



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P(MD)No.21638 of 2017

WEB COPY

Kalarani

... Petitioner

Vs.

- 1.The Director,
Ministry of Home Affairs/Grih Mantralya,
FFR Division, SZ Section, 2nd Floor,
NDCC-II, Jaisingh Road,
Parliament Street,
New Delhi - 1.
- 2.The Principal Secretary,
Government of Tamil Nadu,
Public (Political Pension - I) Department,
Secretariat,
Chennai - 9.
- 3.The District Collector,
Ramanathapuram District,
Ramanathapuram.

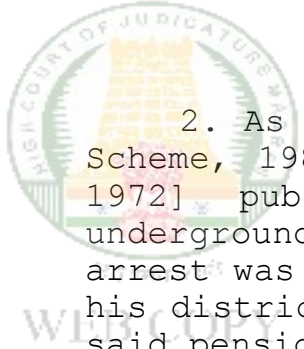
... Respondents

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 of the impugned order passed by the first respondent dated 24.03.2017 bearing No.52/CC/TN/15/2013-FF (SZ) and quash the same and direct the respondents to sanction the freedom fighter pension for the petitioner's father, late.Muthu Servai under the Swatantrata Sainik Samman Pension Scheme, 1980 from the date of the petition, i.e, 15.12.1976 with interest till date of realisation and consequently, pay the same to the petitioner and thereupon to pay the freedom fighters' family pension till her life time.

For Petitioner	: Mr.R.Saravanan
For Respondents	: Mr.J.Jeyakumaran for R.1
	Mr.A.Muthukaruppan
	Additional Government Pleader for R.2 & R.3

ORDER

The petitioner is a daughter of a freedom fighter. The petitioner's father, during the struggle of freedom, went underground for a period between 03.09.1942 and 21.03.1943. The co-prisoner gave a certificate to that effect. Again, another freedom fighter issued a certificate dated 29.07.1974 that he went underground for over nine months between 1942 and 1943. Based on these certificates, the petitioner's father submitted an application.



2. As per the scheme, namely, Swatantrata Sainik Samman Pension Scheme, 1980 [formerly known as 'Freedom Fighters' Pension Scheme, 1972] published by the respondents, a person who remained underground for more than six months, against whom, an award for arrest was made or the person interned in his home or externed from his district for a period of six months or more, is entitled to the said pension.

3. The scheme further explains that the certificates from veteran freedom fighters who themselves underwent imprisonment for five years or more, if the official records are not forthcoming due to non-availability, can be taken into consideration.

4. In the instant case, the petitioner's father submitted those documents given by the renowned freedom fighter as well as co-prisoner. Since nothing came forward from the respondent, the petitioner's father filed W.P.No.2735 of 1993 and the Division Bench of this Court, by order dated 20.12.1993, directed the respondent therein to consider the claim of the petitioner's father afresh under the Central Pension Scheme in the light of the observations and the guidelines evolved in the judgment in W.P.No.7194 of 1991, dated 16.12.1993 and pass appropriate orders within three months from the date of receipt of a copy of the order, if he is entitled to, with effect from 01.08.1980, the date on which the liberalised pension scheme came into force.

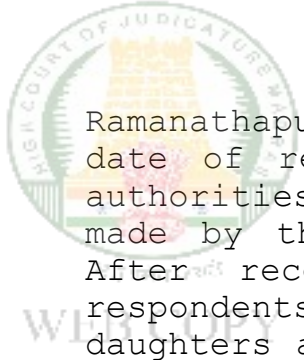
5. However, the respondents have not considered the same and it was kept pending. Again, the petitioner's father approached this Court by way of another writ petition in W.P.No.18214 of 1998 and this Court, after considering the judgments in respect of similarly placed persons, was pleased to direct the second respondent therein to consider the application of the petitioner's father and pass orders within three months from the date of receipt of a copy of the order, after giving due opportunity to him to put forth his submissions.

6. The respondents, by their reply dated 31.05.2000, have sought for the documents referred to by the petitioner's father as they have not been received by them. In the meanwhile, the petitioner's father passed away. Thereafter, his daughter, namely, the petitioner herein, made another application for freedom fighters' pension in favour of her father.

7. According to the petitioner, she is a destitute widow and is completely depending upon her father for livelihood. The revenue authorities have also certified that the petitioner is a destitute widow drawing a sum of Rs.1,000/- as Destitute Widow Pension.

8. Since there is no response from the respondents, the petitioner has filed a writ petition in W.P(MD)No.532 of 2013 and this Court, by its order dated 19.11.2014 directed the petitioner to submit all relevant documents before the District Collector,

<https://hcservices.ecourts.gov.in/hcservices/>



Ramanathapuram District, within a period of three weeks from the date of receipt of a copy of this order, so as to enable the authorities concerned to take positive steps in regard to the claim made by the petitioner for arrears of freedom fighters pension. After receipt of the application from the petitioner, the respondents have rejected the same on the ground that the unmarried daughters alone are eligible to avail the pension benefits from the Central Government, if applied within six months from the date of death of the freedom fighter and the widowed/divorced daughter is not eligible for Swatantrata Sainik Samman Pension as per Para 1.5 of the Revised Policy Guidelines dated 06.08.2014. Aggrieved over the rejection order, the petitioner is before this Court.

