



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal (MD)No.1467 of 2018

and

C.M.P (MD)No.10352 of 2018

The Government of India,
Rep by Secretary,
Ministry of Home Affairs,
(Freedom Fighters Division),
Lok Nayak Bhavan,
New Delhi.

... Appellant/1st Respondent

Vs.

1.K.Balakrishnan

... 1st Respondent/Petitioner

2.The Government of Tamil Nadu,
Rep by its Secretary,
Public (General) Department,
Secretariat, Chennai.

3.The District Collector,
Madurai District, Madurai. ...Respondents 2 and 3/Respondents 2
and 3

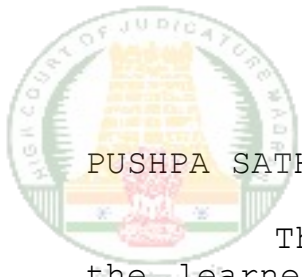
Writ Appeal filed under clause 15 of the Letters Patent
against the order dated 23.08.2018 in W.P(MD)No.14019 of 2018.

Prayer in WP(MD). 14019/ 2018 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorarified Mandamus calling for the records of the original
impugned order bearing No.52/CC/TN/02/2014-FF(SZ) dated 13.06.2018
by the 1st respondent and quash the same and consequently direct the
respondents to grant pension under the Swatantrata Sainik Samman
Pension Yojana Scheme to the petitioner from the date of his
application dated 02.04.2012.

For Appellant : M/s.L.Victoria Gowri

For Respondents 2&3 : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.



JUDGMENT

PUSHPA SATHYANARAYANA, J

This writ appeal is directed against the order passed by the learned single Judge directing the appellant to grant freedom fighters pension to the first respondent under the Swantantra Sainik Samman Pension Scheme.

2.The first respondent is the writ petitioner who had participated in Quit India Movement in 1942 and he was in Vellore Central Jail. The period of his imprisonment was from 05.11.1942 to 05.07.1943. Thereafter, he was remained underground for more than six months from 15.07.1943 to 05.07.1944. According to the first respondent, the Stated Government had granted Freedom Fighters Pension in 2004. It is further stated that the first respondent submitted an application on 02.04.2012 to the appellant seeking pension under Swantantra Sainik Samman Pension Scheme. He claimed that the said application was recommended by the Secretary, Public (General) Department, Chennai, the same having been scrutinized by the concerned Screening Committee. However, the appellant rejected the claim by order dated 13.06.2018 which was set aside by the learned Single Judge by the impugned order.

3.Aggrieved by the same, the present appeal has been filed.

4.In similar circumstances, this Court, in W.A(MD)No.1149 of 2018, dated 12.09.2018 (Union of India, Rep. by the Under Secretary to Government of India Vs.K.Duraisamy) after following the decisions of the Hon'ble Supreme Court in Surja Vs. Union of India, (1991) 4 SCC 366 and in State of Tamil Nadu V. A.Manickam Pillai, (2010) 2 SCC 669 has held that the hyper-technical approach of the appellant in rejecting the claim of the Freedom Fighter cannot be appreciated. On the other hand, the appellant should undertake a survey, in collaboration with the State Governments, to find out the living Freedom Fighters, who were the torch-bearers of this nation, and extend the fruits of the Scheme, on its own, at this doorsteps. The relevant portion of the said order is extracted hereunder:-

".....The object of the certificate is for the purpose of affirming the imprisonment undergone by the applicant and the hyper-technical approach of the appellant in rejecting the claim of the Freedom Fighter cannot be appreciated. On the other hand, the appellant should undertake a survey, in collaboration with the State Governments, to find out the living Freedom Fighters, who were the torch-bearers of this nation, and extend the fruits of the Scheme, on its own, at this doorsteps. It is painful to see that the authorities are making those selfless nationalists to undergo rigorous process of red-tapism, quoting some rules.

9.At this juncture, it is opt to quote the following paragraphs in the decision of the Apex Court in Surja Vs. Union of India, (1991) 4 SCC 366 :

7. 'Freedom Fighters' Pension Scheme of 1972 was renamed as "Swatantrata Sainik Samman Pension Scheme 1980". The



brochure published by the Union of India indicates: "A person who had suffered a minimum imprisonment for six months in the mainland jails before independence in the struggle for independence is eligible to be admitted to the benefits of the pension". It has already been indicated that each of the petitioners had been convicted and was ordered to suffer imprisonment of more than six months. The petitioners' assertion that they did not claim remission has not been doubted or disputed. In the facts of the case it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period beyond six months remission had been granted and they were let off earlier would not take away their right to earn pension. Learned Attorney General appearing for the respondents has accepted this construction of the entitlement clause.

8. The writ petition is accordingly allowed and the respondents are directed to admit each of the petitioners to pension under the Scheme within two months hence. The pension be paid with effect from 1st August 1990 as in the connected case."

10. The Apex Court in State of Tamil Nadu V. A. Manickam Pillai, (2010) 2 SCC 669, held as follows :

7. A perusal of this G.O. would reveal that freedom fighter certificates could now be issued by approved certifiers and these were held as sufficient evidence for the grant of a pension. The G.O. further set out the constitution of District Level Screening Committees to be nominated by the Government in consultation with the Collectors concerned and that these committees were required to personally examine the documents produced and decide as to the entitlement of the applicant to the grant of pension and refer the matter for formal approval to the State Government."

5. In the light of the above judgments of the Hon'ble Supreme Court, this Court is of the considered view that there is no reason to interfere with the order passed by the learned Single Judge in W.P.(MD).No.14019 of 2018, dated 23.08.2018 and the writ appeal is dismissed. The appellant is directed to grant the freedom fighters pension to the writ petitioner/first respondent, as per the Scheme, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, C.M.P(MD)No.10352 of 2018 is closed.

Sd/

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS-I)



To

1.The Secretary,
Government of Tamil Nadu,
Public (General) Department,
Secretariat, Chennai.

2.The District Collector,
Madurai District, Madurai.

+1cc to Mr.L.VICTORIA GOWRI, Advocate, SR.No.92877

+1cc to Mr.K.SAMIDURAI, Advocate, SR.No.92756

+1cc to M/s.Special Government Pleader,SR.No.92926

Writ Appeal (MD)No.1467 of 2018
and
C.M.P (MD)No.10352 of 2018

SMS

KK/RP/SAR-1/13.11.2018/4P-6C