

In the High Court of Judicature at Madras

Reserved on: 27.03.2019

Pronounced on: 12.04.2019

Coram

The Honourable Dr.JUSTICE ANITA SUMANTH

W.P.No.4749 of 2017

& W.M.P.No.4970 of 2017

V.Devagi

.... Petitioner

Vs.

1.Union of India, rep. By Ministry of Home Affairs
/GRIH Mantralaya,Co-ordination Division,
North Block, New Delhi.

2. The Senior Record Officer,
Sena Seva Corps Abhilekh (Dakshin),
ASC Records (South),
Bangalore - 560 007.

3. The District Collector,
Collectorate of Chennai,
Singaravelar Maligai,

62, Rajaji Salai, Chennai - 600 001.

.... Respondents

PETITION filed under Article 226 of The Constitution of India
praying for the issuance of Writ of Certiorarified Mandamus
calling for the records on the file of the 2nd respondent in
Ref.No.7501/Gen/T-VII/Pre 64/FP dated 30.05.2016 and the file of
the 3rd respondent in Ref.No.MuMu.E3/26116 dated 27.12.2016 and
quash the same and further direct the respondents to pay the
Family Pension to the petitioner under Swatantrata Sainik Samman
Pension Scheme 1980 with 18% interest on arrears of pension from
31.08.1986 till date.

For Petitioner :Mr.K.V.Sajeew Kumar

For Respondents :Mr.G.Karthikeyan,ASG - R1 & R2
Mr.R.Udhayakumar, AGP - R3

O R D E R

The petitioner Mrs.V.Devagi, seeks a writ of Certiorarified Mandamus quashing the order of the Senior Record Officer, Sena Seva Corps Abhilekh (Dakshin), arrayed as second respondent, dated 30.05.2016, order of the District Collector, Chennai, arrayed as third respondent, dated 27.12.2016 and a direction to the respondents to pay family pension to her under the Swatantrata Sainik Samman Pension Scheme, 1980.

2. Mr.K.V.Sajeev Kumar, learned counsel for the petitioner states as follows:

(i)The petitioner's husband, Late Mr.V.R.Veeraraghavan was born on 07.08.1928 and joined the Indian National Army (INA) as a Naik. He was allotted Service No.SR-6331565-L/NK in R.A.S.C. Bangalore Nation Authority and held the post of Store Keeper and Technical Assistant in the INA from 1945 to 1948 for a period of 3 years 8 months and 20 days.

(ii)His service as a Technical Assistant during the second world war was for a period of one year and 20 days and he remained in service until the INA was substituted by the Indian Army.

(iii)A copy of the discharge book of the petitioners' husband establishing his service between 13th March 1942 and 1st November, 1948 is filed.

(iv)In addition, a certificate has been issued by the Captain, Station Supply Depot, RIASC TAMBE dated 09.02.1949 attesting to his good conduct and character.

(v)He subsequently joined the Tamil Nadu Electricity Board and retired on attaining superannuation on 31.08.1986.

(vi)He passed away on 23.10.1999 leaving behind the petitioner, one daughter and two sons as legal heirs.

(vii)Death Certificate, Legal heirship certificate, the heirs being Mrs.Devaki, Mrs.Saraswathi, Mr.Hari Krishnan and Mr.Gopalakrishnan, and Legal Heirship Identity Card dated 09.12.1999 have been issued to the petitioner.

(viii)A Certificate of 'Dependency on Ex-serviceman' has been issued by the Department of Ex-Servicemens' Welfare dated 23.11.1987.

(ix)An ESM Grocery-cum-Liquor Card has also been issued by the Southern Command, Pune.

3. The petitioner claims pension on the ground that all freedom fighters, including those that had fought with INA under the leadership of Nethaji Subash Chandra Bose, have been given freedom fighters' pension in addition to the pension remitted by subsequent employers at the time of their retirement from service. She draws pension from the Tamil Nadu Electricity Board till date. However, in addition thereto, in the light of the admitted service of her husband in the INA, she believes that she is eligible for pension on this account also.

4. Several representations were made by her seeking pension commencing from the year 1999, culminating in an order of rejection of her request on 30.05.2016 by the Central Government, arrayed as first respondent. The reason advanced was that the petitioners' husband had not completed ten (10) years of qualifying service to be eligible for pension under Rule 132 of the Pension Regulation for the Army, 1961 [Part I Rules]. According to the petitioner the 1961 Rules are not applicable to her husband who served under the INA even prior to Independence.

5. She had also approached the third respondent, the District Collector with a similar request that was denied on 27.12.2016 stating that there was no provision/Regulation/Rule that empowers the State Government to pay family pension to the dependants of those who had served in the INA/in the World war.

