

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 15610 of 2020 and
W.M.P. No. 19463 of 2020

M. Velu

... Petitioner

-vs-

1. The Government of Tamil Nadu,
Represented by Additional Secretary,
Public (Political Pension) Department,
Secretariat, Fort St. George,
Chennai.
 2. The Collector of Thiruvallur,
Thiruvallur - 602 001.
 3. The Tahsildar of Ponneri,
Ponneri - 601 204.
- Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the record of the first respondent pertaining to the order dated 04.07.2016 made in L.R. No. 32445/AO-3/2013-26 and quash the same and direct the first respondent to provide the State Freedom Fighters Pension from the date of the application along with the arrears.

For Petitioner : Mr. V. Nandagopalan

For Respondents : Ms. R.J.Radhika
Government Advocate

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O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the record of the first respondent pertaining to the order dated 04.07.2016 made in Letter No. 32445/AO-3/2013-26 and quash the same and direct the first respondent to provide the State Freedom Fighters Pension from the date of the application along with the arrears.

2. That, it is yet another case of unfortunate freedom fighter at the age of 96, before this Court.

3. That the petitioner viz., M. Velu, S/o. Late Manickam, was born in Burma in the year 1924 i.e., on 10.01.1924. He studied in a school called 'Burma Muslim Matriculation School', Kandawglay, Rangoon, Burma, for some period from 10.06.1929 to 25.05.1933. He has completed V Standard and certificate to that effect has also been given by the said school. Thereafter, at his young age, he participated in the freedom struggle, especially by inducting himself as a member of Indian Independence League or Indian National Army headed by Shri Nethaji Subhas Chandra Bose and accordingly he was arrested and jailed by the British authority during the years 1945 and 1946 and he had been imprisoned in Central Jail at Rangoon and thereafter, he was released after several months of incarceration and only in the year 1970, he had returned to India and settled in Tamil Nadu.

4. In view of the said history around, as the petitioner is the freedom fighter, who fought for the Nation freedom, he applied to both State and Central Government for getting Freedom Fighter's Pension as under separate schemes Freedom Fighter Pension being envisaged and implemented by both State and Central Government. In this context, the petitioner seems to have made an application on 21.06.1987 before the composite Chengalpet District Collector, however after bifurcation in the year 1997, it has become part of the Tiruvallur District. Therefore, according to the respondent / District Collector, the application submitted by the petitioner dated 21.06.1987 seeking Freedom Fighter Pension from the State Government could not be traced. However, the subsequent application given by the petitioner during 2012 has been considered and acted upon.

5. In support of the claim for seeking Freedom Fighter Pension from the State and Central Government, the petitioner has produced the following documents:

(i) Transfer Certificate issued by the Burma Muslim Matriculation School dated 25.05.1933.

(ii) Personal Knowledge Certificate issued by Dr.(Col) Lakshmi Sehgal, I.N.A dated 25.08.2006.

(iii) Personal Knowledge Certificate issued by P.K. Servai (INA), State President of Tamil Nadu I.N.A. Forum dated 17.09.2008.

(iv) The Co-prisoner Certificate given by one S. Arockiyasamy, freedom fighter dated 09.12.2008 and similar Co-prisoner Certificate given by one T. Ramaiah, freedom fighter.

6. Based on these certificates submitted by the petitioner, it seems that, the case of the petitioner was enquired by the Revenue Department of the State Government, where, on 06.08.2012, Village Administrative Officer having conducted the local enquiry, has sent his report and subsequently, the Revenue Inspector, also on 07.08.2012 has sent his report and based on the same, one of the members of the State Review Committee, one Nallappan had recommended the case of the petitioner and accordingly, it was considered and recommended by the District Collector concerned i.e., Tiruvallur District Collector by proceedings dated 15.12.2015, that the petitioner can be considered for sanctioning the Freedom Fighter Pension of State Government.

