



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

CORAM:

**THE HONOURABLE DR.VINEET KOTHARI,
ACTING CHIEF JUSTICE**

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.[MD]No.580 of 2019

and

C.M.P.[MD]No.4779 of 2019

The Union of India,
Represented by Under Secretary to Govt. of India,
Ministry of Home Affairs / Grih Mantralaya,
(FFR Division),
NDCC-II Building, Jai Singh Road,
New Delhi - 110 001. : Appellant

Vs.

V.Nagamalai (Deceased)

1.Rakkammal
2.Pushpa
3.V.Annapoorni
4.Sakthivel

5.The State of Tamil Nadu,
Through Secretary,
Government of Tamil Nadu,
Public (PP. (I) Department,
Secretariat, Chennai - 9.

6.The District Collector,
Trichy District. : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order dated 14.02.2017 passed in W.P.[MD] No.18758 of 2013.

Prayer in WP(MD) . 18758/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari and Mandamus, calling for the records relating to the



Impugned Order of the 1st Respondent in his Proceedings No.29/1/2009-FF(INA) dated 04.03.2009 and quash the same and consequently to direct the 1st Respondent to grant Swathantrata Sainik Samman Pension to the Petitioner from the date of the application.

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For Appellants : Mr.V.Kathirvelu,
Assistant Solicitor General
Assisted by Mr.P.Subbiah
For Respondents 1 to 4 : Mr.B.Jameel Arasu

JUDGMENT

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J**]

This intra court appeal is directed against the order dated 14.02.2017, allowing W.P.[MD]No.18758 of 2013 filed by one V.Nagamalai. During the pendency of the writ petition, he passed away and his legal heirs had come on record.

2.The case of the original writ petitioner was that he was a member of Indian National Army and freedom fighter. He claimed that he was arrested by the British police and detained in Rangoon Central prison from May 1945 till the end of December 1945. He applied to the Central Government seeking grant of financial assistance under Swathantrata Sainik Samman Pension Scheme. Even though, his application was submitted as early as in the year 1986, it was not considered and simply kept pending. In the meanwhile, he had been granted State Pension vide proceedings dated 04.09.2004, issued by the Government of Tamil Nadu. The stand of the original writ petitioner was that when once the State Government had recognized him as a Freedom Fighter and granted him pension, the Central Government was also obliged to grant him pension under Swathantrata Sainik Samman Pension Scheme, without insisting on any further proof.

3.The case of the writ petitioner was recommended by the District Collector, Trichy vide letter dated 09.04.2008, addressed to the Secretary, Public Department, Government of Tamil Nadu, Chennai. The Government of Tamil Nadu vide communication dated 19.12.2018 forwarded the case of Thiru.Nagamalai, for appropriate decision to the Government. Thereafter, the Government of India vide letter dated 04.03.2009, informed the Government of Tamil Nadu that it is not possible to accept his claim for grant of Swathantrata Sainik Samman Pension from Central Revenue. This communication dated 04.03.2009 was put to challenge in W.P.[MD]No.18758 of 2013. The learned Single Judge, allowed the said writ petition by the impugned order dated 14.02.2017. This is questioned in this intra court appeal.



4. Heard the learned Assistant Solicitor General appearing for the appellant and the learned Counsel appearing for the respondents 1 to 4 and we carefully considered their rival contentions.

5. The claimant sought pension in terms of Swathantrata Sainik Samman Pension Scheme, 1980. The scheme states that not all persons who participated in the freedom movement in some way or other are eligible for Swathantrata Sainik Samman Pension. Only the categories set out in the scheme are eligible for availing the pension. That would also be subject to furnishing of the satisfied evidence. The relevant clause reads as under:

"2.2. Imprisonment:- A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:-

(a) Imprisonment / detention certificate from the concerned jail authority, District Magistrate or the State Govt. indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government / Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the certifier happens to be a sitting or Ex.M.P. / M.L.A., only one certificate in place of the two is required."

6. What is to be seen is whether in this case, the original claimant submitted the requisite evidence. Admittedly, he did not furnish any imprisonment / detention certificate from the concerned jail authority. The claimant placed reliance on the co-prisoner certificates issued by Thiruvalargal. P.T.Mani and S.Muthuswamy. But then, those two persons have not produced any proof to show that they themselves suffered imprisonment for the minimum period of one year as set out in Clause 2.2(b). The competent authority observed that the claimant did not produce any primary documentary evidence in support of his claimed suffering and he did not also produce any acceptable secondary evidence. He also did not furnish any other corroborative evidence. That is the factual basis on which the order dated 04.03.2009 rests.



