

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 40412 of 2005

and

W.M.P. No. 43336 of 2005

1.S.Somasundaram (deceased),
73/34, Weavers' Colony,
Second Street, P.N.Road,
Tirupur - 638 602.

2.Rukmani,
W/o.Late Somasundaram, 2/821, D
The Golden City,
Meenakshi Nagar East, Kanakkam Palayam,
P.Nallur,
Tiruppur - 641 666.

(P2 substituted as LR of Deceased Sole Petitioner
vide Order dated 23.09.2020 made in
W.M.P.No.26534 of 2019 in W.P.No.40412 of 2005)
... Petitioners

Vs

1.Government of India,
Rep. by Under Secretary,
Ministry of Home Affairs,
Lok Nayak Bhawan,
Khan Market, New Delhi - 110 003.

2.The State of Tamil Nadu,
Rep. by Deputy Secretary to the Government,
Public (Political Pension) Department,
Fort St.George,
Madras - 600 009.

3.The District Collector,
Coimbatore Collectorate,
Coimbatore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of Writ of
Certiorarified Mandamus, calling for the records on the file
of the first respondent in Proceeding No.129/413/83-FF/SZ

dated 27.07.2005 and quash the same and to direct the first respondent to accord sanction of pension under Swatantrata Sainik Samman Scheme to the petitioner from the date of third respondent's recommendation dated 22.09.2004 as referred by the second respondent letter dated 04.03.2005.

For Petitioner : Mr.V.Hemanth Kumar for
Mr.Su.Srinivasan.

For Respondents : Mr.G.Karthikeyan,
Assistant Solicitor General for R1.

O R D E R

This Writ Petition has been filed by the Freedom Fighter viz., S.Somasundaram in the year 2005 seeking for a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in Proceeding No.129/413/83-FF/SZ dated 27.07.2005 and quash the same and to direct the first respondent to accord sanction of pension under Swatantrata Sainik Samman Scheme, to the first petitioner from the date of third respondent's recommendation dated 22.09.2004.

2.The following facts are required to be noticed in nutshell for the disposal of this Writ Petition:

(i)The first Petitioner had participated in the Nation's Freedom Struggle and in this regard, in the year 1942, he had been arrested for his participation in Quit India Movement and had been jailed in Coimbatore Prison from 01.09.1942 to 16.04.1943 i.e., for more than a period of six months.

(ii)While so, the Central Government envisaged the Scheme called Swatantrata Sainik Samman Pension Scheme, 1980, for giving political pension to the Freedom Fighters who fought for the Nation's Freedom.

(iii)In this context, the State Government also providing pension to the Freedom Fighters. Accordingly, the first Petitioner seems to have made an application for sanctioning of State Government Freedom Fighters Pension and also applied through the State Government to the Central Government for getting Swatantrata Sainik Samman Scheme Pension.

(iv)In this context, since the first petitioner's request was not considered by the State Government, he filed a Writ Petition in W.P. No. 15465 of 2001 along with one other person, similarly placed who also filed similar Writ Petition (W.P. No. 15596 of 2001) and both the Writ Petitions were heard and decided by this Court on 12.03.2002, where, this Court has given the following directions:

"(i)In result, both the writ petitions succeed and they are allowed.

(ii)The orders impugned in the first writ petition above in proceeding NO.14369/2000-8, Public (Political Pension -

3) department dated 10.04.2001, in the second writ petition above in Proceeding No.20529/2000-7, Public (Political Pension - 3) department dated 30.01.2001 respectively, passed by the first respondent, Government are hereby quashed.

(iii)The first respondent Government is hereby directed to grant the Freedom Fighters pension to the petitioners, pursuant to the recommendations of the District Collector, Coimbatore made in Na.Ka.No.85548/2000/2 in the first writ petition above and in Na.Ka.No.86630/2000/2 in the second writ petition above respectively, both dated 2.1.2001".