7. However, the State Government having considered all the aforesaid, has come to the conclusion that, the supporting documents given by the petitioner for seeking Freedom Fighter Pension from the State Government are not acceptable documents and accordingly, they decided to reject the claim of the petitioner and passed rejection order dated 04.07.2016 in Letter No. 32445/AO-3/2013-26. Subsequently, on 06.07.2019, further report / recommendation was made by the District Collector concerned, since the issue was pending, the petitioner filed a Writ Petition in W.P. No. 16858 of 2018 before this Court.

8. A learned Judge of this Court, after having considered the claim of the petitioner as well as the stand of the respondents, i.e., both State and Central Government, passed the final order in that Writ Petition on 31.01.2020, where, after having taken note of the fact that the State Government rejected the claim of the petitioner, the order rejecting such claim can be furnished to the petitioner, against which, the petitioner can workout his remedy, insofar as the claim of the petitioner to get SSS Pension from the Central Government, the learned Judge having considered the same, has given a direction in the said order dated 31.01.2020, which reads as follows:

"7. Insofar as the Central Pension is concerned, it is admitted by the State Government that the Revenue officials including the District Collector have made recommendations and now, the file is pending with the State Government Secretariat. Therefore, the State Government has to forward the report to the Central Government for considering the claim of the petitioner for grant of Freedom Fighters Pension under the Central Scheme without loss of further time. Accordingly, the third respondent is directed to forward the report / recommendation received from the Revenue officials including the District Collector, Tiruvallur, to the Central Government

within a period of two weeks from the date of receipt of a copy of this order so as to enable the fourth respondent / Central Government to take a decision on the application filed by the petitioner and pass appropriate orders without loss of further time. On receipt of the communication from the third respondent, the fourth respondent shall pass appropriate orders within a period of eight weeks thereafter. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

9. Pursuant to the said order passed by this Court dated 31.01.2020, the State Government vide Letter No. 16223/PP-1/2018-11 dated 12.02.2020 has forwarded the request of the petitioner to the Central Government for consideration to grant SSS Pension to the petitioner. The said letter of the State Government dated 12.02.2020 reads thus:

"3. I am directed to state that the Hon'ble Madras High Court in its order dated 31.01.2020 had directed the State Government to forward the claim of the petitioner and the supportive documents as received from the District Collector of Tiruvallur District to the Government of India within two weeks from the date of receipt of copy of the order. It has further directed that the Central Government must pass appropriate orders based on the report of the State Government, within eight weeks from the date of receipt of proposals from the State Government.

4. In accordance with the direction of the Hon'ble High Court of Madras, the claim of Thiru. M. Velu S/o. Manikkam, residing at 1/470, Kumaran Street, Padiyanalur, Redhills, Chennai - 52 for sanction of Central Government Freedom Fighters Pension - along with supportive documents as received from the District Collector of Tiruvallur District are enclosed herewith for appropriate action at your end.

5. This may be treated as "MOST URGENT" since it involves compliance with the direction of the Hon'ble High Court in W.P. No. 16858 of 2018. A report on the action taken in this regard may please be intimated to the State Government at the earliest. The receipt of this letter and the enclosures may please be acknowledged."

10. At this juncture, since the State Government already expressed the inability, by rejecting the claim of the

petitioner, by order dated 04.07.2016, belatedly, the petitioner / freedom fighter has filed this Writ Petition, challenging the said order passed by the State Government.

11. Heard Mr. V. Nandagopalan, learned counsel appearing for the petitioner who would submit that, all certificates available with the petitioner have been produced to the State Authorities and the same having been considered by the State Authorities, the District Collector in fact, in the year 2015 has made recommendation and the same has not been considered properly by the State Authorities. The State Authorities passed the impugned order dated 04.07.2016 rejecting the claim of the petitioner.

12. In the meanwhile, since the State Government has not acted upon forwarding the request of the petitioner to the Central Authorities for sanctioning of SSS Pension, the petitioner filed the Writ Petition referred to above, where, a direction was given by this Court on 31.01.2020, pursuant to which, the State Authorities also by communication dated 12.02.2020 has recommended the same to the Central Government and now the matter is pending before the Central Government.

