

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ**W.P(MD)No.6526 of 2016**

WEB COPY

M.Sivasundara Parvathi

... Petitioner

Vs.

The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.

... Respondent

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 relating to the order passed by the respondent in F.No.52/CC/TN/22/2007-FF (SZ), dated 20.05.2015 and quash the same and consequently, direct the respondent to pay the arrears of family pension from the date of the application dated 16.05.2001 to 15.09.2013.

For Petitioner : Mr.T.V.Sivakumar

For Respondent : Mr.G.Rajaraman
Central Government Standing Counsel

ORDER

The husband of the petitioner was a freedom fighter and he was incarcerated in connection with C.C.No.106 of 1942 from 15.09.1942 to 23.03.1943, for a period of six months and four days. During his life time, he received Tamil Nadu Freedom Figher's Pension as per FFPO No.60001/70, dated 20.07.1970. Thereafter, he applied for Swatantra Sainik Samman Pension, but it was not sanctioned duirng his life time. Later, on the basis of the representation made by the petitioner, dated 21.09.2005, the pension was granted.

2. Originally, the petitioner filed a writ petition in W.P(MD) No.1383 of 2007 to consider his representation and this Court, by order dated 21.02.2007, directed the respondent to consider the same and pass orders within eight weeks from the date of receipt of the copy of the said order. However, it was rejected by the respondent by order dated 11.05.2007. Again, the petitioner has approached this Court by way of W.P(MD)No.11109 of 2008, which was ordered in favour of the petitioner on 30.06.2011 by quashing the rejection order of the respondent, against which, the respondent preferred an appeal by filing W.A.(MD)No.1183 of 2011 before the Division Bench of this Court and it was dismissed on 31.01.2013



and thereafter, by way of Special Leave Petition (Civil) No.15796 of 2013, the respondent received the same fate on 16.09.2013 and finally, the petitioner has filed a contempt petition for non-compliance of the order of this Court passed in W.P(MD)No.11109 of 2008, dated 30.06.2011 and the respondent has granted the pension with effect from 16.09.2013.

3. The petitioner has filed a representation on 16.04.2015 for payment of arrears of pension with effect from 11.05.2007 to 16.09.2013, but, the respondent has relied on the judgment of the Honourable Supreme Court in **Union of India v. Kaushalaya Devi** reported in **2007 (9) Supreme Court Cases 525** and rejected the same on the ground that when the pension is granted on the basis of secondary evidence, it could be granted only from the date of order of the Honourable Supreme Court in Special Leave Petition (Civil) No.15796 of 2013, viz., with effect from 16.09.2013 and not from the date of application.

4. The learned Counsel for the respondent has filed an elaborate counter setting out that the pension can be granted only from the date of the order of the Court as it is based on secondary evidence and hence, the claim of the petitioner is not sustainable.

5. Heard both sides.

6. 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 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."

7. The Honourable Supreme Court has followed the earlier judgment in ***Mukund Lal Bhandrai v. Union of India*** reported in **1993 Supp (3) SCC 2 : AIR 1993 SC 2127**.

8. The learned Counsel for the respondent would vehemently contend that when there is a latest judgment of the Honourable Supreme Court fixing the date of grant of pension from the date of the order of the Court, it should be followed.

9. In my considered opinion, the judgment of the Honourable Supreme Court was made on the basis of benefit of doubt. In the facts and circumstances of that case, it was held that the petitioner therein was entitled to get pension from the date of the order and not from the date of application. The observation made by the Honourable Supreme Court reads as under:

"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."

There is no clear cut formula that it should be granted only from the date of the order of the Court. In the facts and circumstances of each case, the grant of pension differs.



10. In the instant case, the husband of the petitioner was granted freedom fighter's pension during his life time from 1983 onwards. The Government of Tamil Nadu has recommended the case of the husband of the petitioner for grant of Swatantra Sainik Samman Pension as early as in the year 1983. In that case, the status of the husband of the petitioner as freedom fighter has already reckoned as early as in 1983. It is not the case of the respondent that the petitioner is demanding pension from 1983 or from the date of application. The petitioner seeks arrears of pension from the date of her representation. The said representation was directed most favourably to be disposed of by the respondent by this Court as early as on 21.02.2007 and a positive order was passed by this Court on 30.06.2011. In that event, the first order that should be taken into account is the order dated 21.02.2007 passed by this Court in W.P(MD)No.1383 of 2007 and not the judgment of the Honourable Supreme Court which was passed at the instance of the respondent on 16.09.2013.

11. 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 assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs 5,000. It is only later, i.e., from 1st August, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of



compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now.

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."

12. 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 one such case, 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

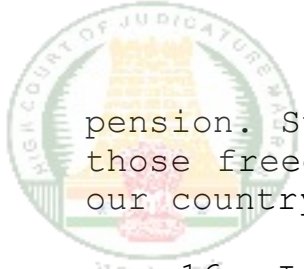


evidence in the absence of primary evidence and in the instant case, the petitioner being 91 years old person cannot be expected to obtain any documents from the jail authorities in support of his claim and therefore, insisting on production of such certificate is untenable to say the least. The other 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."

13. 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.

14. 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.

15. In the facts and circumstances of the case, as observed earlier, the status of the husband of the petitioner was declared as freedom fighter as early as in the year 1983. The respondent should have granted pension without awaiting for his application, but the respondent, by following the rigid scheme, has rejected the same for a longer period and after filing a contempt application, the respondent has come down and unwillingly granted



pension. Such a situation is unwarranted and is a great insult to those freedom fighters, who sacrificed their life for the sake of our country and future generation.

16. In such circumstances, I am inclined to set aside the order in F.No.52/CC/TN/22/2007-FF (SZ), dated 20.05.2015, passed by the respondent rejecting the request for grant of arrears of pension from 11.05.2007 to 16.09.2013 and direct the respondent to pay the arrears of pension within a period of two months from the date of receipt of a copy of this order.

17. In the result, this writ petition is allowed as above. No costs.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.

+1cc to Mr.T.V.Sivakumar, Advocate Sr.No.68956

+1cc to Mr.G.Rajaraman, Advocate Sr.No.68947

RSB

VB/SKN/SAR3/21.08.2018/9P/4C

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