

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.12.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.34254 of 2012

V.Muthaiyan

... Petitioner

Vs.

1.The Union Territory of Pondicherry,
By its Chief Secretary to Government,
Pondicherry.

2.The Welfare Officer,
Government of Pondicherry,
Chief Secretariat (Home)
Freedom Fighers Cell
Pondicherry.

... Respondents

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the order of the 2nd respondent in No.361/FFC/A1/2009 dated 18.01.2010 and quash the same and thereby direct the respondents to grant Freedom Fighers State Pension to the petitioner with effect from 27.04.1985.

For Petitioner : Mr.N.Suresh

For Respondents: Ms.G.Djearany
Special Government Pleader
(Pondicherry)

ORDER

The prayer sought for in this writ petition is to issue a writ of certiorarified mandamus to call for the records pertaining to the order passed by the second respondent in No.361/FFC/A1/2009 dated 18.01.2010 and quash the same and direct the respondents to grant Freedom Fighters State Pension to the petitioner with effect from 27.04.1985.

2.The short facts which are required to be noticed for the disposal of this writ petition, as has been projected by the petitioner through the affidavit filed in support of this writ petition, are as follows:

(i) That the petitioner is a native of Pondicherry and had been permanently residing in Pondicherry Union Territory. He claimed that, he was a Freedom Fighter, fought for the liberation of Pondicherry from the French colonial rule. He claimed that, he had sacrificed the entire life for the cause of freedom struggle. During the freedom struggle, in order to evade from the clutches of the French India Government and to involve actively for the Freedom of Pondicherry and to involve actively for the freedom struggle, he was constrained to go for a self exile/externment several times to the neighbouring State of Tamil Nadu. Only after liberation of Pondicherry i.e., after 01.11.1954 he could enter into Pondicherry, since it got independence from the French colonial rule. Thus, he was in self exile/externment for six months from April 1954 to November 1954 and worked for the liberation of Pondicherry from French colonial rule. Therefore, in order to get recognition of the said service he has rendered for getting freedom to the Pondicherry and to get Freedom Fighter Pension, for which, a Scheme had been evolved by the Pondicherry Government called 'Pondicherry State Freedom Fighters Pension Rules' with effect from 20.07.1970, the petitioner had made an application under the said rule.

(ii) The said application of the petitioner was made on 12.09.1996. The said application of the petitioner, having been considered either by the Committee constituted in this regard or the State Government of Pondicherry, they rejected the claim of the petitioner by order dated 18.01.2010, where, the petitioner's plea was rejected on the sole ground that, since the Committee formed by Pondicherry Government, in this regard, has recommended to receive applications from the Freedom Fighters Pension seeker under the Scheme or Rule only upto 31.03.1986 and beyond the said date, no such application was entertained and since the application of the petitioner, admittedly, was given only on 12.09.1996 well after 31.03.1986 the application of the petitioner cannot be considered or accepted. Therefore, on the sole ground of belated application beyond the cut off date, the application of the petitioner was rejected by the Pondicherry Government through the order dated 18.01.2010. Challenging the said order, the present writ petition has been filed by the petitioner with aforesaid prayer.

(iii) The respondent Pondicherry Government has filed counter affidavit as well as typed set of documents stating that, the Freedom Fighters Pension was given to those who are eligible to get the same, based on their application made by them individually only based on the Rules framed in this regard called 'Pondicherry Freedom Fighters Pension Rule, 1970'. According to the said Rule, a Committee had to be constituted and the Committee was headed by the Chief Minister of the State,

at various point of time, to verify and recommend the applications made in this regard by the Freedom Fighters Pension seekers and time and again, recommendations have been made to the Government to accept the applications of the individual to sanction Freedom Fighters Pension.

(iv) The Committee, at one point of time, has decided that, the last date fixed for receipt of application from the Seekers of the Freedom Fighters Pension was on 05.11.1985 and that had gone by, before which, some of the applicants or genuine Freedom Fighters could not applied, therefore, they, seems to have requested the Government, considering the same, the last date which was fixed as 05.11.1985 was extended upto 31.03.1996, that is the final date, before which, it was decided that, all applicants should make an application to get Freedom Fighters Pension. Beyond 31.03.1986 no extension was given, however, the present petitioner has admittedly made the application only after a decade i.e. on 12.09.1996, therefore, it is a belated application beyond the cut off date, as has been fixed by the Committee and therefore, the said application since was not entertainable, it has been rightly rejected by the respondent through the impugned order dated 18.01.2010. Therefore, the said order cannot be said to be an unsustainable one and therefore, the respondent Pondicherry Government seek dismissal of the writ petition.