9. The first respondent filed a detailed counter setting out the eligibility criteria and conditions of the pension scheme wherein as per Para 1.5, a widowed/divorced daughter is not entitled to receive the pension.

10. Whereas the third respondent also filed a counter affidavit stating among other things, that the petitioner is not eligible to get the freedom fighters' pension as the petitioner's father was not granted pension during his life time and prayed for the dismissal of the writ petition.

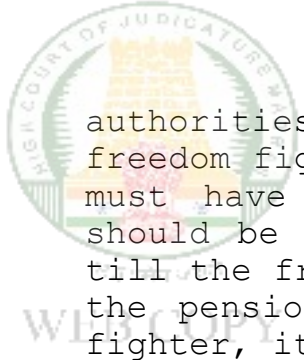
11. I have heard rival contentions.

12. Admittedly, the petitioner's father is a freedom fighter and it was duly certified by the competent persons as indicated in the scheme. The petitioner has approached this Court as early as in 1993 and a positive direction was issued on 20.12.1993. Again that order was reiterated by another order of this Court in W.P.No.18214 of 1998, dated 25.04.2000.

13. In respect of a freedom fighter applying for pension during his life time enclosing all the relevant documents, the respondents have not acted in time. But, it appears that they waited till the freedom fighter die. Even after a positive direction was issued by this Court in W.P(MD)No.532 of 2013, dated 19.11.2014, the respondents have come out with a new reply that a destitute widow is not eligible for receiving the pension. Originally, the reply sent on 31.05.2000 was that the credentials submitted by the petitioner's father - freedom fighter was not available. Once it is submitted, it is incumbent on the respondents to consider and grant pension in time in favour of a freedom fighter. As per the scheme, after the death of the petitioner - freedom fighter, the pension can be transferred to his spouse or daughter if application is made within six months. The Ministry shall take a decision whether to allow the dependent pension or not, whether any arrears to be paid, which means that the applicant shall be a dependent of the freedom fighter.

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14. In the instant case, it is certified by the revenue

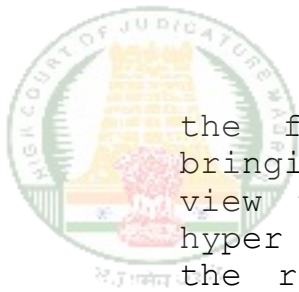


authorities that she is a destitute widow and a dependent on the freedom fighter. In such circumstances, the freedom fighters pension must have been granted posthumously and the arrears of pension should be paid to the family members. The respondents cannot wait till the freedom fighters die and reject the same stating that since the pension was not granted during the life time of the freedom fighter, it cannot be granted to the family members.

15. 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."

16. 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.

17. In the instant case, the freedom fighter has approached this Court as early as in 1993 and he has been forced to run from pillar to post for the past 25 years. Such lethargic attitude of the respondents is not appreciable.

18. This Court in various judgments, as observed above, has held that it is the duty of the respondents to go upto the door steps of the freedom fighter and honour them who struggled for the freedom, which we are enjoying today. They shall not be forced to go with begging bowl for getting a meagre amount. The freedom fighter deserves much more than what is paid by way of meagre amount. Ultimately, it is the pride and respect conferred upon them for the sufferings undergone by them in the freedom struggle.

19. Therefore, I am inclined to set aside the impugned order which comes out with a new reason for rejecting the pension as it is seen from the certificate issued by the co-prisoner as well as renowned freedom fighter. The petitioner's father is entitled to get freedom fighters' pension and consequently, the petitioner is entitled to receive the arrears of freedom fighters' pension.

20. Accordingly, a direction is issued to the respondents to disburse the arrears of freedom fighters' pension with effect from 01.08.1980 as observed by the Division Bench of this Court, in its order dated 20.12.1993 made in W.P.No.2735 of 1993, within a period of three months from the date of receipt of a copy of this order.

21. In the result, this writ petition is disposed of as above. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/



To

1. The Director,
Ministry of Home Affairs/Grih Mantralya,
FFR Division, SZ Section, 2nd Floor,
NDCC-II, Jaisingh Road,
Parliament Street,
New Delhi - 1.
2. The Principal Secretary,
Government of Tamil Nadu,
Public (Political Pension - I) Department,
Secretariat,
Chennai - 9.
3. The District Collector,
Ramanathapuram District,
Ramanathapuram.

+1CC to Mr.R.Saravanan Advocate in SR.No.71990.

+1CC to Mr.J.Jeyakumaran, Advocate in SR.No.72067.

RSB

DS/KAK/SAR-4 :10.08.2018: 6P/6C

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