



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.09.2018

CORAM

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A. (MD) No.1149 of 2018
and
C.M.P. (MD) No.8225 of 2018

The Union of India
Rep. by the Under Secretary to
Government of India,
Ministry of Home Affairs,
(Freedom Fighters Division),
1st Floor, Log Nayak Bhavan,
Khan Market,
New Delhi-110 003.

... Appellant/1st Respondent

Vs.

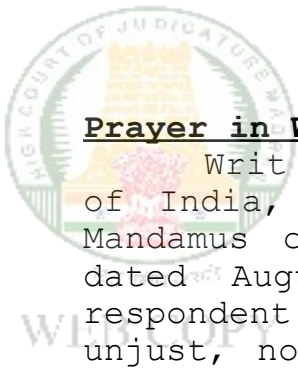
1. K.Duraisamy ...1st Respondent/Petitioner

2. The Joint Secretary,
Public (Political Pension-1) Department,
Government of Tamil Nadu,
Secretariat,
Chennai-600 009.

3. The Accountant General
(Accounts and Entitlement and Pension),
The Office of the Accountant General,
No.36, Anna Salai,
Teynampet,
Chennai-600 018.

4. The District Collector,
The office of the District Collector,
Tamil University Road,
Thanjavur,
Thanjavur District-613 010. ... 2 to 4 Respondents/
Respondents 2 to 4

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent
against the order dated 15.03.2017 as amended on 20.07.2017 in W.P.
(MD).NO.17845 of 2016.



Prayer in WP(MD). 17845/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the Impugned order dated August, 2006 vide No. 29/14/2006 -FF(INA) of the 1st respondent and quash the same as illegal, unconstitutional, unfair, unjust, not proper and against the Sainik, Samman Pension Scheme, 1980 and consequently directing the 1st respondent to pay the petitioner monthly Freedom Fighters Pension under Swatantrata Sainik Samman Pension Scheme, 1980 called Samman Pension from the date of impugned order.

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

For Respondents : Mr.R.Suresh Kumar for R1

R2 to R4 : Mrs.J.Padmavathi Devi
Special Government Pleader

JUDGMENT

**[Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.]**

'Give me blood, I will give you freedom' said Subhash Chandra Bose during the freedom struggle. The path of freedom struggle is not embedded with roses, but thorns. But it could not stop the freedom fighters, as they were firm in their only one ambition "Swaraj - Independent India", which they achieved in 1947.

2. To honour such warriors, inter alia, Freedom Fighters' Pension Scheme, 1972 was brought into effect, which was later called as the Swatantrata Sainik Samman Pension Scheme, 1980 (in short, "the Scheme"). According to the writ petitioner/first respondent, he strained every nerve of his for securing freedom for the country. However, the pension sought for by him under the Scheme was rejected by the appellant, and on challenge, the learned Single Judge set aside the said order with consequential reliefs. Seeking interference in the said order of the learned Single Judge dated 15.03.2017 passed in W.P.(MD)No.17845 of 2016, the Union of India is before this Court in this appeal.

3. The appellant is the first respondent in the said writ petition, which was instituted by the first respondent herein. According to the writ petitioner/first respondent, who is now a nonagenarian, he had served in the Indian Independence League during 1943 at Rangoon, Burma, for which, he got a certificate dated 23.09.1964 from All India Burma Tamilian Association (H.Q.),



Rangoon. The writ petitioner/first respondent claimed that he has been receiving the Freedom Fighter Pension from the State Government from 20.01.2003. Armed with necessary certificates, he submitted an application on 31.03.2004 to the appellant. He claimed that the said application was recommended by the second respondent herein, the same having been scrutinized by the concerned Screening Committee and the District Collector/the fourth respondent. However, the appellant rejected the claim by order dated 07.08.2006 in No.29/14/2006-FF(INA), which was set aside by the learned Single Judge by the impugned order.

4. The contention of the leaned counsel for the appellant is that the reason for the rejection of the claim of the writ petitioner/first respondent that the documents submitted by him are not sufficient to prove his eligibility for pension under the Scheme is against the very object of the Scheme.

5. Be that as it may, the typed set filed by the appellant contains Salient Features of the Scheme with appendices. Clause 2 provides for eligibility, of which, clause 2.2. speaks of imprisonment and the documents that have to be furnished by a pensioner making the claim. Accordingly, the writ petitioner/the first respondent had submitted Co-Prisoner Certificate issued by one Mr.T.P.Ponniah to the effect that they suffered imprisonment from June, 1945 to December, 1945 in Rangoon Central Jail. In similar lines, another Co-Prisoner Certificate was issued by one Mr.V.Kandasamy. Both the Co-Prisoners are recipients of Central and State pensions. However, the appellant rejected the claim of the writ petitioner/first respondent, inter alia, on the ground that the Co-Prisoners have suffered imprisonment for less than one year making them ineligible to issue such certificates.

