



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A (MD) NO.771 OF 2018
and
C.M.P (MD) No.4558 of 2018

The Government of India,
represented by its Under Secretary,
Ministry of Home Affairs (FFR Division),
First Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003.

: Appellant/1st Respondent

. vs .

P.S.Periaiah (Died)

1.P.Selvaraj
2.P.Ravindran
3.Devayee
4.K.Jothi
5.AL.Chandra
6.Indira

: Respondents/Petitioners

7.The District Collector,
Madurai District,
Madurai.

: 8th Respondent/2nd Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.4609 of 2014, dated 28.04.2017.

Prayer in WP(MD)No.4609/2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or Direction particularly in the nature of writ, calling for the records pertaining to the impugned proceedings of the 2nd respondent in Mu.Mu.No. 86785/2008/Y.4, dated 24.12.2013, quash the same and direct the respondents to pay Suthandara sainik samman pension to the petitioner within the time stipulated by this Hon'ble Court.



For Appellant : Mr.V.Kathirvelu,
Asst.Solicitor General of India
for Mr.P.Subbiah, CGSC

For Respondents : Mr.R.Subramanian
1 to 6

For Respondent-7 : Mr.C.M.Mari Chelliah Prabu
Addl.Govt.Pleader

JUDGEMENT

[Judgement of the Court was made by K.RAVICHANDRABAABU,J.]

Here is the story of a Freedom Fighter, who fought for freedom of this country, succeeded, sought for pension before the respondents, failed, approached this Court at the age of 91 years and died during the pendency of the writ petition, unfortunately before seeing the success of his fight against the present Government too.

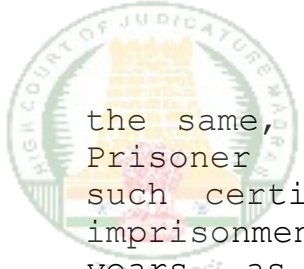
2.This Writ Appeal is directed against the order of the learned Single Judge, dated 28.04.2018 made in W.P(MD)No.4609 of 2014.

3.The Writ Petition was filed challenging the order of the District Collector, Madurai District, dated 24.12.2013 and consequently for a direction to the respondents therein to pay Swathandra Sainik Samman Pension to the Writ Petitioner. During the pendency of the Writ Petition, the Writ Petitioner died and his legal heirs were impleaded as legal representatives of the deceased Writ Petitioner. The District Collector, Madurai District, through the impugned order, rejected the request of the Writ Petitioner for grant of Freedom Fighter Pension under a scheme framed by the Central Government.

4.The Writ Court, after considering the respective cases of the parties and the materials placed by them, passed an elaborate order by referring to various decisions rendered by the Honourable Supreme Court and allowed the Writ Petition by setting aside the impugned order, with a further direction to the respondents to process the application submitted by the original Writ Petitioner and grant the Freedom Fighter Pension under the relevant scheme with arrears from the date of application till the date of death of the claimant.

5.Now, the present Writ Appeal is filed by the Government of India, who is the first respondent in the Writ Petition. The learned Assistant Solicitor General of India appeared for the appellant and submitted as follows:

The Writ Petitioner had not satisfied the mandatory requirements of producing the primary evidence or, in the absence of



the same, at least, acceptable secondary evidence. Though two Co-Prisoner Certificates were produced by the Writ Petitioner, one such certificate was issued by a person who had undergone the imprisonment, admittedly, only for five months and not for two years, as required under the relevant rules. Therefore, in the absence of sufficient materials, the request of the Writ Petitioner was rightly rejected by the District Collector, with which, the Writ Court ought not to have interfered. Even otherwise, when the District Collector himself has rejected the request for grant of Freedom Fighter's Pension, the question of the legal heirs to come into picture and pursuing the claim further after the death of the Original Writ Petitioner does not arise, in view of Freedom Fighter's Pension Scheme, 1972, dated 15.08.1981, more particularly, in view of Clause 1.5 of the same.

6. On the other hand, the learned counsel appearing for the respondents 1 to 6 submitted that the Original Writ Petitioner has satisfied the requirements to prove his participation in the Freedom Fighter's Movement as he has produced two Co-prisoner's Certificate in support of his claim. He further submitted that the Writ Petitioner was also a recipient of State Freedom Fighter's Pension and therefore, the genuineness of his participation in the Freedom Movement cannot be questioned or doubted by the appellant herein. Thus he submitted that the Writ Court has rightly allowed the Writ Petition.

7. Heard both sides.

8. The Writ Petition was filed by the deceased Original Writ Petitioner challenging the order of the District Collector, Madurai District, who was arrayed as second respondent therein, in rejecting his request for grant of Freedom Fighter Pension by the Central Government.

9. A perusal of the said order of the District Collector, dated 24.12.2013 would show that he has chosen to reject the application only on the ground that one of the Co-Prisoner's Certificate produced by the Writ Petitioner, is not satisfying the requirement, since the said person has not undergone the imprisonment even for one year.

