

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2020

CORAM:

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 34252 of 2012 and
M.P. No. 1 of 2012

Thangavelu @ Duraicannou

... Petitioner

-vs-

1. The Union of India,
Rep. by its Under Secretary to the Government of India,
Ministry of Home Affairs/
Grih Mantralaya (Freedom Fighters Division),
I Floor, Lok Nayak Bhawan,
Khan Market, New Delhi - 110 003.
 2. The Deputy Secretary (Home),
Freedom Fighter Cell,
Government of Pondicherry,
Chief Secretariat,
Pondicherry.
 3. The Welfare Officer,
Freedom Fighter Cell,
Government of Puducherry,
Chief Secretariat,
Pondicherry.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent in his letter dated 08.07.2009 and quash the same and thereby direct the First Respondent to grant Freedom Fighter Central Pension to the Petitioner.

For Petitioner :Mr. N.Suresh

For Respondents:Mr. G.Karthikeyan,

Assistant Solicitor General of India (for R1)
Mr. D.Ravichander,
Additional Government Pleader (Puducherry)
(for R2 & R3)

O R D E R
(through video conference)

Heard Mr. N.Suresh, Learned Counsel for the Petitioner,
Mr. G.Karthikeyan, Learned Assistant Solicitor General of India

appearing for the First Respondent and Mr. D.Ravichander, Learned Additional Government Pleader (Puducherry) appearing for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The application made by the Petitioner for Freedom Fighter's Pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as the 'Scheme' for short) of the Central Government had been rejected by Order No. 52/CC/Pon/92/2008-FF/SZ dated 08.07.2009 passed by the First Respondent, which is challenged in this Writ Petition. According to the Petitioner, he had actively participated in the liberation of Pondicherry from the French Colonial Rule and had undergone various hardships, such as, self-exile from 14.04.1954 to 31.10.1954 for which the Government of Pondicherry has sanctioned him State Pension, but the First Respondent has refused the same due to his failure to produce primary or secondary evidence in respect of the same.

3. In response to the claim of the Petitioner, it is contended by the Learned Assistant Solicitor General appearing for the First Respondent that 'self-exile' would not fall under any of the categories for which the Scheme of the Central Government for Freedom Fighters has been formulated.

4. Before proceedings to examine the claim made by the Petitioner, it would be necessary to refer to the various categories prescribed for a Freedom Fighter to be eligible for pension under the Scheme, which are as follows:-

"4. WHO IS ELIGIBLE?

For the purpose of grant of Samman pension under the scheme, a freedom fighter is:-

- (a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India. The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 01.08.1980.
- (b) A person who remained underground for more than six months provided he was:
 1. a proclaimed offender; or
 2. one on whom an award for arrest/head was announced; or
 3. one for whose detention order was issued but not served.
- (c) A person interned in his home or externed from his district provided the period of

internment/externment was six months or more.

- (d) A person whose property was confiscated or attached and sold due to participation in the freedom struggle.
- (e) A person who became permanently incapacitated during firing or lathi charge.
- (f) A person who lost his job (Central or State Government) and thus means of livelihood for participation in national movement.

A MARTYR is a person who died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include an ex-INA or ex-Military person who died fighting the British."

Having regard to the aforesaid conditions of the Scheme viz-a-viz the claim made by the Petitioner for freedom Fighter's Pension, the question that arises for determination is whether it would fall under either clause 4(b) or clause 4 (c) of that eligibility criteria in the Scheme.

5. Insofar as the claim as to whether 'self-exile' claimed by the Petitioner would amount to having remained underground as per clause 4 (b) of the Scheme, it would be useful to refer to the decision of the Hon'ble Supreme Court of India in Union of India -vs- K.Indrasena Reddy [(2007) 14 SCC 305], where it has been observed as follows:-

"10. A person is entitled to the benefit of the Samman Pension Scheme provided he fulfils the criteria laid down therein. One of the criteria laid in the said Scheme, as noticed herein before, was that the person concerned on account of his participation in freedom struggle, had to remain underground for more than six months. However, the same would be subject to the conditions laid down therein, namely, (i) he has to be a proclaimed offender; or (ii) he is one on whom an award for arrest was announced; or (iii) he is one for whose detention an order of arrest was issued but not served.

11. If only an order of detention was issued, the same by itself may not lead to a conclusion that the first respondent had to remain underground for more than six months, unless he proves one or the other requisite condition precedents therefor mentioned in the Scheme."

