



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.06.2019
Pronounced on : 04.07.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A(MD)NO.579 OF 2019
and
C.M.P(MD)No.4778 of 2019

1.The Government of India,
represented by its Secretary,
Ministry of Home Affairs,
(Freedom Fighter Division),
NDCC-II Building,
Jai Singh Road,
New Delhi - 110 001.

2.The Under Secretary,
Ministry of Home Affairs,
(Freedom Fighter Division),
NDCC Building, Jai Singh Road,
New Delhi - 110 001.

:Appellants/Respondents 1 and 2

.vs.

1.M.Kaliyan

: Ist Respondent/Petitioner

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

3.The District Collector,
Sivagangai District,
Sivagangai.

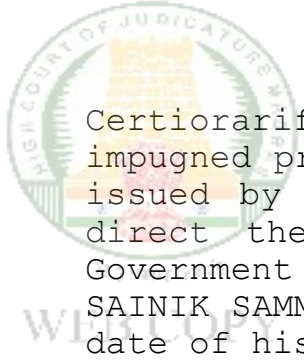
:Respondents 2 and 3/Respondents 3 and 4

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.15737 of 2018, dated 30.10.2018.

Prayer in WP(MD). 15737/ 2018 :

<https://hcservices.ecourts.gov.in/hcservices/>

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of



Certiorarified Mandamus calling for the records relating to the impugned proceedings in No.52/CC/TN/73/2013-FF(SZ), dated 13/06/2018 issued by the 2nd respondent and quash the same and consequently direct the respondents 1 and 2 to grant pension under Central Government Freedom, Fighters pension scheme i.e. "SWATANTRATA SAINIK SAMMAN PENSION SCHEME 1980" to the petitioner herein from the date of his application within the time.

For Appellants	:Mr.P.Subbiah Central Govt.Standing Counsel
For Respondent-1	:Mr.AL.Kannan
For Respondents 2 and 3	:Mr.N.Shanmugaselvam Addl.Govt.Pleader

JUDGMENT

[Judgment of the Court was made by K.RAVICHANDRABAABU,J.]

The appellants are the respondents 1 and 2 before the Writ Court. The first respondent herein as Writ Petitioner, had challenged the order of the second appellant herein, dated 13.6.2018, refusing to grant pension to the Petitioner under 'SWATANTRATA SAINIK SAMMAN PENSION SCHEME, 1980'. Consequently, the Writ Petitioner sought for a direction to the respondents 1 and 2 therein to grant pension under the said scheme.

2.The Writ Court, after considering all the facts and circumstances and the materials placed by the respective parties, allowed the Writ Petition. Aggrieved against the same, the present Writ Appeal is filed.

3.The case of the Writ Petitioner in short is as follows:

He is a freedom fighter, now aged about 100 years. He participated in Quit India Movement in 1942, was arrested by the then British Government, was tried by the learned Special Judge, Ramnad and as a result, was sentenced for a period of one year i.e., from March 1943 to March 1944 at Madurai Central Prison. The State Government has granted him freedom fighter's pension under the 'State Freedom Pensioner's Scheme'. The Petitioner applied for Freedom Fighter's Pension from the Central Government under 'SWATANTRATA SAINIK SAMMAN PENSION SCHEME, 1980' by enclosing the necessary documents. He produced the Co-Prisoner's Certificate issued by one C.Kalimuthan and Sami Thevar before the Screening Committee. The Petitioner filed W.P(MD)No.14875 of 2013 seeking for Central Government Freedom Fighter's Pension. The said Writ Petition was disposed of by directing the Petitioner to submit a fresh application to the District Collector. Accordingly, the petitioner filed a fresh application on 21.10.2014. The District Collector, Sivagangai District through proceedings, dated 13.12.2014



recommended for grant Central Government Freedom Fighter's Pension. Since no order was passed, the Petitioner once-again filed W.P.(MD) No.10791 of 2017 seeking for a direction to grant Central Government Freedom Fighter's Pension. The said Writ Petition was disposed of on the basis of the submissions made on behalf of the respondents that the District Collector has communicated the claim of the Petitioner to the second respondent. However, the Petitioner's claim was rejected on 13.06.2018 on the ground that he did not produce any primary evidence in support of his jail sufferings.

4.The Writ Court, going by the decision made in W.P(MD) No.4689 of 2014, dated 28.4.2017 arising out of similar circumstances and the order made by the Division Bench of this Court in W.A(MD)No.771 of 2018 dated 21.6.2018, allowed the Writ Petition, by observing that the Petitioner had suffered the imprisonment during the relevant time and only after verification, the State Government has granted pension and that the fourth respondent/District Collector has also recommended for Central Government Freedom Fighter's Pension, which the Central Government has over-ruled on some mis-conception.