6. The petitioner states that soldiers who had fought for freedom are eligible for pension under the Swatantrata Sainik Samman Pension Scheme introduced by the Central Government in 1972. The Scheme was liberalised in 1980 and renamed as Swatantrata Sainik Samman Pension Scheme, 1980 (in short 'SSSPS, 1980'). The INA finds place in appendix 'C' Serial No.18 and as such her entitlement to the pension is absolute.

7. A counter has been filed on behalf of each of the respondents praying uniformly that the claim of the petitioner is not sustainable and has to be dismissed. While respondent Nos.1 and 2 merely seek dismissal, the District Collector/third respondent seeks dismissal with levy of exemplary costs.

8. The counters filed by the three respondents are contradictory in regard to several facts. As far as the counter of R1 is concerned, i.e., the Union of India, the averments centre around the eligibility of the petitioner to claim pension under the SSSPS, 1980. They rely on the fact that the

eligibility is only available for a freedom fighter as defined under the Scheme as extracted below,

'A person who had suffered a minimum imprisonment of six months in the mainland jails before independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India. The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 01.08.1980 and that the petitioner would not fall within the said definition. According to the Union of India, the claim of the petitioner that her husband would fall within the ambit of clause 4(b) of the scheme is also not acceptable in the absence of any evidence filed by her in support of the same. Clause 4(b) of the SSSPS 1980 states as under:

'4. Broken period of imprisonment will be totalled up for computing the qualifying period.

(b) A person who remained underground for more than six months provided he was:

1. a proclaimed offender; or
2. one on whom an award for arrest/head was announced; or
3. one for whose detention order was issued but not served.'

9. Since no evidence, either primary or secondary, has been provided to show that Mr.Veeraraghavan was either a proclaimed offender, one upon whom an award for arrest/head was announced or one for whom a detention order was issued, but not served, he falls outside the ambit of clause 4(b) as well. They stress on the position that it is not all freedom fighters who took part in the freedom struggle or the Quit India Movement, who were eligible for Samman Pension under the SSSPS, 1980, but only those who fulfil the eligibility factors. Moreover they would also negate the claim of the petitioner in the light of the guidelines issued in regard to the disbursal of Central Freedom Fighters Pension under the Central Freedom Fighters Pension Scheme, 1980, which specifically provides that no pension shall be sanctioned in the name of the Freedom Fighter after his or her demise and such payments would continue only in cases where dependant family pension has already been sanctioned during the lifetime of the Freedom Fighter. They reiterate that the spirit of the scheme is to assist those who are in need of the pension

as well as to acknowledge the sacrifice made by them and in the present case, in view of the petitioner not having established her eligibility under the Scheme, her claim is liable to be rejected.

10. As far as R2 - Senior Record Officer, Sena Seva Abhilekh, is concerned, the very service of Mr.Veeraraghavan under the INA is denied. R2 states that the petitioner was not an Ex-serviceman, but was only employed with the Royal Indian Army Service Corps (RIASC) for the period in question. The period of his service is not denied. However, R2 specifically denies that he has been employed in the Indian National Army under the leader of Nethaji Subash Chandra Bose pointing out that the purpose and objects of the RIASC were diametrically opposite to that of the INA. According to him, the various evidences produced by the petitioner would only support her stand that Mr.Veeraraghavan was an ex-serviceman, but not a freedom fighter. Moreover, R2 states that qualifying service of fifteen (15) years is required for service pension and the service of Mr.Veeraraghavan falls far short. He reiterates that the grant of family pension to the next of the kin is conditional upon the servicemen having been in receipt of pension himself at the time of demise, in which case, it could stand transferred to the dependants. However, if he had not been receiving pension, there is no question of the dependants applying for the same directly. In conclusion, R2 would state that, at any rate the disbursal of pension under the SSSPS, 1980 was only being administered by R1.

11. The District Collector, Chennai Collectorate does not dispute the facts of the service of Mr.Veeraraghavan in the INA and specifically states that the averments in record to his service, the cadre of service and the period thereof, are admitted. However, according to him, his service in the INA was only as an employee and not as an army fighter. R3 would state that his subsequent employment in the TNEB was only on the basis of his previous service in the INA. As far as war service during the second World War was concerned, R3 points out that no evidence was produced to show that the petitioners' husband had rendered War service. The sum and substance of the counter is that the SSSPS is only meant as a measure to rehabilitate freedom fighters, who had served the nation and not those who had been employed in the INA in other capacities.

12. Heard the submissions of Mr.K.V.Sajeev Kumar, learned counsel for the petitioner, Mr.G.Karthikeyan, learned Additional Solicitor General for respondent Nos.1 and 2 and Mr.R.Udhayakumar, learned Additional Government Pleader for R3.

