

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.29784 of 2018
and W.M.P.No.34756 of 2018

Perumal

.. Petitioner

Vs.

1. The State of Tamilnadu
rep. By Secretary to Government,
Public (Political Pension-3) Department,
Fort St. George,
Chennai-600 009.

2. The District Collector,
Krishnagiri District,
Krishnagiri.

.. Respondents

PRAYER : Writ Petition is filed under under Article 226 of the Constitution seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings dated 22.08.2014 passed in Na.Ka.32324/2012/J4 on the file of the second respondent herein, quash the same and consequently direct the respondents to grant Freedom Fighter's Pension to the petitioner within a stipulated period.

For Petitioner : Mr.K.Govi Ganesan
For Respondents: Mr.N.Inbanathan,
Additional Government Pleader

O R D E R

The petitioner, who claims to be the Freedom Fighter, has filed this writ petition seeking to quash the proceedings dated 22.08.2014 passed in Na.Ka.32324/2012/J4 by the second respondent herein, and to direct the respondents to grant him Freedom Fighter's Pension.

2. The case of the petitioner is that he participated in the freedom movement and he was arrested and suffered imprisonment at the Bellary Jail from 15.10.1942 to 14.01.1943. He was taking part in various social activities thereafter. Though he was struggling to eke out his livelihood, he did not want to apply for pension, as, according to him, it was a sacred duty to the nation. But the poverty had driven him to apply for pension. However, the second respondent sent the impugned proceedings to the first respondent to negative his request. The subsequent

applications submitted by the petitioner were also rejected by the first respondent. Hence, the present writ petition.

3. Heard the learned counsel appearing on behalf of the petitioner and the learned Additional Government Pleader appearing on behalf of the respondents.

4. It is to be stated, at the outset, that the impugned communication was sent by the second respondent to the first respondent suggesting to reject the request of the petitioner on the following grounds:

(i) The petitioner has not produced any documents in support of his claim except producing the copy of the communication received from the Superintendent, Central Prison, Bellary, stating that the jail records pertaining to the period 1941 to 1943 could not be traced, which could not be considered as a valid document ;

(ii) The petitioner has produced only copy of the co-prisoner certificate and he did not produce the original certificate ; and

(iii) The petitioner has failed to produce any document to show that he reached the age of 18 years at the time of imprisonment.

5. Before advertng to the merits of the said grounds, at this juncture, it is relevant to state that from the date of introduction of the beneficial scheme to the freedom fighters, the Government have issued various orders periodically prescribing the eligibility and other conditions for availing the benefit. The Government issued G.O.Ms.No. 30, Public (Political Pension.II) Department, dated 07.02.1996, modifying the procedure for obtaining the Co-Prisoner Certificate, in the matter of grant of State Freedom Fighters' Pension, as follows :

"(i) The Collector will form a District Screening Committee in each District consisting of Collector, as the Chairman and the District Revenue Officer as Vice Chairman. The Collector will also select a few prominent Freedom Fighters in the respective Districts to officiate as members of the District Screening Committee to examine the veracity of Co-Prisoners' Certificates. While selecting the members, the Collector will exercise extreme caution by examining the antecedents of social and financial status of the nominees who would not be yielding to personal or pecuniar status. The members should necessarily be in receipt of Freedom Fighters' Pension on account of their imprisonment vouched by original recorded evidences. These members should not be receiving the pension merely on the basis of other Co-Prisoners' Certificates. It is desirable and

advisable to verify if these nominees are also in receipt of Tamarapatras issued by the Government of India.

(ii) The Collector of Each District should also by adopting the above mentioned stipulations nominate two other prominent Freedom Fighters as eligible certificates to issue Co-Prisoners' Certificates.

(iii) While selecting these two nominees mentioned above their own original records relating to their date, duration, place of imprisonment may be obtained by the Collectors well in advance and kept as permanent records for proper verification of Co-prisoners Certificates issued by them in future. The conditions, qualifications and other stipulations prescribed for nominating the two members may also be scrupulously followed while selecting the certificates.

(iv) The Government in consultation with the Collector concerned will release the name of nominated member of District Level Screening Committee and the eligible certifier of each District as prescribed in item (i) and (ii) above.

