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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.NO.4064 OF 2010

AND

M.P.NO.1 OF 2010

Kasee Varadharasan Swamigal
@ K.S.Varatharasan

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by Deputy Secretary to the Government
Public (P.P.I) Department
Fort St.George, Chennai - 600 009.

2. The District Collector
Coimbatore Collectorate,
Coimbatore.

... Respondents

Prayer:-

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Letter No.13720/2009-2 dated 29.10.2009 and quash the same and further direct the first respondent to grant freedom fighter pension to the petitioner from the date of his application in pursuant to the recommendation given by the District Collector ந.க.ஒள.2/78468/97 dated 18.02.1999.

For Petitioner : Mr.SU.Srinivasan

For Respondents : Mr.R.P.Prathap Singh
Government Advocate

ORDER

This Writ Petition has been filed seeking to quash the Letter No.13720/2009-2 dated 29.10.2009 of the first respondent and to direct the first respondent to grant freedom fighters pension to the petitioner from the date of his application in



pursuant to the recommendation given by the District Collector in e/f/xs/2/78468/97 dated 18.02.1999.

2. The case of the petitioner is that he is a freedom fighter and since his claim for grant of freedom fighter pension was rejected by the first respondent by letter dated 29.10.2009, he had earlier filed a Writ Petition before this Court in W.P.No.2498 of 2005. This Court, by order dated 14.08.2009 while setting aside the earlier rejection order dated 14.06.2004, directed the first respondent to consider the claim of the petitioner for grant of freedom fighter's pension in the light of the recommendation of the second respondent which was made vide proceedings dated 18.02.1999 in favour of the petitioner.

3. The petitioner submitted that he had participated in the Quit India Movement which was initiated by Mahatma Gandhiji in the year 1942 along with several others and had involved in various kind of activities as part of the said Movement. The British Government had arrested the petitioner then and kept him in Coimbatore Central Prison. He was in prison from August 1942 to March 1943 for almost seven months and had also taken part in Mysore State freedom movement for merger of Mysore State with the Indian Union after 15th August 1947 for complete accession with the Independent India. He participated in the Second Sathyagraha batch of Tamil Nadu Student Congress and sentenced to undergo rigorous imprisonment for a period of three months from 30.09.1947 to 29.12.1947. The Senior Superintendent of Central Jail, Bangalore, issued a certified extract form of convict register of Central Jail, Bangalore, to this effect. The petitioner even according to the Certificate issued by the Senior Superintendent, Central Jail, Bangalore, was lodged in the Central Jail, Bangalore, for the offences under Section 56 (1) of D.I.R. sentenced in C.C.No.409 of 1947-47 by the City Magistrate, Bangalore, for a period of three months from 30.09.1947 to 29.12.1947. He was however released on 14.10.1947 as per G.O.No.P.3481-90 dated 13.10.1947.

4. The petitioner further submitted that as per the proceeding No.8/4/72 FF.II dated 27th July 1972 of Ministry of Home Affairs, Government of India, New Delhi, it was notified that "freedom fighters who suffered imprisonment in movements for merger of erstwhile princely states with the Indian Union after the 15th August 1947 till the date of accession of each states will be considered for grant of pension". The petitioner had filed an application to the State Government for sanctioning the freedom fighters pension on 15.06.1973 and his application was considered by the District Committee on 29.08.1997. The petitioner had also produced the certificates from the well known freedom fighters, namely, Ellamma Naidu, Shri P.S.Chinnadurai, Shri.K.P.Thiruvankadam, who are also getting



pension from the Central Government who were lodged in Coimbatore Central Prison during the relevant period. However, these certificates were not considered by the Government as these freedom fighters were not recognized or found in the list of 15 freedom fighters identified by the Government.