3. With the aforesaid facts, Mr.N.Suresh, learned counsel appearing for the petitioner would make submissions stating that, no doubt, the application itself was made by the petitioner only on the basis of the Rule framed in this regard, that is called 'Pondicherry Freedom Fighters Pension Rules, 1970', (in short, hereinafter called as 'the Rules'). In the said Rules, even though no cut off date was given, subsequently, it is claimed by the Pondicherry Government that, a cut off date was given sometime in March 1986 and whether the said cut off date was form part of the Scheme or not, is not known and therefore, if at all the Pondicherry Government comes forward to recognise the Freedom Fighters for the services rendered to the Nation for getting the freedom of the Pondicherry State from the colonial rule, such recognition shall be given to every such Freedom Fighter and therefore, in this regard, no restriction can be shown and accordingly, the application submitted by the petitioner in the year 1996 cannot be treated as a belated application as the cut off date, as has been projected is not a date fixed under the Rule, therefore there is no sanctity attached to the said date, as has been projected by the respondent. Therefore, for that reason the application of the petitioner should not have been rejected. Therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court.

4.The learned counsel for the petitioner has also relied upon a decision of this Court made in W.P.No.18260 of 1997 in the matter of P.Kathirvel Vs. Union Territory of Pondicherry and another, where, he relied upon the following:

"5.It is clear from the proceedings of the first respondent dated 26.10.1994 that the application of the petitioner was rejected only on the ground that the same has been received by their office after the last date fixed for its receipt under State Freedom Fighters Pension Scheme, viz., 31.03.1986. A Division Bench of this Court in a decision reported in THANGAVELU vs. GOVERNMENT OF INDIA & ANOTHER (1994 WRIT LAW REPORTER 137) had an occasion to consider various rules / schemes of both the State and Central Government and after considering all the relevant materials formulated certain guidelines. They also considered rejection of application for freedom fighter pension on the ground of delay. In this regard their Lordships have concluded,

"In our opinion, rejection of claim of genuine and real freedom fighters on the ground of delay or belated approach, is not warranted. It may be, in some cases, the freedom fighters would have felt no necessity to avail the benefit of the Scheme and on account of change in economic circumstances, he may approach the concerned Government for the grant of pension. In such case, to reject the claim on the ground of delay would be defeating the very purpose and object of the Scheme. Hence, in our opinion, if the claim is genuine and true, the same should not be rejected on the ground of delay or that the applicant approached the Government belatedly."

By applying the principle laid down in that decision, I am of the view that the matter has to be considered afresh by the first respondent on merits. Accordingly, the first respondent is hereby directed to consider the claim of the petitioner afresh and pass appropriate orders on merits within a period of four months from the date of receipt of a copy of this order.

6.Writ petition is allowed to the extent mentioned above. No costs."

5.Ms.G.Djearany, learned Special Government Pleader appearing for the respondent Pondicherry Government, by relying upon the averments made in the counter affidavit filed by the respondent as well as the documents filed in the typed set of documents would submit that, no doubt the Pondicherry Government has framed the Rules for Freedom Fighters Pension and the Rules were made in the year 1970. Subsequently, who were all the

applicants to be considered for grant of Freedom Fighters Pension, based on their claim made, in this regard, through the application, since have to be scrutinised thoroughly, a Committee was constituted headed by the Chief Minister and the said Committee time and again had meetings and then and there, decided such applications and made recommendations to the Government, based on which, Freedom Fighters Pension were given to so many genuine Freedom Fighters.