It has been held by the Hon'ble Supreme Court of India in Jagdamba Devi -vs- Union of India [(2017) 3 SCC 688] as extracted below:-

"9. The Swatantrata Sainik Samman Pension Scheme, 1980 is a Central Government Scheme for the grant of

pension to freedom fighters and their families from Central Revenues which was introduced by the Government of India to extend the benefit of pension to all the freedom fighters as a token of respect to them. The Scheme is detailed to the effect that it clearly specifies the persons who are eligible for the purpose of grant of pension under the Scheme; what are the movements/mutinies connected with the national freedom struggle; how to prove the claims; mode of payment of pension, etc. Clause 3 of the Scheme lays down the eligibility of the persons who can claim pension under the Act. Clause 3(b), which is attracted in the case of the appellant reads as under:

"3. Who is eligible? For the purpose of grant of Samman pension under the scheme, a freedom fighter is:

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(b) A person who remained underground for more than six months provided he was:

- (1) a proclaimed offender; or
- (2) one on whom an award for arrest/head was announced; or
- (3) one for whom detention order was issued but not served."

10. Clause 7(b) of the Scheme explicitly lays down that the claim of being "underground" can be proved either by documentary evidence by way of court's/government's orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention; or, Certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability. Clause 7(b) reads as under:

"7. How to Prove the claims (evidence required).— The applicant should furnish the documents indicated below whichever is applicable:

- (a) Imprisonment/detention, etc.:
Certificate from the jail authorities concerned, District Magistrate or the State Government in case of non-availability of such certificates, co-prisoner certificate from a sitting MP or MLA or from an ex-MP or an ex-MLA specifying the jail period.
- (b) Remained underground:
 - (i) Documentary evidence by way of court's/government's orders proclaiming the

applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention.

- (ii) Certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

(c) Internment or externment:

- (i) Order of internment or externment or any other corroboratory documentary evidence.

- (ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available.

Note.—The certified veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganisation of States and their area of operation must be the same.

- (d) Loss of property, job, etc.:

Orders of confiscation and sale of property, orders of dismissal or removal from service."

11. As it appears from the record, the Government of Bihar vide its Letter dated 6-4-1993, had recommended an application dated 25-3-1982, of late Hari Kant Jha for pension under the Swatantrata Sainik Samman Pension Scheme, 1980 on the basis of the deceased's "underground suffering" for about 26 months from 16-9-1942 to 14-10-1944 in the case related to GR No. 609 of 1942. What is material for our present consideration is the subsequent order dated 15-11-2006 passed by the Central Government rejecting the claim of the appellant, as being ineligible for the claim of pension under the Scheme.

12. The appellant had laid his claim only on the ground that Hari Kant Jha had remained underground for more than six months. From the aforesaid Clause 7(b), there are two modes of providing evidence for the same. The first one is by producing official records and the second, where the official records were not forthcoming due to their non-availability, as per Clause 7(b)(ii), by producing certificate from the freedom fighters who have themselves undergone imprisonment for five years or more. In the case of the appellant, since official records were not traceable due to non-availability, the appellant submitted a certificate from one Shri Jagdish Singh

who was a veteran freedom fighter.

13. The Central Government vide its order dated 15-11-2006 clearly pointed out that none of eligibility criteria were met in the case of the appellant. As noted earlier, in GR No. 609 of 1942, Hari Kant Jha was arrested on 14-10-1944 and remained in jail till he was released on bail on 27-10-1944. He was thereafter discharged from the case on 25-1-1945. The word "underground" is not synonymous to being "an absconder". Based on the verification of the documents, in its order dated 15-11-2006, the Central Government stated that the jail suffering of Shri Hari Kant Jha was only for thirteen days whereas the minimum jail suffering required to become eligible for pension is six months. There was neither any document nor any report that Hari Kant Jha was absconding for more than six months. That being "underground" is not synonymous to being an "absconder".

14. As per the Swatantrata Sainik Samman Pension Scheme, 1980, the claim of "underground suffering" is considered subject to furnishing of the following evidence:

- "(i) Primary evidence: Documentary evidence by way of court's/government's order proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. Absconsion on issue of warrant of arrest is not an eligible suffering for grant of SSS pension, unless the same is followed by the order of proclaimed offender/or award for arrest on head or detention order.
- (ii) Secondary evidence: In the absence of primary record-based evidence, a Non-Availability of Records Certificate (NARC) from the State Government/Union Territory Administration concerned along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum of two years and who happened to be from the same administrative district can be submitted as supporting evidence to the claim."

Where primary evidence viz. records of the relevant period are not available, "Non-Availability of Record Certificate (NARC)" from the authority concerned, in the form of secondary evidence becomes a pre-requisite for claiming "underground suffering". The instructions require the State Government to issue NARC only after

due verification from the sources concerned. In the case of appellant, the Central Government stated that the appellant has not produced any acceptable record-based evidence duly verified by the State Government to establish the claimed "jail" or "underground sufferings" of late Shri Hari Kant Jha. She has also not produced NARC from the competent authority as required and that thus, the eligibility criteria is not met.

....