(v)As against the said order passed by the Writ Court, Intra Court Appeals were filed by the State Government in W.A. No. 2142 of 2003 along with W.A. No. 2143 of 2003 and both these Writ Appeals were disposed of by a Division Bench of this Court by order dated 01.07.2003 rejecting the said Writ Appeals, by thus, the Order of the Writ Court was confirmed.

(vi)Pursuant to the said orders passed by this Court, as referred to above, the State Government, having considered the request of the Freedom Fighter i.e. the first Petitioner viz., S.Somasundaram and having accepted the documents filed by him, to establish that, he was the Freedom Fighter participated in the Freedom Struggle and has been imprisoned in Coimbatore Prison, during the year 1942 and 1943, has come forward to sanction the State Government Freedom Fighters Pension and accordingly, G.O.No.1068 was issued by the Public (Political Pension - 3) Department on 28.08.2003.

(vii)An amendment to the said Government Order has also been subsequently issued in G.O.No.2980 dated 03.09.2003 by the same department. Therefore, the State Government by virtue of the issuance of the said Government Order, have sanctioned Freedom Fighters Pension to the first Petitioner.

(viii)Subsequently, the State Government through Joint Secretary to Government, Public (Political Pension - 3) Department by his communication dated 04.03.2005 addressed to the first respondent, has forwarded the request of the first Petitioner to get Swatantrata Sainik Samman Scheme Pension from the Central Government with recommendation of the State Government based on the documents submitted by the first Petitioner.

(ix)The following has been made by the State Government vide letter dated 04.03.2005 which reads thus:

"3.The Collector has stated that the two certifiers, who have certified under ground suffering to the petitioner have

expired and the petitioner was requested to submit Co-Prisoners Certificate from two certifiers who are alive. The petitioner has stated that due to his old age he is unable to locate the Co-prisoners who were lodged with him in the jail to get Co-Prisoners Certificate. Hence he has requested the Co-Prisoners Certificate already submitted by him. (i.e. Co-Prisoners Certificate M.Arumugam and A.Subbaiah) may be sent to Government of India, Ministry of Home Affairs for sanction of Swatantrata Sainik Samman Pension to him.

4.The District Level Screening Committee and the Collector of Coimbatore have recommended the case for sanction of Swatantrata Sainik Samman Pension to him. Based on the recommendation of the Collector and the District Level Screening Committee, the State Government also recommend the case for sanction of Swatantrata Sainik Samman Pension. The District Level Screening Committee and the report of the Collector are enclosed. Thiru S.Somasundaram, S/o.Chockamallaiiah, Coimbatore has submitted the following documents for sanction of Swatantrata Sainik Samman Pension:-

- 1.Collector's report and District Level Screening Committee report.
- 2.Swatantrata Sainik Samman Pension Application form.
- 3.Co-Prisoners Certificates from Thiru A.Arumugam and A.Subbaiah.
- 4.Self Affidavit of the petitioner.
- 5.S.F.F.P. Order No.2980, Public (PP-III) Dept.dated 03.09.2003.
- 6.Election Commission of India photo identity card.

5.I am directed to request you to consider the case of Thiru S.Somasundaram, S/o.Chockamallaiiah, Coimbatore District for sanction of Swatantrata Sainik Samman INA Pension based on the available documents submitted by the petitioner. I am also directed to request you to intimate the action taken to this Government at an early date.

(x) Pursuant to the said forwarding of recommendation made by the State Government, having considered the same, the first respondent vide impugned order dated 27.07.2005 rejected the claim of the first Petitioner / Freedom Fighter that he was not eligible to get Freedom Fighters Pension under

Swatantrata Sainik Samman Scheme on the ground that, as per the Scheme, the Petitioner was not eligible to claim the pension, because, necessary certificate to that effect as envisaged in the Scheme, since has not been produced or filed by the first Petitioner. That is how challenging the said order dated 27.07.2005, this Writ Petition was filed.