5.The learned counsel for the appellants submitted that the Writ Petitioner has produced only the secondary evidence namely, the Co-Prisoner's Certificate and not the primary evidence namely, the Jail Certificate. He further submitted that even Non-Availability Certificate was not produced by the Petitioner. His further contention is that the Co-Prisoner's Certificate produced by the Petitioner was not in the required format. The other contention raised by him is that the High Court cannot go into the sufficiency of proof and even otherwise, based on the secondary evidence and even otherwise pension can be granted only from the date of order and not from the date of application. In support of his contention, the learned counsel relied on (2007) 9 SCC 525(Union of India .vs. Kaushalya Devi), (1997) 10 SCC 190(Govt of India vs.K.V.Swaminathan), (2010) 12 SCC 675(Mahendra Singh .vs. Union of India) and (2017) 3 SCC 688(Jagadamba Devi .vs. Union of India).

6.Per contra,the learned counsel for the first respondent/Writ Petitioner submitted that production of Co-Prisoner's Certificate is acceptable and therefore, the Writ Petitioner having furnished those certificates, is entitled to get pension. The technical objections raised by the appellants cannot be looked into while considering the case of Freedom Fighter's Pension. In support of his contention, the learned counsel again relied on the Division Bench order of this Court made in W.A(MD)No.771 of 2018, dated 21.6.2018.

7.Heard both sides and perused the materials placed before us.

8.A man, now aged about 100 years, who fought for freedom of this country and had undergone jail suffering at the hands of British people, ultimately succeed in seeing the free India, after



getting freedom, is, however, now unfortunately, made to suffer at the hands of the bureaucrats of this country just to get a meagre sum as freedom fighter's pension both from the State Government and Central Government. Of course, after a legal battle, the State Government has recognized him as freedom fighter and is extending the pension under the State scheme. However, the Central Government is still not willing to recognize him as a freedom fighter and thus, refused to grant the pension under the Central Scheme, by citing certain reasons, which are not only flimsy in nature but also exhibiting their pedantic approach, while considering the claim of a person, who fought for freedom of this country and has now turned 100 years. Though he was able to achieve his goal at the age of 40s, against the British Government, his fight against the Indian Government in getting the pension failed even at his 90s.

9.The petitioner participated in Quit India Movement in 1942 and was arrested by the British Government which ultimately resulted in sentencing him for a period of one year from March 1943 to March 1944 at Madurai Central Prison. Either at the time of undergoing the imprisonment or after his release, probably, he might have not thought that after getting freedom, his sacrifice for the same will be doubted by our bureaucrats in Free India and therefore, he should get a certificate then and there from the jail authorities, certifying his imprisonment. Therefore, he did not get one such certificate nor it is now too difficult or near impossible for him to get such certificate at this length of time. However, he was fortunate enough to have his co-prisoners, namely, Sri.Kalimuthan and Sri.Samithevar, alive who, in turn gave the Co-prisoner Certificates, certifying that the petitioner had undergone the jail sufferings for one year, as stated supra. With that certificates, the petitioner approached the State Government for freedom fighter's pension. Though the State Government initially refused to grant the same, however, in pursuant to an order passed by this Court in W.P.No.38797 of 2002 filed by the petitioner, granted the pension to him from 1997 onwards.

10.Thus, it is evident that the State Government has granted the pension to the writ petitioner, thereby, recognized him as the freedom fighter, based on the certificates issued by the co-prisoners in support of his jail suffering. However, now the Central Government to its turn, has chosen to reject the claim for central pension, by stating that the writ petitioner did not produce non-availability certificate, and that the co-prisoners certificates produced were not in the required format. We wonder as to whether the Central Government is justified in raising these hyper-technical reasons to reject the claim of the writ petitioner, notwithstanding the fact that the State Government has chosen to grant the pension, based on those certificates only. A co-prisoner's certificate once accepted by the State Government on scrutiny and acted upon, cannot and need not be doubted or tested again by the Central Government. At this juncture, we would like to reiterate the observations made by the Division Bench of this Court in a decision made in W.A(MD)

No.771 of 2018 dated 21.06.2018 (where one of us KRCBJ was a party) as follows:-

"13.....When one of the Co-Prisoner has already issued a Certificate categorically disclosing the factum of imprisonment of the Writ Petitioner for nearly three years and when such Certificate is not doubted and when a combined reading of both Certificates would lead to the one and only irresistible conclusion that the Writ Petitioner was undergoing the imprisonment for more than three years, it is bothering us very much, as to why the Union of India has to take a hyper-technical stand before us to reject the claim of the Original Writ Petitioner, who was admittedly receiving Freedom Fighter's Pension from the State Government as well. Needless to say that while considering the claim of Freedom Fighters for pension, a pragmatic approach has to be made by the authorities instead of adopting a pedantic way of looking into the matter, that too to fish out some reason or other only to reject the claim. If the Writ Petitioner's very participation in the Freedom Movement is doubted and if no document is produced by him in support of his claim, one can understand that the stand of the respondents has some justification. In this case, We do not find any justification on the part of the appellant as well as the District Collector in rejecting the request of the Writ Petitioner. At this juncture, it is to be stated that the relevant rules are framed only to achieve the object sought under the beneficial Scheme and not to defeat the same on one reason or other."

