



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
12.09.2019	17.10.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.A. (MD) No.1428 of 2017
and
C.M.P. (MD) No.10814 of 2017**

The Government of India
Rep.its Secretary
Ministry of Home Affairs
(Freedom Fighters Division)
Lok Nayak Bhavan
New Delhi-110 003

... Appellant

-vs-

1. N.Selvi

2. The Government of Tamil Nadu
rep.by its Secretary
Public (Political Pension) Department
Fort St.George, Chennai-9

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 25.02.2014, passed in W.P.(MD) No.7946 of 2010, on the file of this Court.

Prayer in WP(MD). 7946/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ of Certiorarified Mandamus or any other order or direction of a like nature to call for the records on the file of the Ist respondent pertaining to its order bearing No. 129/11/2003-FF/SZ dated 29.04.2004 and to quash the same and consequently direct the Ist respondent herein to sanction forthwith the Central Government Freedom Fighters Pension to the 2nd petitioner with effect from the date of application of the Ist petitioner viz., 23.08.1972 to till the death of the present petitioners father Nallathampi that is on 05.11.2010 of and pass such further or other orders as this Hon ble court may deem fit.(Prayer amended vide court order dated 21/02/2014 in MP(MD) 2/14 in 7946/2010)



For Appellant : Mr.S.Jeyasingh
For Respondents : Mr.K.K.Senthilvelan for R1
Mr.A.K.Baskarapandian
Special Government Pleader for R2

J U D G M E N T

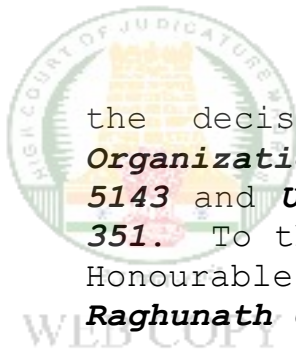
T.S.SIVAGNANAM, J.,

This writ appeal by the Government of India, represented by its Secretary, Ministry of Home Affairs (Freedom Fighters Division), is directed against the order, dated 25.02.2014, passed in W.P.(MD) No.7946 of 2010.

2. The said writ petition was filed by the father of the first respondent herein for issuing a writ of certiorarified mandamus to quash the order passed by the appellant, dated 29.04.2004 and consequently, to direct the appellant to sanction Central Government Freedom Fighters Pension to the first respondent / daughter of the freedom fighter with effect from the date of application, namely, 23.08.1972 till the date of death of the freedom fighter i.e. 05.11.2010. By the impugned order dated 25.02.2014, the writ petition was allowed and the order passed by the appellant was quashed and a direction was issued to sanction pension due to the deceased freedom fighter with effect from 08.09.2009.

3. The appellant's contention is that the freedom fighter claimed that he underwent jail suffering in the lockup at Neyyattinkara from 25.02.1938 to 15.07.1939 and underwent jail suffering from 15.08.1942 to 23.02.1942 without trial. The appellant's case is that there was no primary evidence produced by the applicant to prove the jail suffering by way of Court Orders / Government Orders i.e., Jail Certificate, copy of the Imprisonment / Detention Certificate from the concerned Jail Authority. The appellant would admit that the applicant had produced secondary evidence by way of co-prisoner certificates from Mr.P.K.Krishnan, Mr.A.Kunja Nadar, Mr.M.Williams, Mr.K.V.Parameswaran Nair, Mr.N.Gopalakrishnan Pillai and Mr.Raphel. These certificates were rejected, on the ground that they were not in the prescribed format and those persons, who certified, did not produce any evidence of their own jail suffering for a period of two years or more. It is contended by the learned counsel appearing for the appellant that the Honourable Supreme Court in the case of **Mukund Lal Bhandari vs. Union of India**, reported in **AIR 1993 SC 2127 : 1993 Supp (3) SCC 2** held that the benefit of the scheme will be extended provided relevant material is produced in support of the claim.

4. Further, it is submitted that once the Government held that the documents are not sufficient, then the High Court cannot interfere. In support of such contention, reliance was placed on



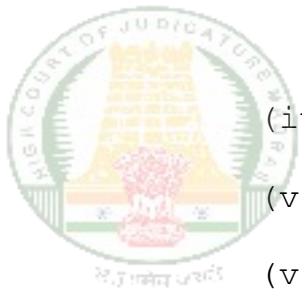
the decisions in the case of **West Bengal Freedom Fighters' Organization vs. Union of India and others**, reported in 2004 AIR 5143 and **Union of India vs. Mohan Singh**, reported in (1996) 10 SCC 351. To the same effect, reliance was placed on the decision of the Honourable Supreme Court in the case of **State of Maharashtra vs. Raghunath Gajanan**, reported in 2004 (6) SCALE 478.

5. Further, it is submitted that the High Court will not be right in appreciating the evidence to conclude that the applicant is a freedom fighter or not. In support of such contention, reliance was placed on the decision of the Honourable Supreme Court in the case of **Union of India vs. R.V.Swamy @ R.Vellaichamy**, dated 31.03.1997.

6. Further, it is submitted that merely because the applicant was granted pension under the State Scheme, it does not make the applicant automatically eligible to pension under the Central Scheme as both schemes are distinguished and different. On these grounds, the learned counsel for the appellant seeks for setting aside the order passed in the writ petition.