3. During the pendency of the Writ Petition, the first petitioner viz., S.Somasundaram died and therefore, his wife viz., Rukmani has been impleaded as Legal Heir of the first Petitioner as Second Petitioner by order of this Court dated 23.09.2020, that is how the present Petitioner who is the wife of the Freedom Fighter is maintaining this Writ Petition.

4. I have heard the learned Counsel appearing for the Petitioners who would submit that, the first Petitioner had been imprisoned during the year 1942 and 1943 for more than six months at Coimbatore Prison for which documents are not available and therefore, two Co-Prisoners' certificates had been submitted for consideration, which were accepted by the State Government and accordingly, State Government Pension was sanctioned.

5. In so far as the sanctioning of Swatantrata Sainik Samman Scheme Pension by the Central Government / first respondent, though those certificates and documents were forwarded with the recommendation of the State Government through communication dated 04.03.2005, the same were not accepted by the first respondent and accordingly, the impugned rejection order has been made. Hence, the learned Counsel appearing for the Petitioners would state that, since the State Government has sanctioned the pension and two Co-Prisoners' certificates as required under the Swatantrata Sainik Samman Scheme also has been obtained and produced, based on which, Swatantrata Sainik Samman Scheme Pension should have been sanctioned to the Freedom Fighter himself, however, it was rejected without considering those documents in proper perspective by the first respondent. Therefore, the impugned order cannot stand in the legal scrutiny and hence, he seeks for indulgence of this Court to issue Writ of Certiorarified Mandamus as has been prayed for herein.

6. However, Mr.G.Karthikeyan, learned Assistant Solicitor General appearing for the first respondent / Central Government relying upon the counter affidavit filed by them as well as the Provisions of the Swatantrata Sainik Samman Scheme, would contend that, the Central Government, especially the first respondent, would not stand in the way to grant Swatantrata Sainik Samman Scheme to the eligible Freedom Fighter. In this regard, Swatantrata Sainik Samman Scheme itself, was formulated by the Central Government only to identify the real Freedom Fighters and to sanction the Freedom Fighters Pension as envisaged in the Scheme. However, since 100 of bogus claims had been given to the Central Government

seeking Freedom Fighters Pension under the Swatantrata Sainik Samman Scheme, the first respondent being the Nodal Authority, on behalf of the Central Government, to scrutinize those documents and to sanction Swatantrata Sainik Samman Pension strictly in accordance with the said Scheme, has to act carefully during the said job and scrutiny of such applications made by the individual Freedom Fighters or individual who claims to be a Freedom Fighter, forwarded or recommended by the State Government. Accordingly, based on the records they produced and after evaluating the same, final decision would be made by the first respondent, of course, strictly, in accordance with the SSS Scheme.

7. The learned Assistant Solicitor General would also submit that, the Scheme framed by the first respondent / Central Government for granting Freedom Fighters Political Pension under the SSS Scheme, is entirely different from various schemes framed by the State Governments for granting pension to the Freedom Fighters. The criteria fixed by the State Government may differ from State to State and so far as the Central Government is concerned, the sanctioning of the Freedom Fighters Pension under SSS Scheme is one and the same, where whoever fulfills those conditions which were essentially fixed for the purpose of identifying the real Freedom Fighter by the Central Government definitely, are provided with SSS Scheme Pension.

8. The learned Assistant Solicitor General would further submit that, if at all the criteria fixed by the Central Government / first respondent under the SSS Scheme to be fulfilled, is excess or onerous, if they feel and if they want similar condition to be imposed on par with the State Government Scheme alone, the Scheme should have been put in challenge. So far, the Scheme, to the knowledge of the first respondent, neither been challenged successfully nor the Court has stated that the Scheme framed by the Central Government under SSS Scheme is having excess or onerous conditions to be fulfilled, therefore, the said requirement is bad in law.