10. There is no dispute to the fact that the very same Writ Petitioner was already considered by the State Government as a Freedom Fighter and that he was receiving pension under the relevant Scheme of the State Government. Now when the very same Freedom Fighter sought the pension also from the Central Government, which is not barred, the District Collector has chosen to reject the application by himself on the reason stated supra. First of all, we fail to understand as to how the District Collector, who at the best is expected only to make a report or recommendation to the concerned Government for grant or refusal of Freedom Fighter Pension, can reject the very application by himself, when the

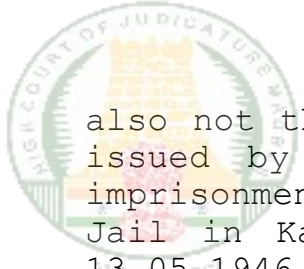


jurisdiction is vested only with the competent authority namely, the Union of India to take a decision based on the report or recommendation of the District Collector, as to whether pension can be granted to the applicant or not. No doubt, the District Collector can either make a adverse report or recommendation. Whether he recommends or makes an adverse report, in both occasions, he should only forward the application to the Central Government through State Government for considering the same, based on his report or recommendation. In this case, the District Collector himself has chosen to reject the application, which we consider as the one without jurisdiction. Even otherwise, as we have already pointed out that the Petitioner is admittedly a recipient of State Freedom Fighter Pension, it is improper for the District Collector to reject the application based on some hyper-technical reasons, without even forwarding the application with his report to the first respondent/The Union of India.

11. Now let us consider the merits of the objection raised by the appellant. We have already pointed out that the Writ Petition itself was filed against the order of the District Collector and that the Writ Court has set aside the said order and directed the respondents to process the application and grant the Freedom Fighter's pension. Now the fact remains that the District Collector has not chosen to file any appeal and challenge the order of the writ court. On the other hand, the present appeal is filed by the Union of India.

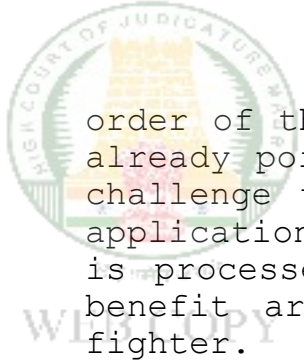
12. It is true that a mandamus is issued against the Union of India also, for considering the application of the Writ Petitioner. When the District Collector has not chosen to challenge the order of the Writ Court and on the other hand allowed the same to become final, it has to be construed that the District Collector has no objection for pursuing the application submitted by the Original Writ Petitioner. Therefore, the next question that would arise for consideration is as to whether the appellant herein would face any impediment in considering the application filed by the Original Writ Petitioner based on the documents filed by him. Two objections are raised by the appellant for their inability to consider the application, which we discuss as hereunder.

13. First objection is in respect of one of the Co-Prisoner Certificate produced by the Writ Petitioner. It is the case of the appellant that both the certificates produced by the Writ Petitioner must uniformly say that the Writ Petitioner was undergoing the imprisonment with those co-prisoners for two years. Admittedly, there is no dispute to the fact that the Writ Petitioner had produced two Co-prisoner's Certificate, out of which, one was issued by one A.M. Lakshmanan. Notably, the said person is recipient of Central Government Freedom Fighter Pension under the Ministry of Home Affairs vide order dated 23.04.1977. The learned Assistant Solicitor General of India is fair enough to state before us that the said certificate is not doubted by the respondents and it is



also not their case in any way. A perusal of the said Certificate issued by the said A.M.Lakshmanan would show that he suffered imprisonment during the Freedom Movement and was lodged in Alipuram Jail in Karnataka State, Bellary District during 05.03.1943 to 13.05.1946. The said person further proceeded to certify that the Writ Petitioner is a bona-fide Freedom Fighter, who was also imprisoned on account of his participation in the Quit India Movement during the freedom struggle and that he was tried by the Court of Special Magistrate Court, Madurai in the year 1942-1943 and was lodged in the same jail during the period from 05.03.1943 to 13.05.1946. When such being the categorical assertion made by one of the Co-prisoner and when such Certificate is not doubted and on the other hand, accepted as a genuine one, we fail to understand as to how the appellant is justified in contending that the other person who issued the second Certificate was inside the prison only for five months and therefore, the said Certificate cannot be accepted. Whether it is certified by one person or two persons, the factum of imprisonment will not change, as the fact is fact forever. Even otherwise, a careful perusal of the certificate issued by other co-prisoner would show that he got released after 5 months of imprisonment. That does not mean that the Writ Petitioner, who was imprisoned with him, did not continue to undergo his rest of the imprisonment period. When one of the Co-Prisoner has already issued a Certificate categorically disclosing the factum of imprisonment of the Writ Petitioner for nearly three years and when such Certificate is not doubted and when a combined reading of both Certificates would lead to the one and only irresistible conclusion that the Writ Petitioner was undergoing the imprisonment for more than three years, it is bothering us very much, as to why the Union of India has to take a hyper-technical stand before us to reject the claim of the Original Writ Petitioner, who was admittedly receiving Freedom Fighter's Pension from the State Government as well. Needless to say that while considering the claim of Freedom Fighters for pension, a pragmatic approach has to be made by the authorities instead of adopting a pedantic way of looking into the matter, that too to fish out some reason or other only to reject the claim. If the Writ Petitioner's very participation in the Freedom Movement is doubted and if no document is produced by him in support of his claim, one can understand that the stand of the respondents has some justification. In this case, We do not find any justification on the part of the appellant as well as the District Collector in rejecting the request of the Writ Petitioner. At this juncture, it is to be stated that the relevant rules are framed only to achieve the object sought under the beneficial Scheme and not to defeat the same on one reason or other.