6.The learned Special Government Pleader would further contend that, at one point of time, the Committee since have already fixed the last date for making such application sometime on 05.11.1985 and within the said cut off date since many number of applicants could not make application, only to give one more chance for those who have missed to file applications before the said cut off date, the cut off date was further directed or recommended to be extended upto 31.03.1986. The said decision was taken by the Committee's meeting held on 11.03.1986 and accordingly, the 31.03.1986 was taken as the last date or cut off date, before which, who ever made applications like the petitioner to get Freedom Fighters Pension were considered and those applicants, based on their merits, as recommended by the Committee, were sanctioned the Freedom Fighters Pension. Beyond 31.03.1986, no such application was entertained, therefore, since the application, now sought to be considered of the petitioner, is admittedly a belated one, as it was filed only on 12.09.1996, that is more than after 10 years of the cut off date, the said application cannot be considered within the parameters of the Rule and therefore, the same has been rejected on the said sole ground of belated application through the impugned order, therefore, the learned Special Government Pleader seeks indulgence of this Court to reject the present writ petition as devoid of merits.

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

8.Now the only adjudication is that, whether the reason cited by the respondent Government in rejecting the application of the petitioner for getting Freedom Fighters Pension, on the only ground of belated application, is justifiable or not.

9.In this context, the case of the respondent Government is that, the Government framed the Scheme i.e., called 'Pondicherry Freedom Fighters Pension Rules,1970' and pursuant to the Scheme only, applications were invited from the Freedom Fighters and accordingly, those applications, having been considered before a Committee constituted in this regard, based on the recommendation made by the Committee were decided and disposed or sanctioned with the Freedom Fighters Pension. Beyond the

Scheme, no individual application can be entertained by the Pondicherry Government. This is the stand of the Pondicherry Government, as projected by the learned Special Government Pleader appearing for the respondent Government.

10. In order to delve into the said issue, whether the Pondicherry Government can entertain an application beyond a particular cut off date, as has been projected by them, are to be gone into.

11. In this context, the Scheme, i.e., the Rule 1970 has been framed by the Pondicherry Government in G.O.Ms.No.51/Home (1) dated 20th July, 1970. The Rules has given certain explanation in Rule 4, like "Central Pension", "Freedom Fighter". What is the amount to be payable for a Freedom Fighter has been spelt out at Rule 5 and the Freedom Fighter dependent pension also can be paid, that has been dealt with at Rule 6 and in case of any sanction obtained for Freedom Fighters pension, which subsequently, found to be a faulty one or mistakenly granted, the same can be cancelled, that has also been provided in Rule 8. Rule 9 says, the Government shall be the authority competent to sanction pension under these Rules. Rule 10(1) says, application for grant of pension under the Rules should be sent to the Secretary to Government (FFC), Pondicherry. The applications must be accompanied by certificates obtained from the Jail Department as proof for having been sentenced imprisonment or held under detention for not less than 3 weeks or by certificates obtained from the All India I.N.A. as the case may be. Rule 11 says, on receipt of application from a Freedom Fighter for the grant of pension, the Government may cause such enquiries as deemed necessary to be made regarding the eligibility. Rule 12 states about the satisfactory enquiry report with regard to the eligibility of the applicant for the pension, and the Government shall make an order on each application either sanctioning pension or rejecting the same and communicate the same to the party concerned and Rule 13 says, the decision, in this regard, of the Government in all matters covered under the Rules shall be final. Therefore, on a thorough reading of the Rules /Scheme made by the Pondicherry Government in the year 1970 for grant of Freedom Fighters Pension, nowhere a cut off date, being the last date for making application by the Freedom Fighters, has been provided.

12. In this context, it is the case of the Pondicherry Government that, in order to enquire and report about the eligibility of any such applicant, who make application, for the purpose of causing enquiry, of course, of the Government, since the causing enquiry is the job of the Government under Rule 11, it seems that, the Government has constituted a Committee headed by the Chief Minister of the State.

13.It is further to be noted that, after constituting the Committee, regarding what are all the jobs to be undertaken by the Committee, the Government has issued a Notification by issuing G.O.Ms.No.89 dated 25.11.1977. In order to appreciate the same, the relevant portion of the G.O., that is Notification dated 25.11.1977 are extracted hereunder:

"The terms of references of the Committee constituted in the G.O. read shall be as follows :

(1) To decide whether State Pension shall be granted to those freedom fighters who are also in receipt of central pension.

(2) To decide whether State Pension has to be granted to those freedom fighters who flew to Nettapakkam and other places on self-exile.