7. Mr.K.K.Senthilvelan, learned counsel appearing for the first respondent seeks to sustain the order passed by the Writ Court by submitting that the applicant was granted State Government Freedom Fighters Pension pursuant to the orders passed by this Court in W.P.No.34675 of 2003. In the said writ petition, the Court decided the issue as to whether Thiru.M.Nallathambi is a freedom fighter or not. The certificates produced therein were considered and it was finally concluded that there is an evidence to show that Thiru.M.Nallathambi participated in the freedom struggle along with other freedom fighters and has undergone imprisonment in different jails. Thiru.M.Nallathambi relied upon the co-prisoner certificates to justify his claim for grant of State Government Freedom Fighters Pension. The said certificates were found to be valid, genuine and sufficient to grant pension. The very same certificates have been relied on by the applicant, while submitting application for grant of Central Government Freedom Fighters Pension. Therefore, it is submitted that the appellant was not justified in rejecting the application and the learned Single Bench was fully right in allowing the writ petition. In support of his contention, the learned counsel for the first respondent relied upon the following decisions:

- (i) **Mukund Lal Bhandari and others vs. Union of India and others**, reported in 1993 Supp (3) SCC 2;
- (ii) **Gurdial Singh vs. Union of India and others**, reported in (2001) 8 SCC 8;
- (iii) **The Government of India vs. T.R.T.Thirumalaivasi and another**, reported in CDJ 2008 MHC 5374;



- (iv) **Kamlabai Sinkar vs. State of Maharashtra and others**, reported in (2012) 11 SCC 754;
- (v) **Under Secretary to the Government of India vs. Noorjahan**, reported in 2014-2-L.W.476; and
- (vi) Judgment dated 21.06.2018 in W.A.(MD) No.771 of 2018, **The Government of India vs. P.S.Periaiah and others**.

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8. We have heard Mr.S.Jeyasingh, learned counsel appearing for the appellant, Mr.K.K.Senthilvelan, learned counsel appearing for the first respondent and Mr.K.A.Baskarapandian, learned Special Government Pleader appearing for the second respondent.

9. After elaborately hearing the learned counsel for the parties, we find that the objection raised by the appellant as regards the form of certificates than the matter contained therein, there appears to be no rigid objection raised to the contents of the certificates. But, the rejection of the claim for Central Government Freedom Fighters Pension is firstly on the ground that there is no primary evidence to prove imprisonment or jail suffering. The second ground is that the secondary evidence produced in the form of co-prisoner certificates are not in the approved format. Apart from that, the other subsidiary grounds being that the High Court cannot re-appreciate the evidence and come to a different conclusion that what was done by the Central Government.

10. The legal position, with regard to the nature of proof to be produced for being entitled to payment of freedom fighters pension, has been well settled in several decisions. An applicant, if unable to produce any primary evidence, is entitled to produce secondary evidence, which are in the nature of co-prisoner certificates. Rejecting the co-prisoner certificates merely because they are not in the approved form is wholly unreasonable and arbitrary. It has not been disputed by any valid record that those five freedom fighters, who had certified the co-prisoner certificates, were not genuine persons or they were not freedom fighters. If those freedom fighters, who had certified that Thiru.M.Nallathambi was their co-prisoner and if those freedom fighters were already receiving freedom fighters pension, there is no necessity for them to once again prove their jail sufferings merely because they signed the co-prisoner certificates. Therefore, the conclusion of the appellant to reject the claim is wholly untenable.

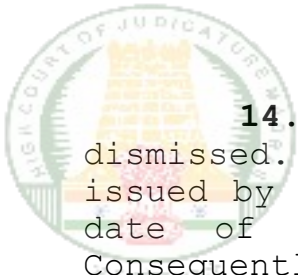
11. The standard of proof, which is required to be produced by the applicant, who seeks for freedom fighters pension, was considered by the Honourable Supreme Court in the case of **Gurdial Singh** (supra), wherein it was held as follows:



"7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

12. The grounds raised before us were canvassed in another appeal in W.A.(MD) No.771 of 2018, filed by the Central Government, which was dismissed by Judgment dated 21.06.2018. Identical issue arose for consideration in the said case and after elaborately hearing the learned Assistant Solicitor General of India, the appeal was dismissed. The said decision would wholly support the case of the first respondent.

13. As pointed out earlier, the co-prisoner certificates, which were produced by Mr.M.Nallathambi for grant of State Government Freedom Fighters Pension are the same certificates, which were produced for grant of Central Government Freedom Fighters Pension. The validity of those certificates were tested in an earlier writ petition and held to be valid and there is sufficient proof to show jail suffering. Therefore, in the present round of litigation, the Writ Court has not re-appreciated the certificates or the evidence, but took note of the earlier events to interfere with the order passed in the writ petition.



14. Accordingly, the writ appeal fails and the same is dismissed. The appellant is directed to implement the directions issued by the Writ Court, within a period of three months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Secretary,
Government of Tamil Nadu,
Public (Political Pension) Department,
Fort St.George,
Chennai-9.

+1 CC to Mr.KK.SENTHILVELAN, Advocate (SR-92664[F] dated 17/10/2019)

+1 CC to Mr.S.JEYASINGH, Advocate (SR-92663[F] dated 17/10/2019)

JUDGMENT IN
W.A. (MD) No.1428 of 2017
and
C.M.P. (MD) No.10814 of 2017
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