(v) The Committee should be personally satisfied about the documents produced and identify of the Freedom Fighter as proposed by them to Government."

6. There is no mention in the impugned order as to whether request of the petitioner was considered by the District Screening Committee, as mandated in the Government Orders. In the absence of the same, the second respondent alone cannot reject the request of the petitioner. Of-course, it is true that the second respondent being the Chairman of the District Screening Committee has to find out the truth of falsity of the age of the so-called freedom fighters.

7. At this juncture, it is apt to state that a Division Bench of this Court in the judgment dated 29.04.2016 in The District Collector, Madurai District, Madurai and another V. L.S.Ramdoss, (Writ Appeal (MD) No.381 of 2016) held as follows :

"34. In M.A.Kandasamy Pillai Vs. the Government of Tamilnadu rep. by its Secretary (Public Political Pension) IV Department, Fort St.George, Chennai, and another reported in 2002 (3) CTC 487, though the petitioner therein, has produced a Co-prisoner's certificate issued by a freedom fighter approved and recognised as a Certifier as per the Government order, the screening committee rejected the application of the claimant on the ground that, no proof of age was furnished by him. While testing the correctness of the order, following the judgment of the Hon'ble

Supreme Court in Gurdial Singh Vs. Union of India and others reported in (2001) 8 SCC 08, and I.V.K. Malaichamy (deceased) and another Vs. the Government of India and others, reported in 2001 W.L.R. 549, this Court set-aside the order of the Government, rejecting the request of the freedom fighter and consequently, allowed the Writ petition as prayed for."

8. This Court in Karuppiiah v. The Secretary to Government Public (Political Pension) Department, Secretariat, Chennai reported in 2017 (1) TLNJ 646 (Civil) observed as follows:

"3. Apart from producing those two certificates from the co-prisoners, the petitioner has also filed a non-availability certificate issued by the Chief Superintendent, Central Prison, Bellary, dated 04.07.2007, stating that the jail records for the period from 15.04.1943 to 24.09.1943 are completely torn out and therefore, he is unable to issue the jail certificate to the petitioner for the above-said period. When these overwhelming documents are filed by the petitioner in support of his claim seeking for freedom fighter pension, there is absolutely no justification on the part of the first respondent in rejecting the same, merely because the petitioner has not produced the jail certificate. In the absence of a jail certificate, the Co-prisoner's certificate will definitely stand to speak the truth and hence, the same has to be considered and accepted as a evidence of jail suffering so long as the genuineness of such certificate is not in dispute."

9. In State of Orissa v. Choudhuri Nayak (D) Thr. L.Rs., and Ors. reported in AIR 2010 SC 3588, the Hon'ble Supreme Court held as follows:

"8. This Court in Mukund Lal Bhandari v. Union of India AIR 1993 SC 2127, Gurdial Singh v. Union of India 2001 (8) SCC 8 and State of M. P. v. Devkinandan Maheshwari 2003 (3) SCC 183 considered the object of the Freedom Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme. We may summarize them as under :

(i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves,

would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore they can not be expected to maintain and produce perfect records or documents about their participation in the freedom struggle.

(iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications are by old persons with no proper records.

(iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the scheme. The above principles were spelled out to ensure that no genuine freedom fighter was denied pension under the scheme."

10. A Division Bench of this Court, in which I am a party, in the Union of India Rep. by the Under Secretary to Government of India, Ministry of Home Affairs, (Freedom Fighters Division) V. K. Duraisamy and another, 2018 SCC OnLine Mad 2992, has observed as follows :

"8. The sheet-anchor of the rejection order is that the Co-Prisoners are not eligible to issue the certificates, since they have undergone the imprisonment for less than one year. When the genuineness or otherwise of the said certificates are not doubted by the appellant, he is not right in rejecting the request of the Freedom Fighter on flimsy grounds, as assigned in the order impugned before the writ court. The object of the certificate is for the purpose of affirming the imprisonment undergone by the applicant and the

hyper-technical approach of the appellant in rejecting the claim of the Freedom Fighter cannot be appreciated. On the other hand, the appellant should undertake a survey, in collaboration with the State Governments, to find out the living Freedom Fighters, who were the torch-bearers of this nation, and extend the fruits of the Scheme, on its own, at this doorsteps. It is painful to see that the authorities are making those selfless nationalists to undergo rigorous process of red-tapism, quoting some rules."