(3) To review central pension in cases referred to by the Government of India for re-review and other cases decided to be reviewed by the Committee and make suitable recommendations.

(4) To review State Pension cases and make recommendations thereon.

(5) To decide whether State Pension should be granted to those freedom fighters who are getting some financial assistances from the Government of India.

(BY ORDER OF THE LIEUTENANT GOVERNOR)

B.S.PARTHASARATHY
CHIEF SECRETARY TO GOVERNMENT

14.On perusal of these items mentioned in the Notification as the job to be undertaken by the Committee, it is found that nowhere it is stated that, the Committee can fix a particular date as a last date or cut off date within which all Freedom Fighters should make an application.

15.Nevertheless, it seems that, on 11th March, 1986 when the Committee had a meeting, it was decided, among other things, to fix a cut off date, which, according to the Committee, has already been fixed as 05.11.1985, however, the same has been extended upto 31.03.1986. The relevant portion of the minutes recorded by the Committee dated 11.03.1986 reads thus:

"7.The Members have brought to the notice of the Committee that some genuine persons who are not able to apply so far, may be allowed to apply and some more

time may be given to them. The last date was 5.11.1985. Now it has been decided finally to extend the time limit upto 31.3.1986. It has been brought to the notice of Members specifically that there will be no extension of time hereafter and 31.3.1986 is the final date. It has also been decided that all the persons who wish to apply now, have to present their applications to the Chief Minister's Office before 31.3.1986."

16.Only based on this recommendation having been made by the Committee on 11.03.1986, it seems that, the State Government has now taken a stand that, after the said date i.e., 31.03.1986, no application is entertainable and therefore, since the application of the petitioner was admittedly made only in the year 1996 i.e., 10 years after the cut off date, the said application was rejected. In this context, this Court wanted to know as to what is the sanctity of the recommendation made by the Committee in its meeting held on 11th March 1986. Therefore, in order to ascertain the same, this Court already directed the respondent Government to file necessary documents to clarify as to whether the recommendation made by the Committee dated 11.03.1986 has been accepted by the State Government and if so, on such acceptance, whether the State Government issued any subsequent Government Order making an amendment in the Rule issued in G.O.Ms.No.51 dated 20.07.1970 fixing the last date or cut off date as the said cut off date or last date, as has been fixed by the Committee, has never been originally issued since 1970.

17.In response to the said order, after getting written as well as oral instructions, the learned Special Government Pleader appearing for the Government would contend that, no such amendment has been made in the Rule or the Scheme and therefore, what has been the cut off date or last date recommended or fixed by the Committee, has been taken as if the last date and they have acted upon. And all these years, since the said cut off date have been acted upon by the State Government based on the recommendation by the Committee, the same cannot be expected to be inserted afresh in the Notification or Scheme of the year 1970. Therefore, based on such practice having been in vogue for the past more than several years, right from the date of recommendation made by the Committee in the year 1986, the applicants, not only the petitioner, but anyone who make subsequent to the cut off date, were not entertained or being entertained and therefore, such a view since have been taken by the Pondicherry Government to entertain the application only filed before the last date or cut off date, the application now filed by the petitioner beyond the said last date or cut off date cannot be entertained, therefore, the same was rejected,

she contended.

18.If the Freedom Fighter of Pondicherry State become entitled to seek for Freedom Fighter Pension, that rights flow to such Freedom Fighter only from the Scheme framed by the State Government, which is nothing but the Rule of 1970. What is the import of such Rule has been discussed herein above, where, under Rule 3, it has been stated that, these rules shall come into force from 1.4.1970. That means, if at all anyone makes an application to get Freedom Fighters Pension on the very date, where the Rule comes to force i.e., on 01.04.1970 and if he is the genuine Freedom Fighter, in whose favour the State Government come forward to sanction the pension, that would be applicable only from 01.04.1970 not prior to that. That means even though the freedom struggle was taken place in the early 1950's, the Freedom Fighters are not entitled to get pension from that date and they would be entitled to get such pension only from 01.04.1970, that is the import of the date mentioned in Rule 3 of the Rules.

19.But no such Rule is available to have a last date to make an application to get the Freedom Fighters Pension.