13. Be that as it may, the learned counsel would further content that, insofar as the rejection made through the impugned order by the State Government is concerned, they have stated that the documents filed by the petitioner / freedom fighter are not acceptable documents, based on the norms prescribed in this regard for sanctioning of the State Government Pension.

14. The learned counsel would further submit that, in order to establish the facts, when the petitioner was born and where he had been living during the relevant period, the certificate given by the school where the petitioner studied has been produced, further also, insofar as the claim made by the petitioner for having participated in the freedom struggle at Burma, during the relevant point of time, two Personal Knowledge Certificates issued by the reputed persons i.e., Dr.(Col) Lakshmi Sehgal (INA) and P.K.Servai were produced, apart from that, two Co-prisoners certificates given by K. Arokiasamy and T. Ramaiah, who were the freedom fighters and were in jail in Burma in the years 1945 and 1946, were also produced. Having accepted these certificates, the case of the petitioner was recommended by the District Collector in the year 2015, however the basis on which, now rejection has been made by the State Government through the impugned order is not acceptable and no plausible reason is given in the impugned order. Therefore, the learned counsel seeks indulgence of this Court to set aside the impugned order and remand the matter back to the respondents for

reconsideration.

15. Per contra, Ms. R.J. Radhika, learned Government Advocate appearing for the respondents has relied upon the counter affidavit filed by the second respondent dated 10.12.2020. By relying upon the averments made in the said counter affidavit, the learned Government Advocate would contend that, insofar as the Personal Knowledge Certificates given by Dr (Col) Lakshmi Sehgal and P.K. Servai are concerned, those certificates are not acceptable to the State Government for reasons that, in view of so many bogus certificates, Dr (Col) Lakshmi Sehgal had claimed that by using forged documents, several persons are trying to get Freedom Fighter Pension, therefore sometime in the year 1988, she had written to the State Government not to accept the certificate without verifying the other related documents of being the member of I.I.L or I.N.A. Therefore, the certificate given by Dr (Col) Lakshmi Sehgal was not accepted by the State Government.

16. The learned Government Advocate appearing for the respondents also submits that, insofar as P.K. Servai's certificate also, the same has not been accepted, as the place of the I.N.A Branch, in which the petitioner was attached, has been differently stated in each of the certificates. In view of the said controversy or contradiction, the genuinity of the certificate given by the said P.K. Servai was also considered to be doubtful one and also was not accepted.

17. The learned Government Advocate by relying upon paragraph 7 of the counter affidavit would contend that, in view of the prescribed rules for sanctioning of pension, two Co-prisoners certificates given in favour of the petitioner were not accepted and since none of the certificates were acceptable, the State Government has decided to reject the case of the petitioner and therefore, the said order need not be interfered with. Therefore, the impugned order can be sustained, she contended.

18. I have heard the submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

19. The petitioner, no doubt, had been in Burma, as he was born in 1924 and he had been in school from 1929 to 1933. These factors have been explained in the Transfer Certificate issued by the school, which has also been filed as one of the supporting documents. In respect of these documents, the State Government has not raised any dispute.

20. It is also the case of the petitioner that, he had returned from Burma to India and these factors have been enquired by conducting a local enquiry and the Revenue Department has given a report to that effect and forwarded the same to the State Government, therefore, there can be no dispute that the petitioner had been in Burma during the relevant point of time of the freedom struggle in the years 1945 and 1946. When Shri Nethaji Subhas Chandra Bose formed the movement I.N.A, number of people, especially in the Burma area, had joined and fought for Nation's freedom. In this context, number of such I.N.A. people had been arrested at various point of time in the years 1945 and 1946 and imprisoned in Burma soil, by the British Army or Authorities.