5. The petitioner also submitted that the second respondent who is the Chairperson of the District Screening Committee for recommending the freedom fighters pension, vide letter dated 23.02.1999 had written to the Deputy Secretary, P.P.1 stating that the petitioner had given the certificate from 3 freedom fighters and had also expressed in his letter stating that "the Government had recognized only two freedom fighters in Coimbatore District and these two freedom fighters cannot be the co-prisoners with others. The Petitioner had produced the certificates given by other freedom fighters who were receiving pension from the Central Government as well as the State Government. The Government's recognition of only two freedom fighters in Coimbatore District cannot be logical as the applicants for freedom fighter pension might have underwent prison custody in different point of time and therefore, getting the co-prisoners certificate from only those two freedom fighters cannot be a basis for deciding the sanction of the freedom fighters pension".

6. The petitioner further submitted that he has been made to run pillar to post for getting the freedom fighters pension from the State Government as well as the Central Government. Despite the second respondent's recommendation dated 18.02.1999, the first respondent did not sanction the freedom fighters pension and due to which, the petitioner had approached this Court by way of Writ Petition in W.P.No.11240 of 2004. This Court, by order dated 23.04.2004, had passed the following order:-

"It is submitted by learned counsel appearing for the petitioner as well as by the learned Additional Government Pleader that the reason given for non suiting the petitioner for freedom fighter pension is covered by an order of this Court in favour of the petitioner and against the respondents. Hence, the order impugned is set aside. However, the matter is remitted back to the authorities to consider the matter afresh in accordance with law and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order".

7. The petitioner also submitted that the above order was



communicated to the respondent by a representation dated 11.05.2004 along with the copies of the Judgments reported in 2001 8 SCC Page 8 and 2003 Writ Law Reporter Page No.835. These Judgments have categorically covered the issue involved in this Writ Petition. But, the respondent without considering either the order of this Court in Writ Petition No.11240 of 2004 or the Judgments enclosed along with the representation rejected the claim of the petitioner, which forced him to file the Second Writ Petition in W.P.No.2498 of 2005. This Writ Petition was also allowed in favour of the petitioner, however, the first respondent had once again rejected the claim of the petitioner and therefore, the petitioner is before this Court.

8. Denying the allegations of the petitioner, the respondents have filed a counter affidavit, wherein, it has been submitted that as per the direction of this Court and recommendation of the second respondent, the request of the petitioner for grant of freedom fighters pension was taken into consideration by the Government. As the claim of the petitioner has not supported by evidence/documents to show that he underwent imprisonment for his participation in the freedom movement, specified period of imprisonment in the specified jail in the co-prisoner's certificate, the Government had categorically rejected the request of the petitioner. Further, it has been submitted that the petitioner has not mentioned any specific reason for not obtaining jail certificate when he was in prison from August 1942 to March 1943 and the certificate issued by the Senior Superintendent Central Jail, Bangalore, dated 16.06.1973 relates to Mysore State Freedom Movement where the petitioner was remanded, which is different from the National Independence.

9. The respondents also submitted that the petitioner has mentioned that he had obtained the co-prisoner's certificate from Thiru.P.S.Chinnadurai, Ex.M.L.A, Thiru K.P.Thiruvengkadam and Thiru.V.Ellamma Naidu, Ex.M.L.A. But, they are not the authorised certifiers of the Government to issue co-prisoner's certificate. The petitioner has not produced any Jail certificate or FIR copy to support his claim. In the absence of valid documentary evidences, the petitioner cannot expect a favourable order from the Government. As per G.O.Ms.No.1482, Public (PP.II) Department, dated 24.12.1996, the Government have nominated 2 freedom fighters for Coimbatore District to issue co-prisoner certificate. The petitioner has not received any such certificate from these two persons and therefore, the respondents have rejected his claim as he failed to fulfill the norms prescribed by the Government.

10. The respondents further submitted that as per the



direction of this Court in W.P.No.2498 of 2005 dated 14.08.2009, the Government have considered the request of the petitioner and as the petitioner's age was only 18 years at the time of his imprisonment, the Government have categorically rejected his request, as he has to complete 18 years of age during the imprisonment as per the rules. Moreover, the respondents submitted that the Government sanction freedom fighters pension to the eligible freedom fighters who produce necessary documents such as co-prisoner certificate/jail certificate or age proof for their involvements in freedom struggle. The petitioner has not produced any of these certificates for the period from August 1942 to March 1943 and as per the records he produced, he was only 12 years of age during 1942 and therefore, his claim was rejected by the respondent. Hence, sought for dismissal of this Writ Petition.

11. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

12. On perusal of the certificate dated 01.09.1972 issued by one of the freedom fighters, namely, Shri.K.P.Thiruvankadam, who is the President of the District Freedom Fighters Association, Coimbatore, it is seen that he knows the petitioner for the past 35 years and he acknowledges that the petitioner had been taken into custody on several occasions during 1942 for participating in 1942 freedom movement. Further, it is seen that since the petitioner was very young, neither any criminal proceedings had been registered against him nor punishment had been awarded. When the said Thiruvankadam was indulged in underground activities while conducting Revolutionary movement, the petitioner was one of them who served under his control to a great extent. To his knowledge, the petitioner had also taken part in 1947 Mysore State Freedom Movement conducted by the IInd Sathyagraha Batch of Tamil Nadu Students Congress and sentenced to undergo Rigorous Imprisonment for three months. As such, the said Thiruvankadam certifies that the petitioner had taken part in the Freedom Movements and suffered much for achieving freedom to our nation.

13. On perusal of the certificate dated 03.09.1972 issued by another freedom fighter, namely, V.Ellama Naidu, who is the President of the Taluk Congress Committee, Coimbatore, it is seen that he also knew the petitioner for the past 35 years and he also acknowledges that the petitioner was arrested on several occasions by the Police during the period 1942 and the petitioner had also taken part in 1947 Mysore State Freedom Movement conducted by the IInd Sathyagraha Batch of Tamil Nadu Students Congress and sentenced to undergo Rigorous Imprisonment for three months. Similarly, another freedom fighter, namely,



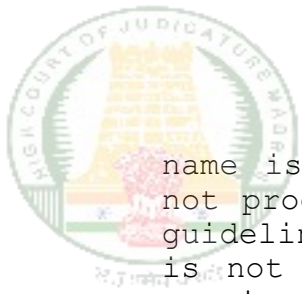
P.S.Chinnadurai, who is the president of the United Textile Labour Association, also certifies vide his certificate dated 31.10.1973 that he knew the petitioner for the past 30 years and the petitioner was arrested on several occasions by the Police during the period 1942 and the petitioner had also taken part in the Mysore State Freedom Movement during 1947 and he had also got sentenced along with the other freedom fighters. Admittedly, three freedom fighters have vouched the sentencing of the petitioner during the freedom movement.

14. The Convict Register dated 16.06.1973 of Central Jail, Bangalore, shows that the petitioner was lodged in the Jail on 30.09.47 for the offence under Section 56(1) of D.I.R. in C.C.No.409 of 1947-1948 on the file of City Magistrate, Bangalore, and at that time, he was a student and was only 18 years old. Further, it shows that the petitioner was released on 14.10.1947 as per G.O.No.P.348-90 dated 13.10.1947.

15. It could be seen from the records that the Government had recognised two freedom fighters in Coimbatore District to issue co-prisoners certificate, and the certificate issued by the aforesaid 3 freedom fighters who are getting Central Government Pension who were also lodged in prison during the relevant period have not been considered by the Government as these people were not recognized or given in the list of 15 freedom fighters identified by the Government. It could be also seen that the second respondent, who is the Chairperson of the District Committee, by letter dated 02.01.2001, had recommended the petitioner to the Deputy Secretary, P.P.1, for grant of freedom fighters pension to him, but, the Deputy Secretary, by his letter dated 30.05.2001, had rejected the claim of the petitioner, as he has not produced any supporting documents or evidence to prove his case.

16. As per the proceeding No.8/4/72 FF.II dated 27th July 1972 of Ministry of Home Affairs, Government of India, New Delhi, the freedom fighters who had suffered imprisonment in movements for merger of erstwhile princely states with the Indian Union after the 15th August 1947 till the date of accession of each states will be considered for grant of pension. Accordingly, the petitioner who had participated in the said movement is also eligible to be considered for granting freedom fighters pension. But, this aspect was not considered by the respondent.

