

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 30-09-2019
Coram
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.10987 of 2014
And
M.P.No.1 of 2014

Mrs.R.Seerangam

..

Petitioner

vs.

- 1.The Government of India,
Ministry of Home Affairs,
FFR Division, 1st Floor,
Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003.
- 2.Joint Secretary,
Public (Political Pension-I) Department,
Government of Tamil Nadu,
Secretariat,
Chennai-600 009.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the letter of the first respondent bearing No.Nil dated 14.07.2006 and quash the same and direct the first respondent to grant Pension to petitioner from the date of application along with interest.

For Petitioner : Mr.G.R.Lakshmanan

For Respondent-1: Mr.G.Karthikeyan,
Assistant Solicitor General of India.

For Respondent-2: Mr.D.Suriya Narayanan,
Additional Government Pleader.

O R D E R

The order of rejection letter dated 14.07.2006 issued by the first respondent is sought to be quashed in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner strenuously contended that the writ petitioner is entitled for the 'Freedom Fighter Pension' under the Scheme as the writ petitioner is the wife of late A.Ramalingam, a freedom fighter.

3. The writ petitioner states that her husband had served in the Indian National Army and in remembrance of the same, she had submitted All India INA Committee Certificate. The husband of the writ petitioner was imprisoned and he was lodged in Rangoon Central Jail during the period from May 1945 to April 1946. In proof of the same, the writ petitioner had produced two Certificates, one from the co-prisoner Mr.S.Pillai and the other from another co-prisoner Mr.S.V.Arumugam.

4. The learned counsel for the writ petitioner states that Mr.S.V.Arumugam is the State and Central Government Freedom Fighter Pensioner. Mr.S.V.Arumugam is the person, who took part in the Quit India Movement in Rangoon, Burma along with the writ petitioner's husband during the Second World War against the British Imperialism under the leadership of Nethaji Subash Chandra Bose. The said Mr.S.V.Arumugam had also certified that the writ petitioner's husband late Mr.A.Ramalingam was his co-prisoner from May 1945 to April 1946.

5. The husband of the writ petitioner during his lifetime had applied for Swatantrata Sainik Samman Pension as early as on 10.08.1973 for the grant of pension under the Central Government Pension Scheme. The said application was forwarded to the Government of India with the State Government's letter bearing No.75594/73-2 Public (General PIV). The State Government by their order of sanction of pension in FFPO No.6818/71 dated 05.02.1971 had accorded sanction to the writ petitioner's husband for the payment of pension under the grant of Freedom Fighter Pension to ex INA Personalities with effect from 04.03.1970. The husband of the writ petitioner passed away on 26.07.1974.

6. The Collector of Thanjavur had recommended the continuation of pension in favour of the writ petitioner. The writ petitioner thereafter had taken steps to pursue the application submitted by her husband in the year 1973 for the grant of Central Government Freedom Fighter Pension.

7. The learned counsel appearing on behalf of the writ petitioner reiterated that the certificates issued by the two co-prisoners ought to have been considered by the Government of India and the other documents were also submitted by the writ petitioner to establish that her husband was imprisoned in between the year 1945 and 1946 in Rangoon, Burma. In spite of all these documents, the first respondent rejected the claim of the writ petitioner without any valid reason. Thus, the writ petitioner is constrained to move the present writ petition.

8. The first respondent filed a counter-affidavit stating that the writ petitioner is not eligible for the grant of Samman Pension under the "Swatantrata Sainik Samman Pension Scheme, 1980" as she had not produced the requisite documents and particulars enabling the Government of India to sanction pension for her. The eligibility criteria and the conditions as well as the evidentiary requirements under INA cases are elaborated in paragraph 7 of the counter-affidavit filed by the first respondent, which are extracted hereunder:-

"(i) Eligibility conditions for INA cases are same as per SSS Pension Scheme, 1980. INA claimants over the time have been granted pension for imprisonment suffered at the hands of British.

(ii) There are two categories of INA personnel i.e., (a) those who joined INA from the then British Indian Army called Military, Category and (b) those who were recruited in the INA Movement locally called Civilian Category.