21. In this context, the petitioner also had been arrested during 1945 and 1946 and he had been in Central Jail of Burma, during the relevant point of time, i.e. from May 1945 to December 1945. These factors have been reiterated by the two Co-prisoners namely S. Arockiyasamy and T. Ramaiah. The said Co-prisoners certificates infavour of the petitioner are extracted hereunder:

CO-PRISONER CERTIFICATE

"I, Sri. S. AROCKIYASAMY, Ex.I.N.A son of Sri SOOSAI, resident at No. 29-A, Mothirappa Chavady, Pattukkottai Road, Thanjavur District, Tamil Nadu do hereby solely and sincerely declare that:-

I know M. Velu, Ex. I.N.A. Son of (Late) Manickam, resident of No.1/470, Kumaran Street, Padiyanallur, Chennai - 600 052, Tamil Nadu personally. The said M. Velu, Ex. I.N.A. has been a member of the defunct Indian National Army constituted by Nethaji Subash Chandra Bose in the Far East.

I was arrested by the British Forces and imprisoned at Central Jail, Rangoon (Burma) for the period from May 1945 to February 1946 and the said M. Velu, Ex. I.N.A. was a Co-prisoner with me in the said Central Jail, Rangoon (Burma) from May 1945 to the end of December 1945.

I am getting freedom fighter pension from the Government of India, Ministry of Home Affairs Order No. 29/MDS/1879/94/F.F/INA dated 20.11.1989 and the State Freedom Fighter Pension from the Government of Tamil Nadu Order No. 34/829/99 dated 02.09.1999.

Solemnly Affirmed and Signed
Before me on 09.12.2008

Deponent"

CO-PRISONER CERTIFICATE

"I, Sri. T. RAMAIAH son of Sri Thevar Ambalam, resident of Aladikumalai and Post, Pattukkottai Taluk, Thanjavur District, Tamil Nadu do hereby solemnly and sincerely declare that:-

I know M. Velu, Ex. I.N.A. Son of (Late) Manickam, resident of No.1/470, Kumaran Street, Padiyanallur, Chennai - 600 052, Tamil Nadu personally. The said M. Velu, Ex. I.N.A. has been a member of the defunct Indian National Army constituted by Nethaji Subash Chandra Bose in the Far East.

I was arrested by the British Forces and imprisoned at Central Jail, Rangoon (Burma) for the period from May 1945 to February 1946 and the said M. Velu, Ex. I.N.A. was a Co-prisoner with me in the said Central Jail, Rangoon (Burma) from May 1945 to the end of December 1945.

I am getting freedom fighter pension from the Government of India, Ministry of Home Affairs Order No. 29/3983/73/F.F/INA dated 20.11.1989 and the State Freedom Fighter Pension from the Government of Tamil Nadu Order No. 4871/70 dated 09.07.1970.

Solemnly Affirmed and Signed

Before me on 09.12.2008

Deponent"

22. In the said certificates, the Co-prisoners also have stated that, they have been in same jail during the relevant point of time, where the petitioner also had been imprisoned and he had been in the same jail between May 1945 to December 1945.

23. In respect of these two Co-prisoners certificates are concerned, the stand now taken by the respondents through the counter affidavit, supporting the impugned order, reads thus:

"7. It is humbly submitted that, the petitioner submitted Co-prisoner certificate from two freedom fighters namely T. Ramaiah and S. Arokiasamy and that it had been certified that the petitioner was imprisoned along with them from May 1945 to end of December 1945 as a Co-prisoner with them in Rangoon Central Jail. It is pertinent to point out that the above Co-prisoners certificates and Personal Knowledge Certificate of P.K. Servai are not acceptable documents for the sanction of State Freedom Fighter Pension as per the prescribed rules of sanction of pension."

24. It has been stated in the counter affidavit that, the Co-prisoners certificates are not acceptable documents for sanctioning the said Freedom Fighter Pension, as per the prescribed rules of sanction of pension.

