanctioned in the name of the freedom fighter after his/her death even if his/her matter was under examination. This also entails that no life time arrears of dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter."

7. In view of the same, since the application filed by the father of the petitioner was already rejected, now the petitioner is not entitled for pension after the death of his father. In the said circumstances, there is no merit in the writ petition and it deserves to be dismissed.

8. Accordingly this writ petition is dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Union Government
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Grih Mantralaya,
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Kanyakumari District.

+1cc to Mr.P.Sam Japa Singh, Advocate, S.R.No.38194
+1cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.38329

W.P.No. 27687 of 2012

BS(CO)
GSP(11/07/2018)