(iii) In cases of Military Category, discharge book/ Certificate issued by the concerned Indian Army Authority/Regiments is a crucial documentary evidence to decide eligibility of the claimants for SSS Pension. In the absence of the discharge book/Certificate or any doubt, reports obtained from the concerned Army Records Office are taken into consideration to decide the INA cases.

(iv) For the Civilian Category, A Co-prisoners Certificate (CPC) from a Central Freedom Fighter Pensioner who had undergone imprisonment for a minimum one year is necessary. There is no need of NARC. In addition, other corroborative documents

like Repatriation Certificate, State Pension Sanction Order, Certificate of INA Association should be produced.

(v) In the past, 3 non-officials Committee comprising of Ex-INA officers were constituted to review/consider the INA cases and give their recommendations. At present no such Committee is in existence.".

9. It is stated that the claims of Samman pension can be considered by the Central Government only when these conditions are duly verified and recommended by the Statement Government/U.T. Administrations concerned along with the basis of such recommendations in accordance with the provisions of the Scheme. No action is therefore possible on the application sent directly to the Central Government. However, in the present case, the State Government had forwarded an application in the year 2005. The application forwarded in the year 1995 was not pursued for more than 21 years and the writ petitioner had taken efforts to pursue the matter after the death of her husband in the year 1974 and the State Government had forwarded the application once again in the year 2005.

10. The application was forwarded by the Ministry of Home Affairs, New Delhi. On receipt of representation from the writ petitioner, the said application was processed along with the letter of the Government of Tamil Nadu and the first respondent had taken a decision that the writ petitioner is not eligible for the grant of Freedom Fighter Pension under the Scheme. It is stated that the State Pension Scheme and the SSS Pension Scheme of Government of India are two separate and different schemes having different eligibility criteria being implemented by the two authorities. The receipt of pension under the State Government Scheme does not automatically entitle a person for pension under the Central Government Scheme. For getting pension under the Central Government, a person has to fulfill the eligibility criteria of this Scheme as stated in earlier paragraphs.

11. The positive recommendation of the Government of Tamil Nadu is not acceptable in view of the fact that the Scheme by the State Government is totally unconnected with the Scheme prevailing in the Government of India. Thus, the mere recommendation by the Statement Government would not confer any right on the applicant to claim pension under the Central

Government Scheme.

12. A judgment of the Hon'ble Division of this Court in WP No.7707 of 2000 vide order dated 03.11.2000 in the case of C.Santhanam vs. State of Tamil Nadu and others, wherein it was held that "admittedly, there are two distinct schemes, and one can be eligible to get pension on fulfilling the conditions prescribed in each scheme. Petitioner can be entitled for Central Government Pension, only on satisfying the facts which are required as per the Schemes".

13. The similar point was taken by various High Courts and some of the judgments are also cited by the first respondent, in paragraphs 15 to 20, which are extracted hereunder:-

15. The Hon'ble Division Bench of the High Court of Kerala vide judgment dated 18.02.2005 in W.A.No.1676 of 2005 (against judgment dated 19.06.2003 in O.P.No.1366 of 2001) in the case of Shri K.Gopinathan Pillai vs. Union of India and Ors., has held as follows:-

"..... The mere fact that the appellant was granted pension under the State Scheme does not make the appellant eligible for pension under the Central Scheme. The terms and conditions for grant of pension under the Central Scheme are totally different from those which are prescribed for grant of pension under the Scheme."

16. The Hon'ble Division Bench of the High Court of Kerala has vide judgment dated 16.01.2006 in W.A.No.2569 of 2005 against judgment dated 18.05.2003 in W.P.(C) No.10812/2004 in the case of Shri A.R.Parameswaran vs. Union of India held that:-

"5. We have already indicated criteria to be adopted while considering the application under the State Rules and Central Scheme are different. The mere fact that an application has been recommended by the State Government or that the State Government has granted pension is not a ground to grant pension under the Central Scheme. Applicant has to be independently fulfill the criteria laid down under the Central Scheme for the grant of

Freedom Fighter's Pension and the Central Government can independently decide as to whether the applicant has satisfied the eligibility criteria laid down under the SSS Pension Scheme. No Rule or Regulation has been brought to our notice obliging the Central Government to follow the opinion expressed by the State Government. Central Government would of course give due weight to the recommendation given by the State Government, but that does not mean Central Government is bound to accept the recommendation made by the State Government and vice versa."

