



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.07.2019

Delivered on : 09.07.2019

CORAM

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

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

W.A. (MD) No.578 of 2019

and

CMP (MD) No.4767 of 2019

The Director,
Ministry of Home Affairs / Grih Mantralya
FFR Division, SZ Section, 2nd Floor,
NDCC-II Building, Jaising Road,
Parliament Street,
New Delhi - 1.

.. Appellant/1st respondent

Vs.

1.Kalarani

..1st Respondent/Petitioner

2.The Principal Secretary
Government of Tamil Nadu
Public (Political Pension-I) Department,
Secretariat, Chennai - 9.

3.The District Collector,
Ramanathapuram District,
Ramanathapuram.

.. Respondents 2 & 3/Respondents 2 & 3

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 10.07.2018 passed in W.P(MD)No.21638 of 2017.

Prayer in WP(MD). 21638/ 2017 :

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 of the impugned order passed by the 1st respondent dated 24.03.2017 bearing No.52/CC/TN/15/2013-FF (SZ) and quash the same and direct the respondents to sanction the freedom fighter pension for the petitioners father Late. Muthu Servai under the Swatantrata Sainik Samman Pension Scheme, 1980 from the date of the petition I.e. 15.12.1976 with interest till date of realization and consequently to pay the same to the petitioner there upon to pay the freedom fighters family pension till her life time.



For Appellant : Mr.P.Subbiah
Central Govt. Senior Panel Counsel

For Respondents : Mr.R.Saravanan (for R1)

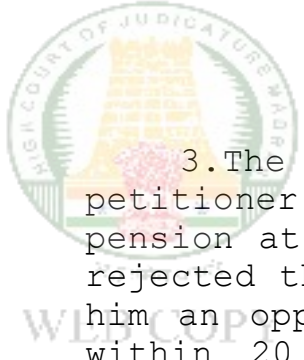
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JUDGMENT

K.RAVICHANDRABAABU, J.

This writ appeal is directed against the order of the Writ Court, dated 10.07.2018, wherein and whereby, the order impugned in the writ petition was set aside and a direction was issued to the respondents to disburse the arrears of freedom fighters' pension with effect from 01.08.1980.

2.The writ petitioner is the daughter of one Muthu Servai, claims to be a freedom fighter. According to the writ petitioner, her father participated in the freedom struggle and in such course, he had gone underground for over nine months between 1942 and 1943. Based on such alleged suffering, the petitioner's father sought for freedom fighters' pension under Swatantrata Sainik Samman Pension Scheme, 1980, from the Central Government. When his request was not considered, he filed W.P.No.2735 of 1993 before this Court, which came to be disposed of on 20.12.1993 directing the respondent therein to consider his claim afresh. Since it was not considered, he filed another writ petition in W.P.No.18214 of 1998, which also came to be disposed of with a direction to the concerned respondent therein to consider his application and pass orders on the same. On 31.05.2000, the first respondent issued a communication to him informing that he had failed to submit acceptable evidences in support of his claimed suffering and in the absence of necessary evidences, his claim of suffering was not substantiated. It further stated therein that he may make a representation along with requisite evidences duly verified by the State Government to the first respondent within 20 days showing cause as to why his claim for Central Pension be not rejected. The petitioner's father on receipt of such communication, dated 31.05.2000, however, did not respond. Subsequently, he died on 26.08.2002. Thereafter, the petitioner made the claim for pension as the unmarried daughter of the said freedom fighter. The said claim was rejected by an order, dated 24.03.2017, on the reason that the petitioner is not an unmarried daughter of the said Muthu Servai and that the father of the petitioner was not recipient of the pension and that sanction of pension after the death of freedom fighter, is not permissible, as per the revised policy guidelines, dated 06.08.2014. The said order was put to challenge before the Writ Court, which intturn set aside the order and issued direction for disbursing the arrears of freedom fighters' pension to the petitioner.



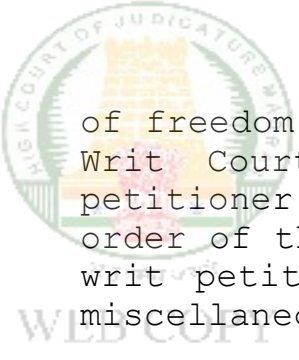
3. The learned counsel for the appellant submitted that the petitioner's father was not granted with freedom fighters' pension at any point of time and on the other hand, his claim was rejected through proceedings, dated 31.05.2000, however, by giving him an opportunity to produce materials in support of his claim within 20 days, which he failed to respond. Therefore, the learned counsel contended that the petitioner's father himself has given up his claim for grant of freedom fighters' pension during his life time and ultimately, he died on 26.08.2002 without making any challenge against the said communication, dated 31.05.2000. Thus, he contended that the writ petitioner being the daughter, cannot pursue the claim for grant of pension after the death of freedom fighter, since it is prohibited, as per the revised policy guidelines. He further submitted that only when the pension is granted to a freedom fighter, either spouse or unmarried daughter is eligible to get the same continuously even after the death of the freedom fighter. In this case, he submitted, no such pension was ever granted to the petitioner's father and consequently, the Writ Court has erred in allowing the writ petition.