"16.Before we part with this case, we need to remind ourselves, so also others including the mighty respondents herein, that, but for the sacrifice made by those selfless freedom fighters to get this country freed from the clutches of the colonial rule, we would have not been in a position today to occupy this armed chair. We breathe easy today only because those selfless people volunteered themselves to get their breath choked at the hands of those rulers, during the freedom struggle. One will surely become emotional and shed uncontrollable tears, if he/she visits the cellular jail in Port-blair at Andaman, where hundreds of freedom fighters were imprisoned during the freedom struggle movement. Unimaginable and inhuman torture met out by those freedom fighters in that prison, still could be visualized, as the cellular jail itself stands even today as the living evidence of those tortures and sufferings, by speaking to itself, soundlessly, volumes and volumes of the stories of those freedom fighters and their sufferings and misery.

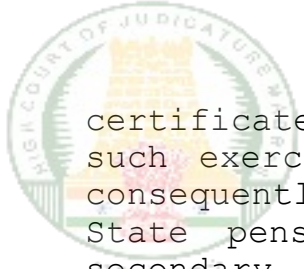
17.It is a matter of fact that several people fought for freedom at several parts of this country and suffered great agony, physical torture and mental cruelty at the hands of the then rulers of our country. When those freedom



fighters, after independence, seek for some monetary relief from the Government run by our own people, by way of pension for their sustenance, their sufferings during the freedom struggle cannot be looked into mechanically with technically shaded colour glass to find out as to how the application can be rejected. The authorities, both in the State and Central Government should look into the ground reality of the factum of sufferings and consider the application with at most sense of responsibility and realization that they are dealing with an application of a person who fought to get freedom of this Country. Certainly granting pension to those people is not a charity being shown by the respective Governments. On the other hand, it is the great honour being conferred on those freedom fighters for their selfless service rendered to the Nation. Instead of looking into an hyper-technical reason and taking shelter under certain rule to reject the claim, it is better to extend such monetary benefit, even if one evidence is sufficiently and satisfactorily produced in support of such sufferings. In fact the respective Governments should not and need not wait for them to make an application for pension. On the other hand, it is their bounden duty to search for those great persons who live in poverty and grant the pension by knocking at their door."

11. In fact, the above reasoning of the Division Bench was taken note by the learned Single Judge, in this case, for allowing the writ petition. Therefore, with great pain and anguish, we need to emphasize and reiterate the above view once again in this case as well for the appellants to consider the cases like the writ petitioner, at least with more pragmatic view than by showing a padentic approach.

12. The learned counsel for the appellants relied upon a decision reported in (2007)12 SCC 527 (Union of India vs. M.S.Mohammed Rawther) to contend that the High Court cannot go into the question of sufficiency of proof in respect of jail sufferings. We do not think that the above decision is applicable to the present facts and circumstances, since it is not as if this Court, as the first time, is going into the question of sufficiency of proof of the jail sufferings. On the other hand, the State Government has already made such exercise and found in favour of the writ petitioner, which has resulted in granting the State pension. Therefore, the above decision is not helping the appellants in any manner. The other two decisions reported in (2007)9 SCC 525 (Union of India vs. Kaushalya Devi) and (1997)10 SCC 190 (Government of India rep. by the Secretary vs. K.V.Swaminathan) are relied on to contend that freedom fighter's pension can be granted only from the date of the order, if the sanction is based on secondary evidence. Again, we are of the considered view that it is not the Central Government as the first time is considering the question of sufficiency of proof of jail sufferings, based on the co-prisoners'



certificates. In this case, already the State Government has made such exercise and found the genuineness of such certificates and consequently granted State pension. Therefore, the very grant of State pension, in our considered view, cannot be termed as a secondary evidence, for considering the claim of the writ petitioner, who is now aged about 100 years. Hence, he cannot be denied to get his pension only from the date of his application. Since this Court in W.P(MD)No.14875 of 2013 had directed the writ petitioner to file a fresh application and the petitioner has also filed such application on 21.10.2014, we are of the view that the appellants shall grant the pension from the date of such application, namely, 21.10.2014. Accordingly, we find no merits in the above appeal and accordingly, the same is dismissed. Consequently, the appellants are directed to comply with the order of the Writ Court, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar(CS)

To

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

2.The District Collector,
Sivagangai District, Sivagangai.

3.The Secretary,
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(Freedom Fighter Division),
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Jai Singh Road, New Delhi - 110 001.

4.The Under Secretary,
Ministry of Home Affairs,
(Freedom Fighter Division),
NDCC Building, Jai Singh Road,
New Delhi - 110 001.

+1 CC to Mr.A.L.KANNAN, Advocate SR-73583.

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and
C.M.P(MD)No.4778 of 2019
04.07.2019