17. Cautioning the authorities in the matter of reliance on secondary evidences, Hon'ble High Court of Karnataka has vide judgment dated 19th March, 1997 in W.P.No.35193 of 1996 in the case of Siddappa Shivalingappa vs. Union of India held -

"In my opinion such certificates cannot be taken to be always genuine and conclusive proof for granting pension under the pension scheme. Further, it cannot be denied that such certificates can be obtained without much efforts."

18. The Hon'ble High Court of Punjab and Haryana has vide judgment dated 09.09.1996 in C.W.P.No.16280 of 1995 in the case of Mulkha Singh and Others vs. Union of India held -

"..... the authorities came to the conclusion that the aforesaid persons are, in fact, indiscriminately issuing the certificates and so declined to grant pension. There is no denying the fact that the authorities have a right to scrutinise the claim laid by the petitioners for grant of freedom fighter pension. The authorities on considering the matter have come to the conclusion that the petitioners' claim is not only false but is a case of manipulation.

We find no infirmity in this conclusion of respondent No.1. It is unthinkable that persons issuing these certificates can possibly remember exact

date and the period of their innumerable co-prisoners after such a long time. No doubt, State of Punjab on the basis of instructions has chosen to grant pension to the petitioners vide Annexure P-1 but that itself can hardly be a ground to infer that the petitioners' claim are genuine. Finding no merit in the writ petition, the same is dismissed."

19. The Hon'ble Supreme Court in the case of M.L.Bhandari and Others vs. Union of India [AIR 1993 SC 2127] has held that -

"The petitioners would undoubtedly be entitled to the benefit of the Scheme provided, of course, they produce the relevant material in support of their claim."

"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 scrutinise 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."

"The pension should, of course, be sanctioned only after the required proof is produced."

20. The Hon'ble Supreme Court of India has vide judgment dated 29.05.2012 in Civil Appeal No.4684 of 2006 in the case of Union of India vs. Pilli Ramachandran has stated -

"In our view, the recommendation made by the State Government is not binding on the Central Government and it is open to the Central Government to make further enquiry, if so advised."

14. The second respondent also in their counter-affidavit held that the co-prisoners certificate issued by Mr.S.Pillai was not acceptable as he was not an eligible certifier for the reason that he himself was suffered imprisonment for a period of about eight months, which is less than one year prescribed under

the provisions of SSS Pension Scheme, 1980 to become an eligible certifier. Thus, the Co-prisoner Certificate (CPC) issued by Mr.S.Pillai cannot be accepted. Further, it is stated that the State Pension Scheme and the SSS Pension Scheme of Government of India are two separate Schemes with different eligibility being implemented by the two different authorities. The receipt of pension under the State Government Scheme does not automatically entitle a person for pension under the Central Government Scheme. For getting pension under the SSS Pension Scheme, 1980, a person has to fulfill the prescribed eligibility criteria of the Scheme and submit the necessary documentary evidences in support of the scheme.

15. The learned counsel for the writ petitioner contended that the certificate of the co-prisoner cannot be disputed. The Certificate of the co-prisoner is also enclosed in the typed set of papers filed along with the present writ petition. The certificate issued by one Mr.Pillai reveals that he was arrested by the British Forces and imprisoned in Rangoon Central Jail from May 1945 to December 1946 and he identified the husband of the writ petitioner late A.Ramalingam as a co-prisoner. However, the said certificate was issued in the year 1980 after a lapse of about 35 years.

16. This apart, the other incidences and relevant factors regarding the imprisonment were not elaborated in the co-prisoner certificate. However, the Government of India rejected the claim only on the ground that the co-prisoner is not eligible as an eligible certifier as he was not imprisoned for more than one year. When the terms and conditions of the Scheme are unambiguous, this Court is of an opinion that the said terms cannot be violated or diluted before the High Court by exercising the powers of Judicial Review under Article 226 of the Constitution of India.

17. The learned counsel for the writ petitioner states that the co-prisoners of the writ petitioner's husband were receiving the Central Government Pension. Therefore, the said benefit is to be extended to the writ petitioner also. Such a submission made by the learned counsel for the writ petitioner cannot be accepted in view of the fact that whether the eligibility criteria considered and scrutinised in respect of those two co-prisoners are not placed before this Court.

