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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN
W.P. (MD) No.15737 of 2018
and
WMP (MD) No.14109 of 2018

M.Kaliyan ... Petitioner
vs.

1.The Government of India,
represented by its Secretary,
Ministry of Home Affairs, (Freedom Fighters Division),
Lok Nayak Bhawan, New Delhi-110 003.

2.The Under Secretary,
Ministry of Home Affairs, (Freedom Fighters Division),
Lok Nayak Bhawan, New Delhi-110 003.

3.The Secretary,
Government of Tamilnadu,
Public (Political Pension 1) Department,
Fort St.George, Chennai-600 009.

4.The District Collector,
Sivagangai District, Sivagangai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings in No.52/CC/TN/73/2013-FF(SZ) dated 13/06/2018 issued by the 2nd respondent and quash the same and consequently direct the respondents 1 and 2 to grant pension under Central Government Freedom Fighters pension scheme i.e. " SWATANTRATA SAINIK SAMMAN PENSION SCHEME 1980" to the petitioner herein from the date of his application within the time limit fixed by this Court.

For Petitioner : Mr.AL.Kannan

For Respondents : Mr.V.Kathirvel
Assistant Solicitor General of India
assisted by Mrs.V.Ragaventhree
Central Government Standing Counsel
for R.1 and R.2
: Mr.M.Jeyakumar
Additional Government Pleader
for R.3 and R.4

O R D E R



part in the national freedom struggle. According to him, he participated in Quit India movement in 1942 and he was arrested by the then British Government and was tried by the learned Special Judge, Ramnad and was sentenced for a period of one year i.e., from 1943 March to 1944 March at Madurai Central Prison.

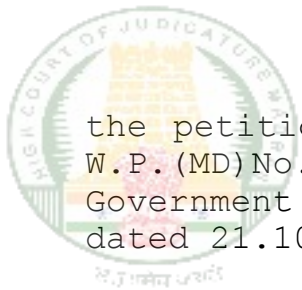
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2. In regard to his participation in the freedom struggle, the petitioner was admittedly granted pension from State freedom pensioner's scheme by the Government of Tamil Nadu. However, he was not granted the Central Government Freedom Fighters Pension Scheme which was introduced in 1980 viz., "SWATANTRATA SAINIK SAMMAN PENSION SCHEME, 1980". In this regard, the petitioner herein sent several representations and there was no response from the second respondent.

3. Initially, the third respondent directed the petitioner vide his letter dated 22.02.2011 to furnish certain documents in the prescribed format. In response to the direction, the petitioner appears to have submitted documents on 25.11.2011 and thereafter screening committee undertook to scrutinize the application submitted by the petitioner. The petitioner also appeared before the fourth respondent in this regard. The petitioner produced an affidavit in support of his claim and produced co-prisoners' certificates issued by one C.Kalimuthan and Samiththevar before screening committee. However, no decision was taken and there was no communication between the fourth respondent and the petitioner. The petitioner has approached the office of the fourth respondent seeking the status of his claim for Central Government Freedom Fighters Pension.

4. In fact, as far as the State pension scheme is concerned, the petitioner had approached this Court in W.P.No.38797 of 2002 and the same was allowed on 09.02.2010 and on the basis of the said order, the State Government granted the Freedom fighters pension to the petitioner from 1997. Despite the grant of State pension scheme, his request for Central Government freedom fighters pension scheme was not granted on the basis of certain technical requirements and the authorities kept on insisting of production of documents periodically without the acceptance of the documents submitted by the petitioner which were enough to conclude the petitioner's part during the participation in the Quit India movement.

5. In the above circumstances, the petitioner approached this Court in W.P.(MD)No.14875 of 2013 and the said writ petition was disposed of on 05.09.2014 directing the petitioner to submit a fresh application to the District Collector and in pursuance of the direction, the petitioner appears to have submitted another application on 21.10.2014. Thereafter the fourth respondent vide his proceedings dated 13.12.2014 recommended to the third respondent to grant Central Government freedom fighters pension. However, the third respondent has not passed any orders thereafter. Therefore,



the petitioner was once again constrained to file writ petition in W.P.(MD)No.10791 of 2017 seeking direction for grant of Central Government freedom fighters pension by considering his application dated 21.10.2014.

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6. The said writ petition was disposed of on the basis of the submissions made on behalf of the Government that the District Collector has communicated the claim of the petitioner to the second respondent. Recording submission, the Writ Petition was closed. Eventually, the order was passed by the first respondent dated 13.06.2018 rejecting the claim of the petitioner on the ground that the petitioner did not produce any primary evidence as per the scheme of 1980 and even the secondary evidence produced by him was not in a proper format and the certificates issued by the co-prisoners were questionable as they did not contain any specific details of the nature and time of the imprisonment. On these grounds, the claim of the petitioner has been rejected. The said order dated 13.06.2018 is put to challenge in the present writ petition.

7. The learned Counsel appearing for the petitioner would outset submit that the issue raised in the writ petition is directly covered by the decision of this Court rendered in W.P.(MD)No.4689 of 2014, dated 28.04.2017, wherein this Court considered a similar claim and also similar objections raised on behalf of the competent authority and allowed the claim of the freedom fighter therein. The learned Counsel would draw the attention of this Court to paragraph Nos.15 to 20 of the above said order and the same are extracted hereunder:

"15. I have given my anxious consideration to the rival submissions of the parties.

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.

18. In such circumstances, I am in agreement with the contention raised on behalf of the petitioner and the decision relied on by the counsel for the petitioner.