20.Though a decision has been made to make a recommendation in the Committee's meeting dated 11.03.1986, unless and until such recommendation having been accepted by the State Government and who issued a G.O. to that effect making an amendment in the Scheme, in the eye of law, such a cut off date or last date cannot be put against any such applicant like the petitioner.

21.The reason being that, the job entrusted to the Committee has been clearly demarcated under the Notification issued in G.O.Ms.No.89 dated 25.11.1977, which have already been quoted herein above, wherein no such date has been made as the cut off date for receipt of applications. When that being so, on what basis, the Committee has made a recommendation is not known. Moreover, the Freedom Fighters Committee, in this regard, has been constituted only to do the job, as has been enumerated under G.O.Ms.No.89 dated 25.11.1977. Moreover, the said Committee itself was constituted only in consonance with Rule 11 of the Rules, which reads thus:

"11.On receipt of application from a freedom fighter for the grant of pension, the Government may cause such enquiries as demand necessary to be made regarding the eligibility."

22.So if an application is made by a Freedom Fighter, a minimum enquiry is a must to satisfy that, whether such a seeker of Freedom Fighter Pension is eligible or entitled to or not to get such a Freedom Fighters Pension and that is to be

ascertained by the State Government and only for the said purpose, this Freedom Fighters Committee was constituted. Therefore, the area where the Freedom Fighters Committee can have a business is within the four corners of Rule 11 read with G.O.Ms.No.89 dated 25.11.1977. Therefore, beyond which, the Committee cannot act upon. Assuming that, the Committee can make some recommendation in respect of certain peripheral areas and one of such recommendation is to fix a last date or cut off date and the same having been recommended, whether it is to be accepted by the Government or not is concerned, it is for the Government to accept and to insert in the Rule. The reason being, in the Rule, the commencement of the Scheme has been specifically mentioned in Rule 3 as 01.04.1970, however, no such cut off date or last date has been fixed in the Rule to close the receipt of application. Therefore, it become a dire necessity to make it in the Rule if at all the Government wants to fix the last date for receipt of application. In the absence of any such Rule, merely on the basis of the recommendation made by the Freedom Fighters Committee in its meeting dated 11.03.1986, the State Government ought not to have taken the 31.03.1986 as the last date or cut off date for receipt of application from the Freedom Fighters Pension Seekers.

23. Therefore, this Court is of the considered view that, the said cut off date i.e., 31.03.1986 taken into account by the State Government on the basis of the recommendation of the Freedom Fighters Committee without having a Rule to that effect or amendment in the existing Rule, is totally unlawful and therefore, based on such unlawful prescription, the State Government cannot reject an application filed by a Freedom Fighter Pension Seeker after March 1986.

24. In view of the above, the reason stated in the impugned order rejecting the application of the petitioner on the one and only ground that, it has been filed beyond 31.03.1986 is unsustainable and therefore for that reason, the impugned order cannot be sustained.

25. In the result, the impugned order is quashed. The matter is remitted back to the respondents for reconsideration. While reconsidering the issue, the respondent State Government shall not once again put any embargo against the petitioner with regard to the cut off date or last date for making such application, as the said issue has been resolved by this Court in this order.

26. Therefore, while reconsidering the application of the petitioner, it is for the Pondicherry Government, either by constituting an adhoc Committee or on their own, to verify the genuinity of the claim made by the petitioner as to whether he

was the Freedom Fighter eligible for getting the Freedom Fighters Pension under the Scheme concerned of 1970 and accordingly decide the issue on merits and in accordance with law. While deciding the same, a reasonable opportunity of being heard shall also be given to the petitioner, for which, proper notice to be given to the petitioner.

27.After considering these aspects, as indicated above, orders to that effect shall be passed by the respondent Government. The needful, as indicated above, shall be undertaken within a period of three months from the date of receipt of a copy of this order.

28.With this direction, the Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The Chief Secretary to Government,
The Union Territory of Pondicherry,
Pondicherry.
- 2.The Welfare Officer,
Government of Pondicherry,
Chief Secretariat (Home),
Freedom Fighers Cell
Pondicherry.
- 3.The Government Advocate, (Pondicherry)
High Court of Madras,
Chennai.

+1cc to Mr.N.Suresh, Advocate, S.R.No. 42955

W.P.No.34254 of 2012

GMR (CO)
GN(19/01/2021)