18. In CWJC No. 9903 of 2001, the Single Judge has made certain observations to the effect that "Hari Kant Jha was absconding" and that the same was sufficient under the provisions of the Scheme to declare him "as remaining underground for more than six months", thereby making him entitled for the pension. As rightly observed by the Division Bench of the High Court, the said observation in CWJC No. 9903 of 2001 was without reference to the Scheme. Be it noted that in CWJC No. 9903 of 2001, the learned Single Judge only remanded the matter to the Central Government for reconsideration, giving liberty to the Central Government to reappraise the documents. Upon reappraisal of the matter, the Central Government has clearly pointed out that Shri Hari Kant Jha did not meet the eligibility criteria of either being an underground within the meaning of the Scheme for more than six months or undergoing sentence for more than six months and as such he was ineligible. The High Court, in our view, has rightly held that the Central Government was well within its power to hold that Hari Kant Jha was ineligible to seek pension under the Swatantrata Sainik Samman Pension Scheme, 1980. We do not find any reason warranting interference with the impugned order."

On a conspectus of the aforesaid binding decisions, it is clear that persons claiming to be in 'self-exile' cannot be treated as having been underground for the purpose of sanction of pension.

6. Coming to the contention as to whether the 'self-exile' claimed by the Petitioner would fall under the category of internment in his home or externment from his District in terms of clause 4 (c) of the Scheme, the evidence required for such claim as prescribed in the scheme will have to be taken into account, which reads as follows:-

"7. HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED):-

(c) INTERNMENT OR EXTERNMENT:-

(i) Order of internment or externment or any other

corroboratory documentary evidence.

(ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available. (Annexure-II in the application).

Note:-

The Certifier veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganization of States and their area of operation must be the same."

The Petitioner has not produced any order to show that there had been any internment or externment or any other corroboratory document and what has been produced is only a Certificate from Thiru. S.Chandrasekara Reddiar, who had suffered imprisonment/detention for the period from 07.03.1954 to 01.11.1954, which does not satisfy the requirement of five years of such imprisonment/detention prescribed under sub clause 7 (c) of the Scheme

7. In respect of the contention raised that the website of the Pensioners' Portal of the Government of India containing the salient features of the Scheme at the end of Appendix - B-IV had included that participation and suffering self - exile for securing freedom for Pondicherry, it has been clarified that it relates to the pension sanctioned by the Government of Pondicherry, which the Petitioner is already receiving, and does not apply to the Scheme of the Central Government for which pension has been sought.

8. In that view of the matter, there does not appear to be any infirmity in the decision-making process of the First Respondent in rejecting the claim made in the impugned order, which requires any interference by this Court in exercise of discretionary powers of judicial review under Article 226 of the Constitution of India.

9. In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

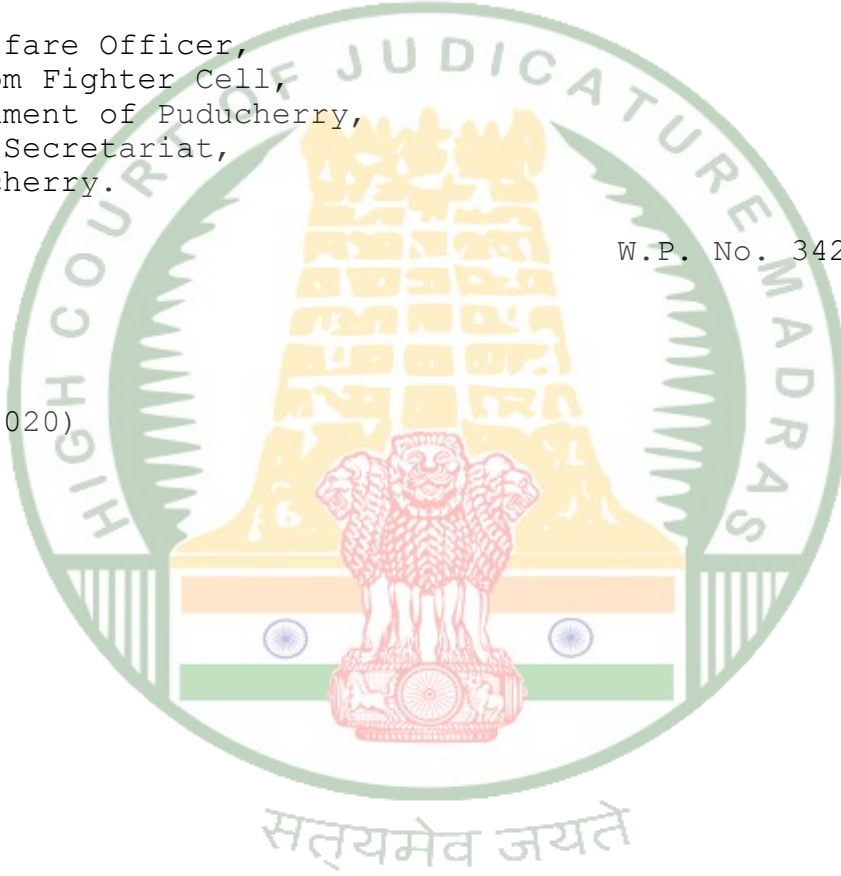
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To

1. The Under Secretary to the Government of India,
Ministry of Home Affairs/
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