9. When that being the position, the learned Assistant Solicitor General would submit that, unless the Freedom Fighter Pension Seeker fulfills such norms under the SSS Scheme, consequently, the first respondent has no option, only to reject their claim and accordingly, in this case also, the first petitioner who is the Freedom Fighter Pension Seeker has not fulfilled the criteria. In production of Co-prisoners' certificate, where, certifier should have been imprisoned for more than a year and unless such detail is produced to the satisfaction of the first respondent, that two certifiers who have given the Co-prisoners' certificates also had been imprisoned for more than one year, the very certificate issued by them, may not be acceptable. Therefore, the learned Assistant Solicitor General submits that, in the present case, admittedly, two certifiers who had given the Co-prisoners' certificate though imprisoned, to establish that they have been in jail for more than one year, since no proof were

filed, the very basis of the Co-prisoners' certificate would go and accordingly, based on which, SSS Scheme Pension cannot be sanctioned by the first respondent.

10.The learned Assistant Solicitor General would also submit that, merely because State Government sanctioned the Freedom Fighter Pension, it will not bind the Central Government to grant SSS Pension. Therefore, the first respondent / Central Government through the rejection order, which is impugned herein, made by the first respondent, has given reasons based on the Scheme. Hence, it does not require any interference, he contended.

11.I have considered the said submissions made by the learned Counsel appearing for both sides and perused the materials placed before this Court.

12.No doubt, as has been contended by the learned Assistant Solicitor General appearing for the first respondent, Freedom Fighter Political Pension is being provided by the Central Government i.e. the first respondent, only on the basis of the Swatantrata Sainik Samman Scheme formulated in this regard. If a Scheme is formulated, normally within the four corners of the Scheme alone, beneficiaries can seek benefits.

13.In this case also, according to the first respondent, they verified the documents filed by the petitioner's side within the meaning of the SSS Scheme and whether, the criteria fixed therein has been fulfilled or not, also has been verified and on verification, the first respondent was not satisfied. Further, the documents produced by the Freedom Fighter is concerned, it has not fulfilled the required criteria, especially in the context of production of Co-prisoners' certificate, therefore, based on the strength of Co-prisoners' certificate alone, the first Petitioner cannot seek pension under Swatantrata Sainik Samman Scheme.

14.Though the said contention has been made by the learned Assistant Solicitor General, on the basis of the Scheme framed by the first respondent, this Court feels that, the very Scheme itself was formulated for identifying the Freedom Fighters and to recognize them and also to provide them solace for the rest of their life for their welfare and well being especially in their advanced age.

15.In this context, it is also to be noted that, apart from the Scheme framed by the Central Government, by way of SSS Scheme, the State Government also framed Scheme to provide political pension for the Freedom Fighters.

16.Accordingly, the State of Tamil Nadu has come forward to provide Freedom Fighters Pension and accordingly, whenever, a Freedom Fighter seeks pension from the State Government or Central Government, initially, the request made to the State Government under their Scheme will be considered, once if they

are satisfied to grant Freedom Fighter Pension under their Scheme, the application or request would be forwarded to the Central Government. This arrangement is because, the ground level limited enquiry required to identify the Freedom Fighter and also to verify the genuinity of the certificates and veracity of the same issued by various authorities including the Co-prisoners' certificates, can very well be examined and once the State Government through its machinery, having verified and found that he is entitled and eligible to get Freedom Fighter Pension under the Scheme, then only, the State Government will give the same.

17.Only on this basis, the Scheme of both the State Government and the Central Government is being worked out and it is the practice that if the Freedom Fighter is getting such State Government pension and subsequently Central Government pension also, a certain amount already been sanctioned by the State Government would be reduced in order to match the Central Government Pension.

18.Therefore, in practical, both the State Government as well as the Central Government Scheme, even though would have some different criteria for identifying the Freedom Fighter Pension, the basic fact is that, once the Freedom Fighter is identified and the veracity of the documents filed by him are once verified and accepted by the State Government, the same would be normally accepted by the Central Government / first respondent.