25. As per the rules of the State Government, for considering the request of the freedom fighter to get the State Government pension, atleast one Co-prisoners certificate must be produced by the seeker of the freedom fighters pension and if such certifier is already recognized either by the State Government or Central Government that, he is a freedom fighter and accordingly he is given pension by both Governments or one of the Government and given certificate in favour of the freedom fighter seeker to the extent that such a freedom fighter had been in jail along with the certifiers, not less than even three weeks, that would be sufficient for the State Government to accept such Co-prisoners certificate.

26. These aspects have already been discussed in number of cases of similar nature, where, I had an occasion to decide a similar issue in W.P. No.14733 of 2020 dated 07.12.2020, where on that basis, the order of this Court having been accepted by the State Government for sanctioning the State Government pension to the pension seeker also subsequently, pension sanction order was passed.

27. When that being the position, on what basis, the State Government has not accepted the two Co-prisoners certificates given by the certifiers, whose genuinity was accepted by the Central Government and they having been considered to be freedom fighters, pension also sanctioned to them. Hence, the said certificates, without any plausible reasons, are not accepted by the State Government.

28. In the order dated 31.01.2020, the learned Judge of this Court, even in respect of forwarding the request of the petitioner to the Central Authorities for sanctioning SSS Pension, where it become a must to have atleast two Co-prisoners certificates, has given direction to the State Government that, without any loss of time, to forward the request of the petitioner along with Co-prisoners certificates for Central Authorities for considering the case of the petitioner for sanctioning SSS Pension.

29. Pursuant to the said order dated 31.01.2020, the State Government also by letter dated 12.02.2020, the relevant contents of which has already been quoted herein above, had forwarded the proposal to the Central Government also.

30. Having taken the said stand taken by the State

Government on prima facie, acceptance of the Co-prisoners certificates and other certificates filed by the petitioner, such a proposal to the Central Government for their consideration, also was sent, the present justification sought to be made by the District Collector through the counter affidavit on behalf of all the respondents justifying the impugned order in the year 2016, to reject the claim of the petitioner, cannot be accepted.

31. The District Collector of the same District having already considered the petitioner case, had made recommendation in the year 2015, which is also reflected in the impugned order and that being so, now the District Collector had taken a different stand in respect of the certificates.

32. Absolutely, no acceptable reason is available before this Court to take such stand by the State Government to sustain the impugned order, on the reason that, the Co-prisoners certificates are not acceptable documents.

33. The content of the Co-prisoners certificates produced before this Court in the typedset of papers, are already extracted herein above, which discloses that, the petitioner had been in jail along with two Co-prisoners, during the relevant point of time and the certifiers' genuinity also already been verified and confirmed and recognized by the State and Central Authorities and they are receiving the Freedom Fighter Pension. Hence, there can be no quarrel to accept the two Co-prisoners certificates issued in favour of the petitioner.

34. In that view of the matter, this Court has no hesitation to hold that, the impugned order is unsustainable and the impugned order is liable to be quashed and the matter can be remitted back to the State Authorities for reconsideration.

35. Resultantly, this Writ Petition is disposed of with the following orders:

"(i) That the impugned order is quashed and the matter is remitted back to the State Authorities / respondents herein for reconsideration.

(ii) While making such reconsideration, the respondents / Authorities including the State Level Committee and the District Level Committee shall take into account, the two Co-prisoners certificates referred to above submitted by the petitioner, as this Court finds no plausible reason available to reject those Co-prisoners certificates and accordingly pass necessary or

suitable orders sanctioning the Freedom Fighter Pension of the State Government to the petitioner. The needful as indicated above shall be undertaken by the State Authorities within a period of 60 days from the date of receipt of a copy of this order."

36. This Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Additional Secretary,
The Government of Tamil Nadu,
Public (Political Pension) Department,
Secretariat, Fort St. George,
Chennai.
2. The Collector of Thiruvallur,
Thiruvallur - 602 001.
3. The Tahsildar of Ponneri,
Ponneri - 601 204.

+2cc to Mr.V.Nandagopalan, Advocate, S.R.No.41576.

+1cc to the Government Pleader, S.R.No.41685.

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W.M.P. No. 19463 of 2020

MP(CO)
NRA(17/02/2021)