



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P. (MD) No.3740 of 2015
and
M.P. (MD) .Nos.2 to 5 of 2015

1.V.Meenambal
2.V.Elangiam

... Petitioners

vs.

1.The Deputy Secretary,
Government of India,
Ministry of Home Affairs/Grih Mantralaya
(freedom fighters Division - SZ Section)
2nd floor, NDCC-II Building,
Jai Singh Road, New Delhi-110 001.

2.Central Pension Accounting Officer,
Trikoot -II,
Bhikaji Cama Palace,
R.K.Puram,
New Delhi-110 066.

3.The Additional Secretary,
Government of Tamil Nadu,
Public (Political Pension-I) Department
Secretariat, Chennai-600 009.

4.The Treasury Officer,
Devakottai,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records connected with F.No.119/Gen/TN/23/2015-FF(SZ) dated 12.02.2015 of the 1st respondent and to quash the same and consequently to issue a direction to the respondents to continue to pay the family pension under the Central Freedom Fighters Family Pension Scheme as per the revised order of the 2nd respondent made in

<https://hcservices.ecourts.gov.in/hcservices/> CPAO/AUTH3/RIO/2014/004173 and CPAO/AUTH3/RIO/2014/004174 on 28.11.2014.



WEB COPY

For Petitioner : Mr.A.R.Sethupathy
For Respondents : Mr.G.Rajaraman
Central Government Standing
Counsel for RR-1 & 2
Mrs.J.Padmavathi Devi
Special Government Pleader
for RR-3 & 4

O R D E R

The writ petition has been filed for issuance of writ of Certiorarified Mandamus, to quash the impugned order, dated 12.02.2015, passed by the 1st respondent and consequently to issue a direction to the respondents to continue to pay the family pension under the Central Government Freedom Fighters Family Pension Scheme to the petitioners.

2.By way of the impugned order, dated 12.02.2015, the first respondent directed the officials to recover the excess payment of family pension disbursed to the petitioners.

3.Heard the learned counsel appearing for the petitioner, the learned Central Standing Counsel appearing for the respondents 1 & 2 and Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents 3 & 4.

4. The fact remains that one Vellaisamy Pillai was a freedom fighter. Considering the services rendered by him, the Central Government duly granted him the freedom fighter pension. He is entitled to pension amount of Rs.6,330/- per month. But, by mistake, the respondent issued pension at the rate of Rs.6,330/- per month to both the wives of the pensioner. Accordingly, excess payment to the tune of Rs.15 lakhs has been paid to the wives of the freedom fighter. Curiously, the freedom fighter passed away in the year 1998. For the past 16 years, they continued to receive double payment. The Central Government woke up from deep slumber and now they are taking steps to recover the money.

5. The learned counsel appearing for the petitioners has vehemently contended that it is not their mistake. When they demanded pension for both the people, the Central Government should have calculated the pension for the freedom fighter and after verification of the records should have made single payment. Therefore, the money cannot be recovered for no fault of theirs.

6. Per contra, the learned Central Government Standing counsel appearing for the respondents 1 & 2 would contend that a freedom fighter is entitled to pension. When both the wives had independently applied for freedom fighter's pension, it was mistakenly granted to both the wives. Therefore, it amounts to double payment. The Central Government is justified in recovering



the payment made to the freedom fighter. The mistake is on the part of the applicants. They should have made a single application for single freedom fighter. But they have two applications. Therefore, excess payment was made.

7. I have considered the rival contentions.

8. It is well-settled that a freedom fighter is entitled to freedom fighter pension under the scheme framed by the Central Government, but it does not mean that under the name of same freedom fighter, many dependents can apply independently. In this case, there are two applications by two wives and pension was granted to both of them. The Central Government should have been vigilant, while granting pension. For one freedom fighter, they have granted two pensions. The mistake is on the part of the Central Government by granting two pensions for the same individual. Be that as it may, pension is modified in accordance with rules. Accordingly, the dependent pension is divided and given to both the wives. In these circumstances, the order of recovery made by the first respondent is not justified, in view of the judgment of the Honourable Supreme Court reported in (2009) 3 Supreme Court Cases 475 (*Syed Abdul Qadir and Others Vs State of Bihar*) and Others, wherein, in a service matter, it was held that when a payment was made not on misrepresentation or fraud, it cannot be recovered. In the instant case, both the petitioners were wives of the late freedom fighter and they made individual applications. It is the usual practice in the case of two wives to make rival claims, in order to get recognised status of a wife of the deceased. In the instant case also, it appears that there was a rival claim. It is incumbent on the part of the Central Government to verify the independent claims and grant single pension. Therefore, it cannot be said that the petitioner made fraudulent claims. In such circumstances, the decision taken by the Central Government to adjust future payment is justified. But, they cannot force the petitioners to repay the amount at this old age, which they have innocently received. The impugned order is partly set aside to the extent of recovery alone. The Central Government is entitled to adjust money in future payments.

9. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To:

1. The Deputy Secretary,
<https://hcservices.ecourts.gov.in/hcservices/>
Government of India,
Ministry of Home Affairs/Grih Mantralaya,



(freedom fighters Division -sz Section)
2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi-110 001.

2. Central Pension Accounting Officer,
Trikoot-II,
Bhikaji Cama Palace,
R.K. Puram,
New Delhi-110 066.

3. The Additional Secretary,
Government of Tamil Nadu,
Public (Political Pension-I) Department
Secretariat, Chennai-600 009.

4. The Treasury Officer,
Devakottai,
Sivagangai District.

+1cc to Mr. T.R. SUBRAMANIAN, Advocate, SR.No. 69799
+1cc to Mr. G. RAJARAMAN, Advocate, SR.No. 69803

W.P. (MD) No. 3740 of 2015
26.06.2018

VS
KK/PN/SAR-3/17.07.2018/4P-7C/