4. Per contra, the learned counsel appearing for the first respondent/writ petitioner contended that the proceedings, dated 31.05.2000, is only a show cause notice and therefore, it is not an order of rejection. Consequently, not challenging the said show cause notice is not a bar for granting pension, considering the claim of the petitioner for grant of pension.

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

6. It is claimed that the petitioner's father participated in the freedom struggle and in the course of such participation, he went underground for over 9 months between 1942 and 1943. No doubt, it is true that the petitioner's father, based on such claim, made application before the Central Government for grant of freedom fighters' pension, and had also approached this Court twice by filing writ petitions in the year 1993 and 1998 seeking for a direction to the first respondent to grant pension. It is seen that on both occasions, this Court has only directed the first respondent to consider the claim of the petitioner and pass appropriate orders. Consequent upon the order passed in W.P.No.18214 of 1998, the first respondent issued a communication on 31.05.2000 to the petitioner's father informing that he had failed to submit acceptable evidences in support of his claimed suffering and in the absence of necessary evidences, his claim of suffering is not substantiated. After saying so, the first respondent, however, had chosen to give an opportunity to the petitioner's father to make a representation along with requisite evidences duly verified by the State Government, within 20 days, as to why his claim for Central Pension be not rejected.

7. Admittedly, the said communication was received by the petitioner's father and for the reasons best known to him, he has not chosen to either respond to the said communication or challenge the same before the Court of law. Therefore, the fact remains that the petitioner's father has allowed the said communication, dated 31.05.2000, to become final, by not pursuing his claim any further. Subsequently, he died on 26.08.2002. Therefore, it is evident that during the life time of the petitioner's father, the Central Government has not granted pension to him. When such being the factual position, the petitioner being the daughter of the said Muthu Servai sought for pension as the unmarried daughter of the freedom fighter. First of all, it should be noted that the petitioner's father himself was not granted with pension and his claim for the same ended up by issuing the proceedings, dated 31.05.2000. It is also seen from the said proceedings that the State Government also did not recommend his case for want of acceptable evidence. Normally, this Court would be more liberal and pragmatic in considering the claim of freedom fighter's pension. In this case, however, we are not in a position to accept the claim of the writ petitioner who is, admittedly, seeking such pension only as the daughter of a person claimed to be freedom fighter, who, inturn, on the other hand, had not questioned the rejection made as early as on 31.05.2000. Nor the petitioner has challenged the said proceedings. Even though it is claimed that such proceedings is only a show cause notice, still the fact remains that the petitioner's father did not show cause. Under such circumstances, we are not able to convince ourselves on any ground to sustain the order of the Writ Court. Therefore, the petitioner, as the daughter of the said person, is not entitled to seek for pension in the absence of any pension already granted to her father. The Writ Court relied on the decision of this Court in W.P(MD)No.4609 of 2004 to grant relief, which in our considered view, is not correct, since the case relied on by the learned Single Judge is in respect of the writ petitioner therein, who himself is a freedom fighter and filed the writ petition, which this Court has considered and granted the relief based on the facts and circumstances of the said case. It is also to be noted that in that case, the petitioner therein was receiving the State pension and that in addition he sought for Central pension as well. The facts and circumstances of the present case are totally different. As already stated supra, the petitioner's father was never recognized as freedom fighter either by the State Government or by the Central Government and on the other hand, his claim for pension ended by issuing the proceedings dated 31.05.2000 as stated supra, which was allowed to become final by the petitioner's father himself, since he has not chosen to challenge the same or response by adducing material evidences before the Services court for consideration. When such being the factual position and in the absence of any pension granted to the said person and especially, in view of the policy that the sanction of pension after the death



of freedom fighter is not permissible, we are of the view that the Writ Court is not justified in granting the relief to the petitioner. Accordingly, this writ appeal is allowed and the order of the learned single Judge is set aside. Consequently, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Principal Secretary
Government of Tamil Nadu
Public (Political Pension-I) Department,
Secretariat, Chennai - 9.

2.The District Collector,
Ramanathapuram District,
Ramanathapuram.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-74226[F] dated 09/07/2019)

+1 CC to M/s.P.SUBBIAH, Advocate (SR-74394[F] dated 10/07/2019)

SKN

Judgment made in

W.A. (MD) No.578 of 2019
and
CMP (MD) No.4767 of 2019
09.07.2019

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