14. Insofar as the next objection of the appellant namely the right of the legal heirs to pursue the proceedings is concerned, We are not impressed upon by the submission of the learned Assistant Solicitor General of India, in view of the fact that at the time of filing the Writ Petition, the Writ Petitioner was very much alive and the Writ Petition itself was filed challenging the

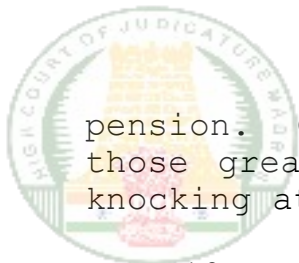


order of the District Collector in rejecting the application. It is already pointed out that the District Collector has not chosen to challenge the order of the Writ Court. Thus, it follows that such application is bound to be processed by the authorities and if it is processed, admittedly, the legal heirs are entitled to get the benefit arising out of such application of the deceased freedom fighter.

15. The Writ Court has considered all the aspects and has chosen to allow the Writ Petition. We find no valid reason to interfere with such order, apart from other aspects dealt with by us, as stated supra.

16. Before we part with this case, we need to remind ourselves, so also others including the mighty respondents herein, that, but for the sacrifice made by those selfless freedom fighters to get this country freed from the clutches of the colonial rule, we would have not been in a position today to occupy this armed chair. We breathe easy today only because those selfless people volunteered themselves to get their breath choked at the hands of those rulers, during the freedom struggle. One will surely become emotional and shed uncontrollable tears, if he/she visits the cellular jail in Port-blair at Andaman, where hundreds of freedom fighters were imprisoned during the freedom struggle movement. Unimaginable and inhuman torture met out by those freedom fighters in that prison, still could be visualized, as the cellular jail itself stands even today as the living evidence of those tortures and sufferings, by speaking to itself, soundlessly, volumes and volumes of the stories of those freedom fighters and their sufferings and misery.

17. It is a matter of fact that several people fought for freedom at several parts of this country and suffered great agony, physical torture and mental cruelty at the hands of the then rulers of our country. When those freedom fighters, after independence, seek for some monetary relief from the Government run by our own people, by way of pension for their sustenance, their sufferings during the freedom struggle cannot be looked into mechanically with technically shaded colour glass to find out as to how the application can be rejected. The authorities, both in the State and Central Government should look into the ground reality of the factum of sufferings and consider the application with at most sense of responsibility and realization that they are dealing with an application of a person who fought to get freedom of this Country. Certainly granting pension to those people is not a charity being shown by the respective Governments. On the other hand, it is the great honour being conferred on those freedom fighters for their selfless service rendered to the Nation. Instead of looking into an hyper-technical reason and taking shelter under certain rule to reject the claim, it is better to extend such monetary benefit, even if one evidence is sufficiently and satisfactorily produced in support of such sufferings. In fact the respective Governments should not and need not wait for them to make an application for



pension. On the other hand, it is their bounden duty to search for those great persons who live in poverty and grant the pension by knocking at their door.

18. Accordingly, the Writ Appeal fails and the same is dismissed. In view of the dismissal of the Writ Appeal, the 8th respondent therein/the District Collector, Madurai District is directed to forward the application of the Original Writ Petitioner with a report of the entitlement of the original Writ Petitioner to the State Government within a period of four weeks from the date of receipt of a copy of this order and consequently, the State Government shall forward the application to the Union of India within a period of six weeks thereafter. On receipt of such application, the Union of India is directed to consider and grant the pension as directed by the Writ Court within a period of eight weeks thereafter. No costs. Consequently, connected Civil Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The District Collector,
Madurai District,
Madurai.

+ 2 CC TO Mr.P.SUBBIAH, ADVOCATE IN SR No. 69190
+ 1 CC TO Mr.R.SUBRAMANIAN, ADVOCATE IN SR No. 69178

VSN/SKN

TE/SV/SAR-1 : 10/07/2018 : 7P/5C

JUDGEMENT MADE IN
W.A(MD)NO.771 OF 2018 and
C.M.P (MD)No.4558 of 2018
21.06.2018