



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.07.2019

Delivered on : 12.07.2019

CORAM

THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

W.A.(MD)No.449 of 2019

and

CMP(MD)No.3719 of 2019

The Union of India,
rep. by Deputy Secretary to Govt. of India,
Ministry of Home Affairs/Grih Mantralaya,
(FFR Division),
NDCC-II Building, Jai Singh Road,
New Delhi - 110001.

.. Appellant/1st respondent

Vs.

1.R.Ramalingam

..Respondent/Petitioner

2.The Government of Tamil Nadu,

rep. by its Secretary,

Pubic (Political Pension) Department,

Fort St. George, Secretariat,

Chennai - 600 009.

.. Respondent/ 2nd Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 21.06.2018 passed in W.P(MD)No.5521 of 2014.

Prayer in WP(MD)No. 5521/ 2014 :

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 pertaining to the impugned order passed by the 1st respondent in No.52/CC/TN/12/2011-FF/SZ, dated 25.3.2011, quash the same and consequently direct the 1st respondent herein to grant Swatantrata Sainik Samman Pension (S.S.S Freedom Fighters Pension) to the petitioner from the date of his application dated 5.8.2010.

For Appellant

: Mr.P.Subbiah

Central Govt. Senior Panel Counsel

For Respondents

: Mr.G.Rajan (for R1)

Mr.N.Shanmugaselvam

Addl. Govt. Pleader (for R2)

**JUDGMENT****K. RAVICHANDRABAABU, J.**

Aggrieved against the order passed in W.P(MD)No.5521 of 2014 dated 21.06.2018, the present appeal is filed by the first respondent before the Writ Court.

2.The writ petitioner is the first respondent in this writ appeal. He is now aged about 92 years. His application for grant of freedom fighters' pension under Swatantrata Sainik Samman Pension Scheme was rejected by the Central Government, by order dated 25.03.2013, on the ground that the writ petitioner has not furnished any acceptable records based on primary evidence duly verified by the State Government in support of his claimed jail suffering during freedom movement and that the petitioner has furnished only the secondary evidence in support of his claimed suffering. The Writ Court, after hearing both sides and considering the facts and circumstances and by following various orders passed by the Apex Court and this Court, allowed the writ petition and directed the Central Government to pay the freedom fighters' pension to the writ petitioner from the date of his application with arrears.

3.The present writ appeal is filed mainly by raising the following grounds:-

(a) the petitioner has produced only one co-prisoner's certificate, whereas as per the scheme two such certificates are required to be produced. (b) the petitioner has not furnished non-availability certificate regarding his jail suffering.

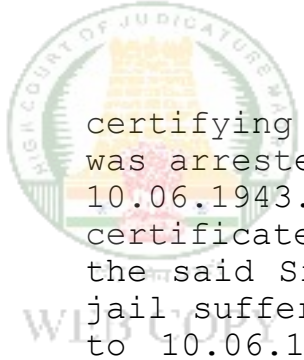
(c)The petitioner's claim was not received through the State Government along with their verification and recommendation.

4.The learned counsel appearing for the appellant, after reiterating the above contentions and referring to certain case laws, submitted that the Writ Court was not justified in granting the relief.

5.On the other hand, the learned counsel for the first respondent/writ petitioner submitted that the Writ Court has rightly considered the merits of the matter and granted the relief to the writ petitioner, who is also recipient of freedom fighters' pension from the State Government.

6.Heard both sides.

7.The writ petitioner is now aged about 92 years. He claims that he participated the freedom struggle during 1942 by taking part in Quit India movement and consequently, he was arrested and convicted to undergo imprisonment for a period from 03.11.1942 to 10.06.1943. The said claim of the writ petitioner is supported by the certificate issued by a co-prisoner, by name, Sri.Mayandi Bharathi. He has also issued a personal knowledge certificate



certifying that the petitioner is a *bone fide* freedom fighter, who was arrested and imprisoned at Palayamkottai Jail from 03.11.1942 to 10.06.1943. Therefore, it is evident from the said co-prisoner's certificate as well as the personal knowledge certificate issued by the said Sri.Mayandi Bharathi that the petitioner had undergone the jail suffering due to the freedom struggle movement from 03.11.1942 to 10.06.1943. There is no dispute to the fact that the said Sri.Mayandi Bharathi has been recognized by the Central Government as the freedom fighter and is recipient of Central Government freedom fighters' pension under the very same pension scheme. The objection raised by the appellant in this regard is that the petitioner has produced only one co-prisoner's certificate and by not producing another certificate from another person, he is not eligible to get pension. The certificate issued by Sri.Mayandi Bharathi is not either doubted or questioned. Only objection is that the jail suffering of the petitioner was not supported by two co-prisoners certificate. We failed to understand as to how the such technical objection can falsify the claim of the petitioner about his jail suffering. Whether it is certified by one person or two persons, the factum of his jail suffering would be the same and does not get changed. The very same issue was considered by the Division Bench of this Court (where one of us KRCBJ was a party) in **W.A(MD)No.771 of 2018 dated 21.06.2018**, wherein, we have rejected the very same contention by observing as follows:-

"13.....Whether it is certified by one person or two persons, the factum of imprisonment will not change, as the fact is fact forever. Even otherwise, a careful perusal of the certificate issued by other co-prisoner would show that he got released after 5 months of imprisonment. That does not mean that the Writ Petitioner, who was imprisoned with him, did not continue to undergo his rest of the imprisonment period. 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."

Therefore, the above objection raised by the appellant regarding the co-prisoner's certificate produced by the petitioner, is liable to be rejected. Accordingly, the same is rejected.

8.Next it is contended that the application of the petitioner was not routed through the State Government without due verification. Again, we find that this objection could at the best be only technical, which certainly will not go to the root of the matter and disentitle the petitioner to get the pension from the Central Government, in view of the following reasons:-

Admittedly, the petitioner is a recipient of Tamil State Government freedom fighters' pension. Naturally before granting such pension, the State Government would have verified the genuineness of the documents produced by the petitioner in support of such claim and only after fully satisfying with those materials, the State Government would have granted the freedom fighters' pension. When such being the factual position, the appellant/Central Government is not justified in denying the Central Government pension to the petitioner merely because, the application was not routed through the State Government. In out considered view that the very grant of State Government pension based on verification of co-prisoner's certificate itself is to be construed as a primary evidence for considering the claim of the applicant for grant of Central Pension. In a recent decision made by us in a similar matter rendered in **W.A(MD)No.579 of 2019 dated 04.07.2019**, we have observed at paragraph 12 as follows:-

"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....."

Therefore, we find that the above objection raised by the appellant is also liable to be rejected.

9.The other objection raised is that the writ petitioner has not produced non-availability certificate regarding his jail suffering. Since the petitioner has produced co-prisoner's certificate and when such co-prisoner is also receiving Central Government freedom fighters' pension, non-production of non-availability certificate regarding the jail suffering of the writ petitioner, cannot be a reason to deny the pension to the writ petitioner, especially, when the State Government has chosen to grant such freedom fighters' pension to the writ petitioner.

10.Considering the above-stated facts and circumstances of the case, we find no merits in this writ appeal. Accordingly, the Writ Appeal is dismissed. The appellant is directed to comply with the order passed by the Writ Court within a period of four weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar (CS-)

To

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

+1 CC to M/s.G.RAJAN, Advocate (SR-74930[F] dated 12/07/2019)

+1 CC to M/s.P.SUBBIAH, Advocate (SR-75066[F] dated 12/07/2019)

W.A.(MD)No.449 of 2019 and

CMP(MD)No.3719 of 2019

12.07.2019