7. But the reasons assigned by the competent authority have been dislodged by the learned Single Judge by observing that 'to call upon the person who issued the certificate to produce proof of his jail suffering is unreasonable'. In our view, when the terms and conditions of the scheme are not challenged, they cannot be ignored. What has to be seen is whether the eligibility criteria laid down in the scheme has been satisfied or not. When it is seen that the eligibility criteria as set out in the pension scheme has not been fulfilled by the claimant, the order of rejection will have to be necessarily sustained.

8. The learned Counsel appearing for the respondents 1 to 4 would call upon us to sustain the order of the learned Single Judge by referring to the recommendation of the District Collector, Trichy. He would submit that if the District Magistrate had certified the jail suffering of the claimant, the same will have to be considered as a primary evidence.

9. We are not impressed by this argument. It is true that the District Collector, Trichy, vide communication dated 09.04.2008 had strongly recommended the case of the claimant. But then, this letter is addressed to the State Government which itself had clarified that the co-prisoners have not produced their own jail suffering certificate. The State Government had merely forwarded the application of Thiru. Nagamalai, to the Government of India. Thus, the recommendation originally made by the District Collector, stood superseded by the stand taken by the State Government. We must also note that the District Collector had not referred to any positive material to certify that Nagamalai was in Rangoon Central Jail for a period of six [6] months. He had merely echoed the claim of the applicant.

10. There is also no substance in the stand of the learned Counsel appearing for the respondents 1 to 4 that once the State Government had recognized Nagamalai as a freedom fighter, the Central Government cannot take a different stand. We carefully went through the order passed by the State Government granting freedom fighter's pension to Nagamalai. A mere look at the order dated 04.09.2004, issued by the Secretary to Government, Public Department, Government of Tamil Nadu would indicate that pension was granted to him as a special case by relaxing the relevant norms. Such a proceeding cannot bind the Central Government.

11. We should also note that this writ petition came to be filed only in the year 2013. The original claimant passed away in the year 2016. The litigation is being carried on only by his legal heirs. While disposing of ***W.P.[MD]No.14815 of 2017, [S.Sundaresh Vs. State of Karnataka and others]***, one of us [Dr. Justice. Vineeth Kothari, sitting as a Judge of the High Court of Karnataka, Bengaluru]



"When one talks of Freedom Fighters, the normal image that comes to one's mind is a person who suffered physically and mentally for unshackling the chains of foreign rule in our country. The normal reaction when one sees such person is one of reverence, regard and respect. The brave and courageous deeds of these persons are a distinctive part of India's history of fight for freedom. Many persons lost their lives, many were injured and a large number of such persons had languished in jails for various periods. The common thread which must have passed through the minds of these people is their sole objective to see that their motherland has a Government of its own, free from foreign rule.

But these images get shattered when one hears that with a view to gain financially, fake documents have been produced, false claims of participation in the freedom movement have been made and it is indeed a sad reflection on the moral values of the citizens of our country that a large number of cases have surfaced after Independence in 1947 where it has been established that people who were not even born when the freedom fight was on or the country got independence or were toddlers when the country got independence, have applied for and managed to get "Sammanpatra", pensionary and other allied benefits. Such persons actually bring disrespect to the whole country and such dishonorable ventures have to be dealt with sternness to send out a message that they are not freedom fighters, but are profiteers sullyng the name of freedom fight."

12.The order impugned in this writ appeal cannot be sustained and the same is set aside. Accordingly, the Writ Appeal stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Secretary,
State of Tamil Nadu,
Government of Tamil Nadu,
Public (PP. (I) Department,
Secretariat, Chennai - 9.

2.The District Collector,
Trichy District.

3.The Under Secretary to Government of India,
Ministry of Home Affairs / Grih Mantralaya,
(FFR Division),
NDCC-II Building, Jai Singh Road,
New Delhi - 110 001.

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-96587[F] 07/11/2019)
+1 CC to M/s.P.SUBBIAH, Advocate (SR-96780[F] dated 07/11/2019)

JUDGMENT MADE IN
W.A. [MD]No.580 of 2019
Dated: 06.11.2019

MR/MPK
SDS(16.12.2019) 6P 6C