



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2018

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P(MD) No.5521 of 2014

and

M.P(MD) No.1 of 2014

R.Ramalingam

... Petitioner

Vs.

1. The Union of India,
represented by its
Deputy Secretary,
Freedom Fighters Pension Division (FFR Division),
Ministry of Home Affairs,
2nd Floor, NDCC-II Parliament Street,
New Delhi - 110 001.

2. The Government of Tamil Nadu,
represented by its
Secretary,
Public (Political Pension) Department,
Fort St. George,
Secretariat,
Chennai - 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the first respondent in No.52/CC/TN/12/2011-FF/Sz, dated 25.03.2011 and quash the same and consequently, direct the first respondent herein to grant Swatantrata Sainik Samman Pension (S.S.S. Freedom Fighters Pension) to the petitioner from the date of his application dated 05.08.2010 within the time stipulated by this Court.

For Petitioner

: Mr.G.Rajan
for Mr.S.Veeranasamy

For Respondents

: Mr.S.Jeyasingh
Central Government Standing Counsel for R.1
Mr.J.Gunaseelan Muthiah
Additional Government Pleader for R.2

**ORDER**

The petitioner is a freedom fighter and he was declared as a freedom fighter by the State Government. He has produced a Certificate from the co-prisoner for being incarcerated between 1940 and 1944. The first respondent, by order dated 25.03.2011, has rejected the application of the petitioner on the ground that he failed to produce primary evidence as to his incarceration. Hence, the petitioner is before this Court.

2. Heard both sides.

3. According to the first respondent, as per the Swatantra Sainik Samman Pension Scheme, the petitioner has failed to produce the certificate from the co-prisoner. However, in the opinion of this Court, the procedures are hand-maids of law. The Central Government cannot be too technical and forced him to produce the certificates at the ripen age of 92 years and when this Court posed a question to the learned Central Government Standing Counsel appearing for the first respondent to produce the available materials, the answer was in negative and when the Government, who is the custodian of records, did not possess any records, a 92 years old freedom fighter cannot be expected to produce the documents which are not even available with the Government.

4. Insofar as primary and secondary evidence are concerned, it is total discrimination and violative of Articles 14 and 16 of the Constitution of India. Once the State Government has already declared the petitioner as freedom fighter, there cannot be any discrimination as primary evidence freedom fighter and secondary evidence freedom fighter. Freedom fighter is always a freedom fighter. Perhaps, the evidence may not be available with them. As held in the various judgments of the Honourable Supreme Court, it is the duty of the Government to honour them and respect their sufferings during freedom struggle.

5. The Honourable Supreme Court in ***Union of India and others v. Kashiswar Jana*** reported in ***(2008) 11 Supreme Court Cases 309***, has held as follows:

"7. Almost similar issue came up for consideration before this Court in *Union of India v. Kaushalaya Devi* [2007(9) SCC 525], wherein it was inter alia observed as follows:

"3. Heard learned counsel for the parties and perused the record. The short question in this case is whether the freedom fighters' pension should be granted to the respondent



from the date of the application or the date of the order granting the pension.

4. It has been held by this Court in Govt. of India v. K.V.Swaminathan [(1997) 10 SCC 190] that where the claim is allowed on the basis of benefit of doubt, the pension should be granted not from the date of the application but from the date of the order.

5. In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.

6. Learned counsel for the respondent has relied on the judgment of this Court in Mukund Lal Bhandrai v. Union of India [1993 Supp (3) SCC 2 : AIR 1993 SC 2127].

7. In our opinion that decision is distinguishable as it has been stated therein that the pension cannot be granted from any date prior to the application. In our opinion this does not mean that it cannot be granted from a date subsequent to the application.

8. For the reasons given above this appeal is allowed. The impugned judgment is set aside and it is directed that the pension will be granted only from the date of the order for granting pension and not from the date of the application."

6. The Honourable Supreme Court in **Mukund Lal Bhandari v. Union of India** reported in **AIR 1993 SUPREME COURT 2127**, while dealing with this issue of grant of pension, as to whether it is from the date of the order or it is from the date of application, has considered the matter and has observed as under:

"4. As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do



so. We would, therefore, direct accordingly.

As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting, the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill-behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit.

Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents, would be readily in possession of



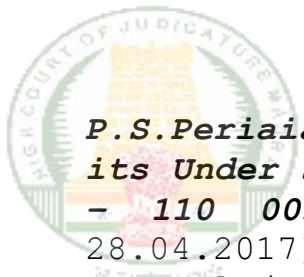
the required documents. In the very nature of things, such documents have to be secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time limit. What is necessary in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished.

