



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.351 of 2018

and

C.M.P (MD)No.2150 of 2018

1.The Government of Tamil Nadu,
Rep by its Principal Secretary,
Public (Political Pension) Department,
Secretariat, Chennai 600 009.

2.The District Collector,
Dindigul District,
Dindigul.

... Appellants/Respondents

Vs.

Krishnasamy

... Respondent/Petitioner

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 13.11.2017 in W.P(MD)No.11993 of 2017.

Prayer in WP(MD). 11993/ 2017 :

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 2nd respondents impugned proceedings in Na.Ka.No.9471/2013/R3 dated 23.05.2016 and quash the same as illegal and consequently direct the respondents to sanction the freedom fighter pension to the petitioner from the date of his application.

For Appellants : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

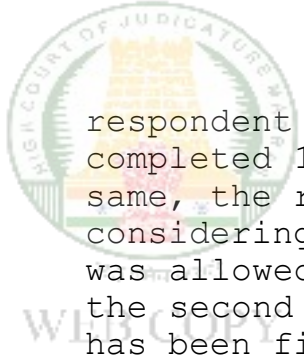
For Respondent : Mr.V.Thirumal

JUDGMENT

PUSHPA SATHYANARAYANA, J

This writ appeal is directed against the order passed by the learned single Judge directing the appellants to grant freedom fighters pension to the respondent.

2.According to the respondent, he had participated in the freedom struggle and he was in Central Prison, Coimbatore. The period of his imprisonment was from 01.01.1941 to 02.03.1941 and 15.04.1941 to 01.07.1941. It is stated that the respondent submitted an application along with necessary documents which was rejected by the second appellant vide proceedings in Na.Ka.no.9471/2013/R3, dated 23.05.2016 on the ground that the application made by the



respondent is bereft of particulars and the respondent had not completed 18 years, when he was sent to the prison. Aggrieved by the same, the respondent has filed W.P(MD)No.11993 of 2017. Upon considering the submissions made on either side, the writ petition was allowed by the learned single Judge quashing the order passed by the second appellant. Challenging the said order, the present appeal has been filed.

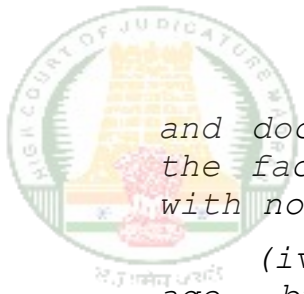
3. Admittedly, the Freedom Fighters Pension Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Keeping in mind the object of the Scheme, the concerned authorities are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country.

4. In *State of Orissa Vs. Choudhuri Nayak (D) Thr. L.Rs.* (AIR 2010 SC 3588), the Hon'ble Supreme Court has considered the object of the Freedom Fighters Pension Scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme. The relevant portion of the said decision reads as follows:-

(i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore, they cannot be expected to maintain and produce perfect records or documents about their participation.

(iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications



and documents produced, but be practical having regard to the fact that most of the applications are by old persons with no proper records.

(iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the scheme.

5. In yet another case in State of Madhya Pradesh Vs. Devkinandan Maheshwari, the Supreme Court recognised a boy of 12 years who had gone underground for participating in the freedom movement as a "Freedom fighter" and directed the authorities to grant freedom fighters pension to him.

6. Unfortunately in this case, the State Government has proceeded on a hyper technical ground overlooking the spirit of granting pension to a freedom fighter.

7. In K. Arumugam Vs. Union of India, W.P(MD) No. 19046 of 2001, this Court has held as follows:

"8. In the above circumstances, relying on the following judgments reported in (1) GURDIAL SINGH vs. UNION OF INDIA AND OTHERS, (2001) 8 SCC 8 (2) I.V.K. MALAICHAMY (deceased) AND ANOTHER vs. THE GOVERNMENT OF INDIA & OTHERS, (2001 Writ Law Reporter 549), this court has to arrive at decision so far as the issue concerned with the grant of Tamilnadu Scholar Pensions in favour of the petitioner is concerned. The relevant portion from the judgment cited first supra is as follows: "The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by the scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". (Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is



rebutted by cogent, reasonable and reliable evidence." The relevant portion from the judgment cited second supra is as follows: "Taking note of the spirit and substance of the certificate issued by the co-prisoner Sri. P. Kakkan particularly when there is no averment in the counter affidavit filed by respondents 1 and 2 disbelieving the certificate as a whole, I am obliged to quash both the proceedings, namely, No. 13/O/Mu/37917/89 dated 23.7.1990 by the third respondent and No. 129/97/84/FF(S.2) dated 25.2.1984 by the first respondent with a direction to give the benefits of the scheme to the petitioner, who are legal heirs of V.K. Malaichamy (deceased) freedom fighter, within three months from the date of receipt of a copy of this order".

8.It is relevant to refer the judgment of Karnataka High Court in the case of B.K. Nagaraj v. Union of India reported in 2004 (1) KCCR 31, wherein it is held that the grant of Freedom Fighters Pension is an honour to those who have given the best part of their life to the country. Hence the approach should be to liberally interpret the scheme so that the real freedom fighter is not dishonoured by the technical approach and that he must feel really honoured. This position was reiterated following judgment of the Apex Court in the case of *Mukundlal Bhandari v. Union of India*, reported in AIR 1903 SC 2127.

9.From the perusal of records, it is seen that the authorities have adopted a hyper-technical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the Scheme intended to give the benefit to the sufferers in the freedom movement. The rejection of the appellants appears to have been made with a biased and closed mind, completely ignoring the verdict of this Court in *Mukund Lal Bhandari's* case.

10.For all the foregoing reasons, 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.11993 of 2017, dated 13.11.2017 and the writ appeal is dismissed. The appellants are directed to grant the freedom fighters pension to the writ petitioner/ 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.2150 of 2018 is closed.

Sd/

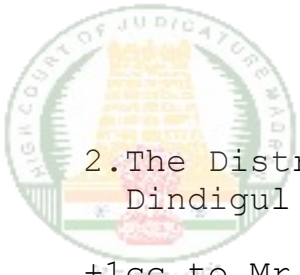
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS-I)

To

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



2.The District Collector,
Dindigul District,Dindigul.

+1cc to Mr.V.THIRUMAL, Advocate, SR.No.92804

+1cc to M/s.Special Government Pleader,SR.No.92963

Judgment made in
Writ Appeal (MD)No.351 of 2018
and
C.M.P (MD)No.2150 of 2018
29.10.2018

SMS

KK/RP/SAR-1/28.11.2018/5P-5C