18. This apart, grant of pension to one co-prisoner would not be a ground to grant pension to another co-prisoner. In the absence of establishing the fact that the person, who submitted his application is eligible and fulfilling the terms and

conditions stipulated in the scheme, pension cannot be granted. Even in case if pension is granted by mistake to one freedom fighter or otherwise, the said mistake or error cannot be cited as a precedent for the purpose of extending the benefit of pension scheme in violation of the terms and conditions of the Scheme.

19. Thus, it is to be remembered that the terms and conditions of such special Schemes are to be followed scrupulously and there cannot be any deviation. The legal principles in this regard is that by citing a wrong precedent, one cannot claim the benefit of the scheme and such a method is unacceptable. Therefore, the very submission of the learned counsel for the writ petitioner that the other co-prisoner was receiving Central Government Pension Scheme would not be of any avail to the writ petitioner to get the Central Government Pension scheme. In the absence of establishing that the writ petitioner is not fulfilling otherwise eligible as per the terms and conditions of the Scheme, the reason stated in the impugned order regarding the ineligibility of the writ petitioner has not been disputed seriously and therefore, the said submission of the learned counsel for the writ petitioner deserves no merit consideration.

20. The learned counsel for the writ petitioner states that the SSS Pension Scheme is of the year 1980 and therefore, the same is not applicable to the writ petitioner as her husband was eligible even prior to that and died during the year 1974. In reply, the learned Assistant Solicitor General reiterated the contention of the learned counsel appearing on behalf of the writ petitioner that the application of the writ petitioner, which was processed in the year 1974, was not considered and the writ petitioner also had not pursued the same. However, the writ petitioner had submitted an application on 20.08.1981 and therefore, the grant of Freedom Fighter's Pension has to be scrutinised with reference to the Scheme of the year 1980. All the applications submitted in a proper format and forwarded by the Government of Tamil Nadu after implementation of the Scheme of the year 1980 was scrutinised and pension was granted strictly in accordance with the terms and conditions of the Scheme of the year 1980. Thus, the application of the writ petitioner was also considered in accordance with the terms and condition os the Scheme of the year 1980 and there is no infirmity. Even in such cases, there was an enormous delay on the part of the writ petitioner in pursuing the remedy. The writ petitioner states that she submitted an application in the year

1981 and thereafter, the State Government forwarded the same to the Government of India in the year 2005. The impugned order was passed in the year 2006. Thus, this Court is of an opinion that there is no infirmity in respect of scrutinisation of the application submitted by the writ petitioner as per the terms and conditions of the Scheme of the year 1980.

21. Freedom Fighter's Pension is an honour and is a special scheme granted by the Government of India for the purpose of respecting the Freedom Fighters and their family. Such special schemes are to be implemented strictly in accordance with the terms and conditions and the authorities competent cannot deviate or violate the eligibility criteria or the conditions stipulated in the Scheme. Such special schemes cannot be claimed as an absolute right. The right conferred within the scheme alone can be claimed by the applicants. As such, the application of the writ petitioner was scrutinised by the first respondent and they found that the writ petitioner is not eligible as per the terms and conditions of the Scheme. When the eligibility criteria itself has not been fulfilled, the writ petitioner cannot claim the Freedom Fighter's Pension as a matter of right as the scheme itself is a special scheme and would not confer any absolute right and the said right is restricted only with reference to the terms and conditions stipulated in the scheme itself.

22. When the Government of India came to the conclusion that the ineligible certifier issued the co-prisoner certificate cannot constitute the ground for grant of Freedom Fighter's Pension in favour of the writ petitioner, such being the main reason cited, this Court is of the considered opinion that the power of Judicial Review under Article 226 of the Constitution of India cannot be extended for the purpose of violating such terms and conditions of special schemes and granted Freedom Fighter's Pension to the writ petitioner. Consequently, the writ petition is devoid of merits and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

Svn

10/11

To

1.The Government of India,
Ministry of Home Affairs,
FFR Division, 1st Floor,
Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003.

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

+1cc to Mr.G.Karthikeyan, ASG, Advocate sr.83596
+1cc to Mr.G.R.Lakshmanan, Advocate sr.84039

W.P.No.10987 of 2014

pm(co)
nr 11/11/2019



WEB COPY