19.In certain cases, the first respondent / Central Government may take stand that, merely because the State Government accepted the claim of the Freedom Fighter under their Scheme, it would not automatically entail the Freedom Fighter to seek SSS Pension of the Central Government, unless, the Freedom Fighter satisfies the criteria and fulfills the condition fixed by the first respondent / Central Government.

20.However, in majority of cases, since the imprisonment for Freedom Fighter had taken place during the Freedom Struggle prior to 1947 and in most of the cases, jail records and other Government records are not available, the alternative method, as provided under the SSS Scheme is to obtain the Co-prisoner's certificate from two co-prisoners and to produce the same. If the Co-prisoners' certificate are produced, the veracity and genuinity of the same can very well be ascertained by the authorities before sanctioning the pension.

21.In this context, it is a vehement contention of the learned Assistant Solicitor General that, two Co-prisoners' certificates were produced by the first Petitioner for getting pension and the certifiers who issued those certificates, whether had been imprisoned for more than one year or not, has not been spelled out anywhere. It has been pointed out that, the Co-prisoner has not been imprisoned for more than one

year and if it is assumed that if he is imprisoned for less than one year, he only may be entitled to get Pension, but he is not eligible to give certificate. Therefore, such kind of Co-prisoners' certificate issued by the prisoners cannot be accepted as valid document for the purpose of sanctioning the Freedom Fighter Pension for the person to whose favour such a Co-prisoners' certificate has been given.

22. But this Court feels that, even though the SSS Scheme is provided for a criteria that certifier who has issued Co-prisoner certificate, must have established his imprisonment for more than one year, it need not be strictly adopted in each and every case, provided, if the case of the Freedom Fighter Pension seeker is accepted, prima facie, by the State Government and accordingly if they have granted pension through the State Government Scheme.

23. Here in, the case in hand, on 12.06.1981 and 28.06.1981, two such Co-prisoners' namely Subbaiah and Arumugam had given Co-prisoners' certificate in favour of the first Petitioner / Freedom Fighter. However, the said certificates have not been accepted by the first respondent for the reason that, the details as to whether those Co-prisoners had also been imprisoned for more than one year, have not been furnished.

24. However, learned Counsel appearing for the Petitioners has clarified that, two Co-prisoners i.e., Subbaiah and Arumugam who gave certificates to the first Petitioner, had been sanctioned Freedom Fighter Pension both by the State Government as well as the first respondent / Central Government. Therefore, it has become clear that two persons who gave Co-prisoners' certificate to the first Petitioner / Freedom Fighter had been imprisoned in the same jail for sometime and whether, they had been imprisoned for more than one year or not, may not be available as of now. But the fact remains that, they had been imprisoned in the same jail and for their struggle including the imprisonment, SSS Pension have been considered by the first respondent and was sanctioned to them.

25. If this kind of cases come up for consideration before the first respondent, this Court feels that, in those cases, if the certifiers who gave the Co-prisoners' certificates have already been considered and Freedom Fighter Pension under SSS Scheme has been sanctioned, the requirement to establish that those certifiers had also undergone more than one year imprisonment, need not be strictly insisted upon.

26. In other words, if this kind of records are available to establish that the certifiers of Co-prisoners certificate have undergone more than one year of imprisonment, it is well and good and if those details are not available for perusal, at this juncture, as the fact remains that those certifiers who gave Co-prisoners' certificate, definitely, would have

been in the same jail and based on which, they are granted SSS Pension and State Government Pension, certainly, the Co-prisoners' certificates issued by those Co-prisoners can be accepted as a valid document.

27. This kind of interpretation could be given for the said criteria fixed by the Central Government under the SSS Scheme by fixing one year criteria for the certifiers of the Co-prisoners' certificate. In case, the records are not available, if both the certifiers as well as the prisoners to whom the certificate has been given were considered by the State Government for sanctioning the Freedom Fighter Pension and in case of those certifiers, the Central Government also having considered their service to the nation, sanctioned the Swatantrata Sainik Samman Scheme, their Co-prisoners' certificate can certainly be accepted as a valid document.