(emphasis is mine)

11. A perusal of the principles enunciated in the above judgments make it amply clear that the age cannot be the deciding factor to grant or refuse the pension to a freedom fighter. The so-called evidence of a witness called Mariappan is not put to any examination and the same cannot be the sole basis for the second respondent to reject the request.

12. Further, the second respondent has merely sent the said communication based on the reports of the Tahsildar and the Revenue Divisional Officer, besides the examination of the petitioner by the P.A. (General). If the second respondent entertains any doubt about the correctness of the certificates issued by the co-prisoners, he should have get them tested by deputing officers for the said purpose. Instead of that, without verifying the genuineness of the certificates, he sent the impugned communication. The method adopted by the second respondent is untenable and hence, the impugned communication needs interference.

13. The petitioner is claimed to be aged about 96 years and instead of driving him to again go before the respondents, directing the respondents to sanction him State Freedom Fighters Pension from the date of his application would meet the ends of justice. Accordingly, the respondents are directed to grant State Freedom Fighters Pension to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above directions, this Writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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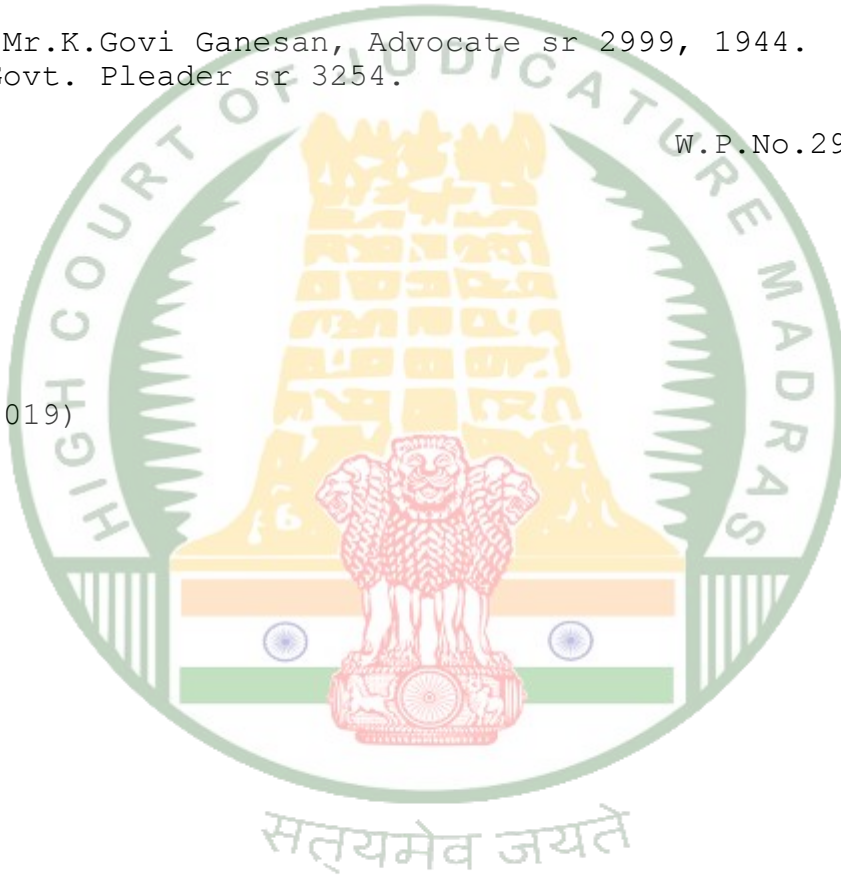
To

1. The Secretary,
Government of Tamil Nadu,
Public (Political Pension-3) Department,
Fort St. George,
Chennai-600 009.
2. The District Collector,
Krishnagiri District,
Krishnagiri.

+2 Ccs to Mr.K.Govi Ganesan, Advocate sr 2999, 1944.
+1 CC to Govt. Pleader sr 3254.

W.P.No.29784 of 2018

RK (CO)
SP (06/02/2019)



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