

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.19492 of 2003

G.Chinnaiyan

...Petitioner

Vs

Union of India,
Rep. By The Secretary,
Ministry of Home Affairs,
Freedom Fighter's Pension Division,
Lok Nayak Bhavan,
New Delhi.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the respondent's order dated 30.04.2003 made in Ref.No.29/7771/73-FF(INA) Ministry of Home Affairs, Government of India, New Delhi, and to quash the same and to direct the respondent to grant to the petitioner, the Freedom Fighters Central Pension, with effect from the date of his Original application i.e. On 05.08.1972.

For Petitioner : Mr.R.N.Kothandaraman

For Respondent :Mr.J.Madanagopal Rao, SCGSC

O R D E R

The impugned order dated 30.04.2003 in the present writ petition is rejection of the petitioner's claim for Freedom Fighter Pension under Swatantrata Sainik Samman Pension (hereinafter referred to as SSSP scheme"). Though various reasons have been assigned in the rejection order for non-consideration of the petitioner's application seeking the pension, I am constrained to allow the writ petition on the following grounds.

2.It is claimed by the petitioner that he is a Freedom

fighter, who had joined Indian National Army under the leadership of Netaji Subash Chandra Bose for the noble cause of struggle for independence. According to the petitioner, he was arrested by the British force while he was serving in the Indian National Army and detained in the camp jail.

3. In view of his participation in the freedom struggle, the State Government had extended Freedom Fighters Pension through an order in Freedom Fighters Pension No. 7654 dated 13.03.1973. The petitioner claims to be receiving this State Government Pension till date. Subsequently, when the petitioner had applied to the respondent herein, seeking for Freedom Fighter Pension under the scheme of S.S.S.P. with effect from 05.08.1972, the respondent had failed to consider his application which necessitated him to file a writ petition in WP.No.5883/1992. This Court, by order dated 10.01.1994, had directed the respondent herein to consider the petitioner's matter afresh, in the light of an earlier decision of this Court, made in WP.No.7194/1991 dated 16.12.1993 and pass appropriate orders within a time frame.

4. Pursuant to the order of this Court dated 10.01.1994, the petitioner submitted an application to the respondent herein, which came to be rejected on 22.03.1994, mainly on the ground that the detention/ imprisonment of the petitioner was not substantiated. Challenging the said order of rejection dated 22.03.1994, the petitioner herein had filed a Writ Petition in WP.No.46489/2002, which came to be disposed on 04.03.2003, observing that the petitioner had acceptable documentary evidence in support of his claim and thereby quashed the rejection order dated 22.03.1994 and consequentially, directed the respondent to consider his case, within a stipulated time. It is in continuation of this order, the present impugned order dated 30.04.2003 came to be passed, whereby the petitioner's request for grant of pension under S.S.S.P., came to be rejected, essentially on the ground that his imprisonment during the freedom struggle was not substantiated. The said order is under challenge in the present writ petition. As stated above, the writ petition requires to be allowed in view of the decision of a Division Bench of this Court reported in CDJ 1993 MHC 608 in the case of R.Thargavelu Vs. Govt. of India and another wherein, it has been held that, once the Central Government has granted the pension to the petitioner as a Freedom Fighter, he may automatically get the order of the pension under the State Government scheme also without any further enquiry. This analogy will be applicable to the Central Government also, when the State Government has accepted a person to be a freedom fighter, the Central Government cannot take a different stand and say that he is not a freedom fighter.

5.The learned Senior Standing Counsel, appearing for the respondent, vehemently opposed the petitioners submission stating that the petitioner had not provided sufficient documentary evidence to show that he was under imprisonment during the freedom struggle. By reiterating the reasons given in the impugned order, the learned standing counsel submitted that the petitioners claim has been rightly rejected.

6.In support of his contention the learned counsel also relied upon two decisions of the Hon'ble Apex Court in Civil Appeal No.1260 of 2017 arising out of SLP (c) No.27192 of 2015 [Jagdamba Devi V. Union of India and others] and the decision of this Court dated 19.06.2018 in WP.No.27687 of 2012 [Issac Sam V. Union Government, rep. By the Secretary to Government, Ministry of Home Affairs, Grih Mantralaya, Lok Nayak Bhavan, Freedom Fighters Division, New Delhi and 5 others].

7.The petitioner herein was a member of the Indian National Army. During the course of his freedom struggle, he was arrested and detained in the camp jail from 15.08.1945 to 26.02.1946 for about six and half months. In recognition of his participation in the freedom struggle and his consequent detention in the prison, the State Government had extended the Freedom Fighter Pension to him, which is being continued, to be received by him till date. According to the learned counsel, the petitioner is in possession of co-prisoner certificate and the INA forum certificate and other genuine documents to make him eligible for the pension under the SSSP scheme. It is after scrutinising these documents that the State Government had extended the Freedom Fighter Pension benefit to him. While that being so, the observation of the respondent herein that such supporting documents are not creditable is unfounded.