28. If this method is adopted or criteria is accepted, then there can be no further impediment for the authorities concerned to accept the Co-prisoners' certificate as genuine document.

29. Herein the case in hand, the State Government recognized the imprisonment of the Freedom Fighter and accordingly sanctioned the pension and it seems that the Central Government has also verified with the available records including a report of the Collector and District Level Screening Committee.

30. The District Level Screening Committee and District Collector had come forward for having enquiry about the first Petitioner who was the Freedom Fighter and has given the said report to the State Government stating that, on what basis they come to the conclusion that the Freedom Fighter was entitled for the State Government Pension and accordingly the State Government sanctioned the same. Therefore, the report of the District Collector as well as the District Level Screening Committee and the certificates issued by the two Co-prisoners' who were imprisoned in the same jail, since has been accepted, the first respondent can very well accept the claim of the first Petitioner also and accordingly they could have sanctioned the Freedom Fighters Pension during the life time of the first Petitioner viz., S.Somasundaram.

31. However, during the pendency of the Writ Petition, unfortunately, the said Somasundaram died and in whose place his wife viz., Rukmani had been impleaded and she is maintaining the Writ Petition now.

32. The Central Government as well as the State Government are providing funds for various welfare measures to variety of people who belong to various sectors / weaker sections. Though, those welfare schemes causing much burden to the State exchequer, still, both the Central and State Governments are continuously providing welfare scheme to the people, because,

the States are welfare States and it should aim to attain avowed goal of achieving an egalitarian society. In this context, sometimes, the unscrupulous and ineligible persons also would have been in the bunch of beneficiaries, which means out of 100, if 90 deserving people are getting benefits from the Governments, ten undeserving also might be receiving the same. Merely because, some undeserved are getting the benefits under the scheme for variety of reasons, even one eligible person cannot be denied such benefits on technical reasons.

33. Especially in the context of granting the Freedom Fighter Pension, which is not only a financial assistance to the people who made their great sacrifice and service to the nation, but also a recognition of the country to be conferred on them. Therefore, when the Freedom Fighter comes before concerned authorities seeking indulgence, the eligibility of such persons, can very well be examined thoroughly. However, once their eligibility having been considered by the State Government after having the enquiry also in the District Level Screening Committee by way of local enquiry and accordingly accepted the claim of the Freedom Fighter, the same can be a basis for the Central Government also, to consider the case of such Freedom Fighter for sanctioning the Swatantrata Sainik Samman Pension.

34. Even though certain more criteria are fixed by the Central Government under SSS Scheme and in respect of expectation of fulfilling those additional criteria or different criteria under the SSS Scheme, a very narrow and pedantic view cannot be taken by the authorities. In this context, hypertechnically, objection has been raised herein to state that, the certifiers of the Co-prisoners' certificate have not established that, they had been imprisoned for more than one year and it is a criteria for the SSS Scheme. Thus, based on such kind of very narrow and hypertechnical objection, the genuinity of the claim made by the Freedom Fighter, which has been accepted by the State Government, cannot be rejected out rightly as has been done in the impugned order.

35. Therefore, this Court is of the considered view that, the impugned order can very well be interfered with and accordingly, the same can be set aside for remitting the matter back to the first respondent for reconsideration.

36. In the result, the following order, in the Writ Petition, are passed:-

(i) The impugned order of the first respondent dated 27.07.2005 is set aside.

(ii) The matter is remitted back to the first respondent for reconsideration.

(iii) While reconsidering the same, two Co-prisoners' certificates given by one Arumugam and one Subbaiah, can very well be taken note and considered as valid document, in view of the fact that the Arumugam and Subbaiah had also been sanctioned the Swatantrata Sainik Samman Pension by the first respondent and in view of the said certification having been given on the side of the two certifiers of the Co-prisoners' certificate, there can be no impediment for the first respondent to accept the Co-prisoners' certificates as supporting documents for the purpose of fulfilling the criteria fixed by the Central Government and accordingly, the same shall be accepted.