5. That leaves us with the question as to whether, notwithstanding, the date on which the application itself is made, the claimant should be entitled to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with retrospective effect, reliance is placed on the two cases cited earlier where the benefit is given with effect from 1st August, 1980. We have given our anxious consideration to the question and are of the view that for reasons more than one, the benefit should flow only from the date of the application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospectivity of the benefit was neither raised nor answered. We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such straight-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial



Hence we are of the view that the pension under the Scheme should be made payable only from the date on which the application is made whether the application is accompanied by the necessary proof of eligibility or not. The pension should, of course, be sanctioned only after the required proof is produced."

7. It is pathetic to note that the freedom fighters who deserve high honour and respect from the administrators and citizens of our country, are forced to go before them with begging bowls. Such situation is heavily condemned by the Honourable Supreme Court as well as by this Court in various cases. In



P.S.Periaiah and others v. The Government of India, represented by its Under Secretary, Ministry of Home Affairs (FFR Div.) New Delhi - 110 003 and another [W.P(MD)No.4609 of 2014, decided on 28.04.2017], my learned Brother Judge [V.Parthiban,J.] following several judgments of the Honourable Supreme Court and this Court, observed as under:

"16. It is an admitted fact that the original petitioner is 91 years old freedom fighter, when he filed this Writ Petition. The status of the petitioner as freedom fighter has been recognized and pension is also sanctioned and being paid to the petitioner by the State Government. In fact, even his claim for grant of pension under the samman scheme was also recognized by the Collector of District committee constituted for the said purpose.

17. From the facts and circumstances narrated above, it is seen that the petitioner was indeed a freedom fighter and there cannot be two opinion, on that. The only reason that was held against him was no primary evidence was available. As far as the submission is concerned, the same cannot be countenanced in law, for the simple reason that the scheme itself is provided for production of secondary evidence in the absence of primary evidence and in the instant case, the petitioner being 91 years old person cannot be expected to obtain any documents from the jail authorities in support of his claim and therefore, insisting on production of such certificate is untenable to say the least. The other reason that the certifiers, who were not eligible to issue certificate, cannot also be appreciated because after all for grant of pension under samman scheme some proof has to be produced for the purpose of eligibility for grant of pension. When such a proof is available and it cannot be doubted merely because the two certifiers did not suffer imprisonment for one year or more. The said reasoning cannot be held against the petitioner and particularly when the petitioner sought pension at his ripe old age and is no more now. As stated by the Honourable Supreme Court of India in its decision, that it is imperative and incumbent upon the State to honour the freedom fighter instead of making them to beg the Government for grant of pension. Such a situation does not advance the cause and objective behind pension scheme. The State cannot look down upon the freedom fighters' claim with pedantic approach, bringing it under their microscopic consideration with a view to reject the claim of the freedom fighters on hyper technicality. Strict construction or sticking to the rigidity of the provisions of the Samman Scheme should



give way to the larger public interest of honouring our freedom fighter by repaying them, however, in small means as a fulfilment of our gratitude to their selfless struggle."

8. Observing so, the learned Judge has directed the respondents to grant pension under Swatantra Sainik Samman Pension Scheme with arrears from the date of application till the date of the death of the claimant therein, i.e., 08.06.2014.

9. It is the duty of the Government to go to the door steps of the freedom fighters and honour them. But they are treated as beggars to approach the Central Government with begging bowls for paltry sum paid towards pension. Rather it is honour and recognition given to them for the sacrifices made by them during the freedom struggle. It is total disheartening attitude of the Central Government to treat the elder citizens who got freedom for our country.

10. I have already stated that the judgment of the Honourable Supreme Court in **Union of India and others v. Kashiswar Jana** reported in **(2008) 11 Supreme Court Cases 309**, pertains to that individual case and the same cannot be applied as a straight-jacket formula in all cases.

11. Therefore, I have no hesitation to set aside the order passed by the first respondent and direct them to pay the freedom fighters pension from the date of application along with the arrears.

12. In the result, this writ petition is allowed as above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Deputy Secretary,
Union of India,
Freedom Fighters Pension Division (FFR Division),
Ministry of Home Affairs,
2nd Floor, NDCC-II Parliament Street,
New Delhi - 110 001.



2. The Secretary,
Government of Tamil Nadu,
Public (Political Pension) Department,
Fort St. George,
Secretariat,
Chennai - 600 009.

+ 1 CC TO Mr.S.JEYASINGH, ADVOCATE IN SR No. 69490
+ 1 CC TO Mr.G.RAJAN, ADVOCATE IN SR No. 69310

RSB

TE/RSK/SAR-3 : 11/08/2018 : 9P/5C

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21.06.2018