17. The respondent's submission is that the applicant's for availing freedom fighters pension ought to have been awarded with Tamara Patra or Central Pension or his name should find place in the book "who is who". But, the petitioner herein neither a recipient of Tamara Patra or Central Pension nor his



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name is found place in the book "who is who". Further, he has not produced any vital proof for his jail sufferings as per the guidelines prescribed by the Government. Hence, the petitioner is not eligible under any of the norms for grant of political pension.

18. The petitioner's submission is that when the similarly placed persons were considered for freedom fighters pension and necessary orders have been passed, the petitioner has been singled out by stating that he has not produced the co-prisoner's certificate from the two persons who were authorised by the Government. The Quit India Movement had been participated by thousands of people and even if the petitioner had been lodged in prison during the relevant period, it would not be possible for to him to identify the two persons authorised by the Government and to get the co-prisoner's certificate from them. Further, most of the documents could not be traced as they had been destroyed. In spite of that, some of the relevant documents available had been submitted by the petitioner. However, the respondent had refused to grant freedom fighters pension to the petitioner.

19. In view of the above, it is clear that the petitioner had participated in the Second Sathyagraha batch of Tamil Nadu Student Congress and sentenced to undergo rigorous imprisonment for a period of three months from 30.09.1947 to 29.12.1947 and had been released at later point of time.

20. The main object for providing pension to the freedom fighters is to honour and mitigate the sufferings of those who had sacrificed their life to the country. Once the country had decided to honour such freedom fighters, the authorities who are interested with the jobs of examining the cases of such freedom fighters had use due diligence. The freedom fighters for their livelihood have been literally begging to the Government. As per the norms prescribed by the Government, the petitioner has enclosed the copy of the certificate issued by the jail authorities and wherein, it is specifically stated that he had been arrested on 30.09.1947 and had been kept in custody of Central Jail, Bangalore, for a period of three months. But still, he has been insisting upon to produce co-prisoner's certificate by the respondent.

21. It is also clear from the above that the petitioner has produced the co-prisoner certificate from 3 freedom fighters who had actively participated in the freedom fighters movement and who had lodged in prison along with the petitioner during the relevant point of time. While that being so, the Government cannot justify in rejecting the certificate of the persons that they are not authorised to issue such certificate. When those



persons have been considered and have been granted pension, the petitioner has also to be considered by the Government for freedom fighters pension.

22. The respondent's submission that the petitioner had gone to prison only under the Mysore State freedom movement and he had not participated in the General Independence freedom struggle and hence, not eligible could not be accepted by this Court, as the petitioner is entitled for pension as per the Central Government's Scheme.

23. The District Collector, only after considering all the above aspects and after conducting a detailed enquiry had recommended the petitioner for freedom fighters pension. Hence, based on the said recommendation, the petitioner's case ought to have been considered by the first respondent. When this being the case, the impugned proceedings of the first respondent has to be set aside and the petitioner claim has to be considered for issuance of freedom fighters pension as per the recommendation of the second respondent, the District Collector.

24. There is no justifiable reason given for taking adverse decision while rejecting the case of the petitioner and the certificate issued by three freedom fighters has to be considered, as this issue has been pending for two decades.

25. In view of the above reasons, the impugned proceedings of the first respondent in Letter No.13720/2009-2 dated 29.10.2009 is set aside and the first respondent is directed to grant freedom fighters pension based on the recommendation given by the District Collector in ந.க.ஒள.2/78468/97 dated 18.02.1999.

26. With these observations, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Deputy Secretary to the Government
Public (P.P.I) Department
Fort St.George, Chennai - 600 009.



2. The District Collector
Coimbatore Collectorate,
Coimbatore.

+1cc to Mr.SU.Srinivasan, Advocate in sr.no.42605

+1cc to Government Pleader, in sr.no.43157

W.P.No.4064 of 2010
and
M.P.No.1 of 2010

MR (CO)
CS/27/06/2019