6. As noticed above, the Scheme for the grant of pension to the freedom fighters from central revenues was introduced by the Government of India to honour the Freedom Fighters. In fact, the pension is not only to lead the life of freedom fighters but also to the families, as even if they are not alive, it has to be extended to the family members of martyrs. The benefit of the Scheme is extended to all Freedom Fighters as a token of SAMMAN to them. Be that as it may, the writ petitioner/first respondent has joined the Indian Independence League and served in the Indian National Army (INA) and he has come well within the definition of "Freedom Fighter" and he has also produced the relevant records and he made his application in the year 2004, which has culminated in passing the impugned order on 07.08.2006. However, he has been made to run from pillar to post for getting the sanction for the last more than 10 years, which would defeat the very purpose and the scheme for which, it was initiated.

7. It is pertinent to state that though in the absence of the primary evidence, secondary evidence could be placed on record to seek the relief, one of the reasons for rejection is non-production



of the primary evidence, which is wholly unjustified. Further, the State Government had recommended the claim of the writ petitioner/first respondent. Hence, the question production of a valid "Non-Availability of Records Certificate (NARC)" does not arise at all. Despite the fact that the writ petitioner/first respondent has produced the certificate as required by the Scheme, the appellant had not considered the grant of freedom fighters pension to the writ petitioner/first respondent in its proper perspective. In such circumstances, the learned Single Judge, by placing reliance on a catena of decisions of the Apex Court, had directed the appellant to grant freedom fighters pension to the petitioner under the Scheme within a period of eight weeks from the date of receipt of a copy of this order.

8. The sheet-anchor of the rejection order is that the Co-Prisoners are not eligible to issue the certificates, since they have undergone the imprisonment for less than one year. When the genuineness or otherwise of the said certificates are not doubted by the appellant, he is not right in rejecting the request of the Freedom Fighter on flimsy grounds, as assigned in the order impugned before the writ court. The object of the certificate is for the purpose of affirming the imprisonment undergone by the applicant and the hyper-technical approach of the appellant in rejecting the claim of the Freedom Fighter cannot be appreciated. On the other hand, the appellant should undertake a survey, in collaboration with the State Governments, to find out the living Freedom Fighters, who were the torch-bearers of this nation, and extend the fruits of the Scheme, on its own, at this doorsteps. It is painful to see that the authorities are making those selfless nationalists to undergo rigorous process of red-tapism, quoting some rules.

9. At this juncture, it is apt to quote the following paragraphs in the decision of the Apex Court in Surja Vs. Union of India, (1991) 4 SCC 366 :

7. Freedom Fighters' Pension Scheme of 1972 was renamed as "Swatantrata Sainik Samman Pension Scheme 1980". The brochure published by the Union of India indicates: "A person who had suffered a minimum imprisonment for six months in the mainland jails before independence in the struggle for independence is eligible to be admitted to the benefits of the pension". It has already been indicated that each of the petitioners had been convicted and was ordered to suffer imprisonment of more than six months. The petitioners' assertion that they did not claim remission has not been doubted or disputed. In the facts of the case it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period beyond six months remission had been granted and they were let off earlier would not take away their right to earn pension. Learned Attorney General



appearing for the respondents has accepted this construction of the entitlement clause.

8. The writ petition is accordingly allowed and the respondents are directed to admit each of the petitioners to pension under the Scheme within two months hence. The pension be paid with effect from 1st August 1990 as in the connected case."

10. The Apex Court in State of Tamil Nadu V. A.Manickam Pillai, (2010) 2 SCC 669, held as follows :

7. A perusal of this G.O. would reveal that freedom fighter certificates could now be issued by approved certifiers and these were held as sufficient evidence for the grant of a pension. The G.O. further set out the constitution of District Level Screening Committees to be nominated by the Government in consultation with the Collectors concerned and that these committees were required to personally examine the documents produced and decide as to the entitlement of the applicant to the grant of pension and refer the matter for formal approval to the State Government."

11. In the light of the above judgments of the Apex Court, this Court is of the considered view that there is no reason to interfere with the order passed by the learned Single Judge in W.P.(MD). No.17845 of 2016, dated 15.03.2017 and the writ appeal is dismissed. The appellant is directed to grant the freedom fighters pension to the writ petitioner/first respondent, as per the Scheme, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.side)

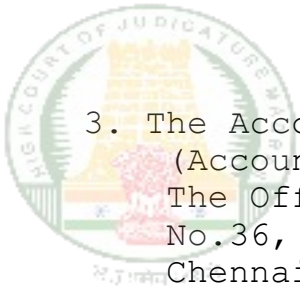
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Sub Assistant Registrar(CS-II)

To

1.The Under Secretary,
Ministry of Home Affairs,
(Freedom Fighters Division),
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2. The Joint Secretary,
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Thanjavur District-613 010.

+1CC to Mr.R.Suresh Kumar, Advocate, SR.No.84279

W.A. (MD) No.1149 of 2018
12.09.2018

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