19. In these circumstances, the impugned order passed by the second respondent, dated 24.12.2013 is liable to be interfered with. Therefore, the same is set aside. The respondents are directed to process the application submitted by the original petitioner Periaiah and grant the pension under the Swatantrata Sainik Samman Pension Scheme, 1980, and grant pension with arrears from the date of application till the date of the death of the claimant i.e., till 8.6.2014. The said exercise shall be completed and the pension shall be sanctioned within a period of eight weeks from the date of receipt of a copy of this order.

20. With above directions, this writ petition is allowed. No costs."

8. The learned Counsel for the petitioner would also submit that the above order passed by the Single Judge of this Court has been confirmed in writ appeal in W.A.(MD)No.771 of 2018, dated 21.06.2018 wherein the learned Division Bench of this Court has held as follows:

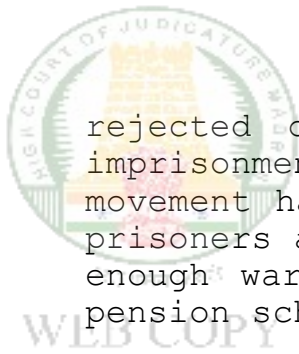
<https://hcservices.ecourts.gov.in/hcservices/> 17. It is a matter of fact that several people fought for freedom at several parts of this country and



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.

9. He would therefore submit that despite the recommendations of the competent authority at the State Government level and despite the fact that the petitioner has been in receipt of the State freedom fighters pension, the claim of the petitioner has been



rejected on certain hyper technical grounds. The fact of the imprisonment of the petitioner for participating in the Quit India movement has been established by the certificates issued by the co-prisoners and when such fact has been established, the same was fair enough warranting sanction of Central Government freedom fighters pension scheme.

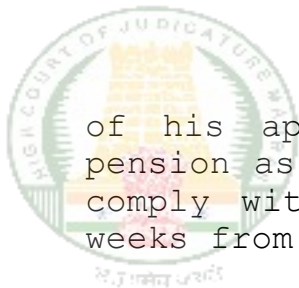
10. Per contra, the learned Assistant Solicitor General of India has expressed strong reservation about the grant of any relief to the petitioner. He would submit that first of all the petitioner has not satisfied with the conditions stipulated in the Central Government scheme of 1980. The petitioner did not satisfy the requirements with regard to the production of any primary evidence and nor was able to produce any secondary evidence in the proper format. The co-prisoners certificates produced by the petitioner were bereft of any details and the same were questionable and therefore, rightly the first respondent rejected the claim of the petitioner.

11. An elaborate counter affidavit has been filed reiterating the reasons for rejection of the claim of the petitioner.

12. This Court gave its anxious consideration to the claim of the petitioner as well as to the objections of the Assistant Solicitor General of India.

13. As rightly contended by the learned Counsel appearing for the petitioner, the issue is directly covered by the order passed by this Court as above mentioned which has been confirmed by the Division Bench of this Court in W.A.(MD)No.771 of 2018, dated 21.06.2018. In that case also, the claim of the freedom fighter was declined to be granted, on the basis of certain technical objections and there also co-prisoner's certificate was not found to be genuine and *bonafide*. However, overruling such technical objections, this Court has passed the order in favour of the freedom fighter. What is intended to be established in these kinds of situation is the factum of imprisonment during the freedom struggle. Admittedly, the petitioner has suffered with imprisonment during the relevant time and only on such verification, the State Government has granted pension. Thereafter even as per the impugned order, the fourth respondent Collector who is the competent authority has recommended for grant of Central Government pension. But unfortunately, the recommendation was overruled on certain misconception by the first respondent.

14. For the above said reasons, this Court is of the view that this petitioner has made out a case for grant of relief and such view of the matter, the impugned proceedings No.52/CC/TN/73/2013-FF (SZ) dated 13.06.2018 of the second respondent is hereby set aside. The respondents 1 and 2 are directed to grant pension of Central Government Freedom Fighters pension scheme i.e. " SWATANTRATA SAINIK SAMMAN PENSION SCHEME 1980" to the petitioner from the date



of his application and pay arrears of pension and the monthly pension as per the scheme. The respondents 1 and 2 are directed to comply with the directions of this Court within a period of two weeks from the date of receipt of a copy of this order.

15. The learned Assistant Solicitor General of India has drawn the attention of this Court to the decision of the Honourable Supreme Court of India dated 15.02.2007 in Appeal (Civil) No.783 of 2007, in which, the Honourable Supreme Court of India has granted such pension only from the date of order and not from the date of application in view of the fact that the benefit of doubt was given to the petitioner therein.

16. This Court is of the view that the Honourable Supreme Court has rendered the above said findings in regard to the factual matrix of that case.

17. In view of the above, the Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(CO)

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Sub Assistant Registrar(CS-III)

To

1.The Secretary,
Government of India,
Ministry of Home Affairs, (Freedom Fighters Division),
Lok Nayak Bhawan, New Delhi-110 003.

2.The Under Secretary,
Ministry of Home Affairs, (Freedom Fighters Division),
Lok Nayak Bhawan, New Delhi-110 003.

3.The Secretary,
Government of Tamilnadu,
Public (Political Pension 1) Department,
Fort St.George, Chennai-600 009.

4.The District Collector,
Sivagangai District, Sivagangai.

+1cc to Mr.AL.KANNAN, Advocate, SR.No. 93440

+1cc to M/s.Special Government Pleader,SR.No. 93393

W.P.(MD) No.15737 of 2018

SSL

KK/PM/SAR-3/10.12.2018/7P-7C