(iv) Since the Freedom Fighter viz., S.Somasundaram died during the pendency of the Writ Petition, after consideration as indicated above, the first respondent can sanction the Freedom Fighter's Pension under Swatantrata Sainik Samman Pension to the first Petitioner viz., S.Somasundaram from the date of recommendation made by the State Government to the Central Government till the date of his death and the family pension for Freedom Fighter's dependents can also be sanctioned to the second Petitioner viz., Rukmani, the wife of the Freedom Fighter, till her lifetime.

37. The aforesaid exercise shall be undertaken by the first respondent within a period of twelve weeks from the date of receipt of copy of this order.

38. With these directions, this Writ Petition is ordered. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

ay/vji

To

1. The Under Secretary
Government of India,
Ministry of Home Affairs,
Lok Nayak Bhawan,
Khan Market, New Delhi - 110 003.

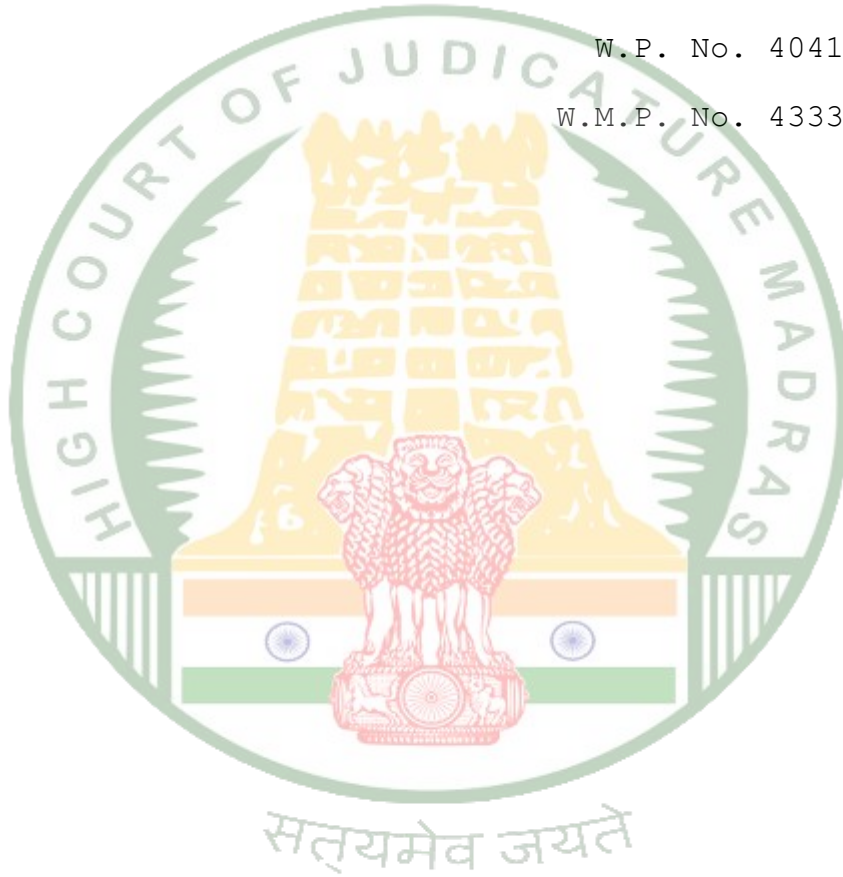
2. The Deputy Secretary to the Government
State of Tamil Nadu,
Public (Political Pension) Department,
Fort St. George, Madras - 600 009.

3.The District Collector,
Coimbatore Collectorate,
Coimbatore.

+1cc to Mr.G. Karthikeyan, Additional Solicitor General,
S.R.No.35078

MGR (CO)
SM(09/02/2021)

W.P. No. 40412 of 2005
and
W.M.P. No. 43336 of 2005



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