8.In view of my aforesaid findings that once the petitioner is extended with the State Government Pension, he would be automatically be eligible for the pension under the Central Government Scheme also, the objections raised by the learned standing counsel cannot be sustained. In so far as the submission of the learned Standing Counsel is concerned, in Jagdamba Devi case (supra), the ratio laid down was that the S.S.S.P scheme is a document based scheme and if such document for eligibility is not appended with the application, applicant may not be eligible for the pension under the S.S.S.P. Scheme. The same ratio has also been laid down in Issac Sam's case (supra).

9.It is seen that in both these petitions, the issue as to eligibility for a pension under S.S.S.P. scheme to persons, who have been granted with the State Government Pension has not been considered. As a matter of fact, in the case of Jagdamba Devi

[supra] the State Government had only recommended the petitioner's application without granting the pension. In Issac Sam's Case (Supra), the Freedom Fighters application came to be rejected and subsequently the applicant died. Thereafter his son had filed the application, which also came to be rejected on the ground that as per the revised pension guidelines', no pension can be sanctioned in the name of the Freedom Fighter, after his /her death. Hence, these two decisions relied upon by the learned Senior Central Government Standing Counsel may not be of any help.

10.The decision of the Division Bench in R.Thangavelu case [supra] has been subsequently followed in various other decisions of this Court, whereby Freedom Fighters, who had been granted the benefit of State Government Freedom Fighters Pension were also extended with pension under the scheme of S.S.S.P. One such an order of this Court dated 12.11.2018 passed in WP.No.20495 of 2003 [L.Kathayee Ammal Vs. The Union of India] reads as follows:

"39. In this context, this Court wants to make it clear that, the Freedom Fighters Pension Schemes announced by both the Central Government and the State Government are only to recognise the immense service selflessly made by thousands of lakhs of persons for the freedom struggle. In order to recognise and appreciate such prodigious selfless service of those persons, these Schemes were announced by the Central and State Governments and therefore, it cannot be treated as a gift or bounty by the Governments.

40.Moreover, in the case in hand, the State Government after having considered the claim of the petitioner has sanctioned Freedom Fighters Family Pension to the petitioner as early as in the year 1970 by order dated 28.03.1970. Assuming for the sake of argument that, unless the State Government made recommendation for sanctioning of the Freedom Fighters Family Pension to the petitioner, the respondent/Central Government cannot act upon, atleast the respondent could have verified whether the State Government has sanctioned Freedom Fighters Family Pension to the petitioner if so on what basis. Moreover, since the State Government sanction order dated 28.03.1970 had also been forwarded by the petitioner to the respondent at the first instance itself, the respondent could have very well confirmed the stand of the State Government by verifying the fact.

41.However, the respondent in the impugned order

has given one more reason that, merely because the State Government sanctioned Freedom Fighters Family Pension to the petitioner, the respondent/Central Government need not follow it. This Court is of the view that, the said stand taken by the respondent/Central government is absolutely unjustifiable because, a Freedom Fighter who fought for the freedom of this great country, shall be the freedom fighter for every one whether it is a state or central recognition by both State Government and the Central Government. Hence, it shall not take a stand that merely because the State Government recognised the service rendered by the Freedom Fighter viz., the husband of the petitioner, the respondent/ Central Government need not follow it. This kind of stand taken by the respondent/ Central Government, in the opinion of this Court, is absolutely unjust and it cannot be approved."

The aforesaid order is self explanatory. Since the State Government has already sanctioned freedom fighter's pension after verification of the authenticity of the supporting documents filed by the petitioner herein and come to the conclusion that the petitioner is entitled to a Freedom Fighter Pension, it is not justifiable on the part of the respondent herein to reject the petitioner's claim by taking a contrary view.

11. In the light of the above observations, the impugned order dated 30.04.2003 made in Ref.No.29/7771/73-FF(INA) Ministry of Home Affairs, Government of India, New Delhi, is set-aside. Consequently the respondent is directed to sanction Freedom Fighters Pension under the scheme of Swatantrata Sainik Samman Pension to the petitioner and consequentially extend in freedom fighter pension to his legal heirs, within a period of three months, from the date of receipt of a copy of this order.

12. With the above observations and directions, the present writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Jrs

To

The Secretary
Union of India,
Ministry of Home Affairs,
Freedom Fighter's Pension Division,
Lok Nayak Bhavan,
New Delhi.

+1cc to Mr. R.N.Kothandaraman, Advocate, S.R.No. 25824

+1cc to Mr. J.Madanagopal Rao, Advocate, S.R.No. 26376

WP.No.19492 of 2003

RK(CO)
GN(01/04/2019)