13. In the course of initial hearings, this Court had indicated to the respondents, particularly respondent No.1, that it would be in fitness of things for the respondents to honour the request of the petitioner in the light of the admission by them of the services rendered by the petitioners' husband. The resistance put up by R1 and 2 startled the Court. While it was expected that there may be some discussion regarding the quantum of payment to be made, should the court direct such payment, as well as a request that the award of such pension not be made a precedent in other cases, there was, instead, an outright rejection of any suggestion at all to consider the petitioners' claim.

14. On one occasion when the question of quantum of remittance was under discussion, learned counsel for respondent Nos.1 and 2 made a tentative suggestion that the monthly pension payable to destitute women under the Deserted and Destitute Wife Pension Scheme might be appropriate in the present case as well. However, even before the court had occasion to consider the suggestion, the officials present in Court appear to have conveyed instructions to him to withdraw the suggestion which he then, did. The co-operation of the respondents ended there and it was left for the Court to take into account the merits in the matter, if at all, as well as the balance of convenience and arrive at a conclusion.

15. A copy of the service book of Mr. Veeraraghavan has been produced in court, albeit in a tattered manner. The relevant portions of the book are extracted below:

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16. Two questions arise for resolution: the entitlement of the petitioner to pension and, if the first question is answered in the affirmative, the quantification of such entitlement.

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17. At the threshold, it is expressly confirmed that the respondents accept the veracity and authenticity of the records extracted above and produced in the Court as well as the contents thereof. As per the records, the service of Mr.Veeraraghavan was in the RIASC and nothing is produced before me to establish that he was in the INA. In any event, the record of service contains entries that indicate that Mr.Veeraraghavan was engaged in military service. He is referred to as a 'soldier' and the identity card shows receipt of a war medal as well as a civil family pension. The identity card reveals his position as a 'Naik' which is a rank equivalent to 'corporal'.

18. The contentions of the respondents that he has not seen or engaged in military service does not appear correct in the light of the specific noting in the identity card that he was awarded a war medal. Moreover, he had also been receiving a civil family pension during his lifetime and there is an entry to the effect that the beneficiary of the same would be his sons Mr.Harikrishnan and Mr.Gopalakrishnan, whose names tally as per the legal heirship certificate of Mr.Veeraraghavan. As such, the averment that the petitioner is making the claim for pension

for the first time after the demise of Mr.Veeraraghavan is factually incorrect.

19. I must state that there is bound to be some amount of mist in regard to the facts at issue, seeing that the narration revolves around events that have transpired a century ago. In fact, it is remarkable that the records that have been produced have been preserved so well. Taking into account a wholistic appreciation of the facts and circumstances and based solely on the records that have been produced, as well as the fact that the military service and receipt of civil family pension by Mr.Veeraraghavan are a matter of record, I am inclined to hold that the petitioner succeeds in her claim for pension.

20. This brings me to the aspect of computation of the pension. War Widows and dependents are entitled, as per the various schemes formulated by the Government, to pension. The Schemes floated by the Government in this regard from time to time are detailed hereunder:

- i) Swatantrata Sainik Samman Pension Scheme, 1980
- ii) Pension Regulation for Army, 1961
- iii) Pension Regulation for the Army, 2008

21. Though R1 in its counter refers to other Central Schemes and Regulations, such as the Central Freedom Fighter's Pension Scheme, 1980 and highlighted the fact that the petitioner/her husband would not carry any entitlement thereunder, such details have not been produced before the Court. One thing is clear. The powers-that-be have evidently not envisaged a claim from the dependent of a soldier who served in the pre-independence era and the parties before me are also unanimous in stating that there is no scheme or regulation that addresses such a situation. This cannot however mean that we do not honour the service of those that served then, or provide for their dependants. In the absence of a method by which to compute the amount of entitlement of the petitioner, I direct that the 1st respondent pay over a sum of Rs.1,00,000/- (Rupees one lakh only) to the petitioner as ex-gratia in the light of the admitted services rendered by Mr.Veeraraghavan, her husband in the RAISC during the period 1945 to 1948 within a period of four (4) weeks from the date of receipt of this order. This direction is given on the basis of the admitted factual position as I have noted above, strictly as a one-time gesture and without it being a precedent in a case of any other possible claim.

22. The Writ Petition is allowed in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Ministry of Home Affairs, Union of India,
/GRIH Mantralaya, Co-ordination Division,
North Block, New Delhi.

2. The Senior Record Officer,
Sena Seva Corps Abhilekh (Dakshin),
ASC Records (South),
Bangalore - 560 007.

3. The District Collector,
Collectorate of Chennai,
Singaravelar Maligai,
62, Rajaji Salai, Chennai - 600 001.

+1 CC to Mr.K.V.Sajeev Kumar, Advocate sr 36702.

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SP(27/04/2019)