

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.25062 OF 2016

N.V.Vadivelu

... Petitioner

Vs.

- 1.The Secretary to Government of India
Ministry of Home Affairs
Parliament Street,
New Delhi - 110 001.
- 2.The Deputy Secretary Government of India
Ministry of Home Affairs
Parliament Street,
New Delhi - 110 001.
- 3.The Secretary to Government of Tamil Nadu
Public (Political Pension - I) Department
Secretariat,
Chennai - 600 009.
- 4.The Collector
Dharmapuri District,
Dharmapuri.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent No.129/Gen/02/TN/2012-FF (SZ) Government of India / Bharat Sarkar, Ministry of Home Affairs / Grih Mantralaya (FFR Division SX Section) dated 17.03.2016 and quash the same and direct the first respondent to grant pension to the petitioner under Swatantrata Sainik Samman Pension Scheme 1980.

For Petitioner : Mr.M.Selvam

For Respondents

1 and 2 : Mr.G.Karthikeyan (ASGI)

For Respondents

3 and 4 : Mr.M.Venkadesh Kumar
Government Advocate

O R D E R

The petitioner is a freedom fighter having participated in the struggle for the freedom for our Nation during Quit India Movement. For his participation, he underwent imprisonment in Allipuram Camp Jail at Bellary District, Karnataka, for a period of seven months. On that basis, he applied for pension under Freedom Fighters' Pension Scheme introduced by the State Government, on 30.05.1985. It was rejected by the second respondent on 23.07.1985 on the ground that it was received after the cut off date. Thereafter, the State Government passed an order in G.O.Ms.No.30, Public (Political Pension - II) Department, dated 07.02.1996, by which, they introduced a modified procedure regarding acceptance of the co-prisoner's certificate and other formalities. By complying with the requirement, the petitioner again applied on 09.08.2001 for pension. Since the said application was also rejected, he preferred a writ petition in W.P.No.2402 of 2004. This Court, following the judgment of the Hon'ble Supreme Court in R.NARAYANAN VS. UNION OF INDIA [AIR 1990 SC 746] directed the Government not to take hyper technical views and consider sanctioning of Freedom Fighters' Pension to the petitioner. Pursuant to the order passed by this Court, the Government, by its order dated 12.12.2012, sanctioned pension to the petitioner from 09.08.2001 viz., from the date of his application. Thereafter, the petitioner's case was recommended for pension under Swatantrata Sainik Samman Pension Scheme 1980 introduced by the Central Government. The Central Government called for reports and the fourth respondent recommended the case of the petitioner by his letter dated 24.04.2015. Again, the second respondent, not being satisfied with the secondary evidence produced by the petitioner, rejected his request for pension under Swatantrata Sainik Samman Pension Scheme 1980. Challenging the order of rejection dated 17.03.2016, the petitioner is before this Court.

2. The learned counsel for the petitioner would contend that the petitioner has involved himself in Quit India Movement and suffered imprisonment in Allipuram Camp Jail at Bellary District, Karnataka, from 15.10.1942 to 15.04.1943. He also produced certificate from the co-prisoners, who had undergone incarceration during that period in the same jail. He has also produced all the credentials, which were sought by the respondents, such as, certificate from Ex-MP/MLA and certificate from the prominent freedom fighter Personal Knowledge certificate etc. Having considered all these certificates, the second respondent should have granted pension. The rejection order is illegal. He would rely on a Division Bench judgment of

this Court in GOVERNMENT OF INDIA VS. M.KALIYAN [2019 (5) CTC 148]. The Division Bench has observed that when the co-prisoner's certificate is accepted by the State Government on scrutiny and acted upon, it cannot be tested again by the Central Government. The objection raised for grant of pension when it is already granted by the State amounts to hyper technical approach and therefore, directed grant of pension to the respondents therein. The appeal preferred by the Union was dismissed following various other judgments in the case of Freedom Fighters Pension.

3. I have considered the submissions.

4. In the instant case also, the second respondent has taken a hyper technical view that the certificates produced by the petitioner are not acceptable as the State and Central schemes stand in a different footing. The grant of sanction of pension by the State will not automatically entitle him for pension under Central Government Scheme. It is obvious that no one can produce primary evidence at this distance of time. The applications shall be processed only on the basis of secondary evidence. In that view of the matter, the Central Government cannot set a different standard of proof. A freedom fighter is a freedom fighter irrespective of the standard of certificate expected of him. As held by the Hon'ble Supreme Court and the Division Bench of this Court that once the State Government, on scrutiny, has accepted the genuineness of the certificates and acted upon it, those certificates cannot be rejected by the Central Government taking hyper technical views. It is repeatedly held that the freedom fighters should not be made to approach the Governments with begging bowls for pension. It is the duty of the State to go to their doorsteps and honour them for their contribution towards freedom struggle.

5. In the instant case, the petitioner is aged about 99 years as of today. He is not going to enrich him unduly by getting this meager amount of pension. It gives only the satisfaction that he is recognised for his participation in the Quit India Movement. The respondents have stuck to hyper technical views. In such circumstances, I have no hesitation to set aside the impugned order passed by the second respondent in the light of the judgment cited above.

6. Accordingly, the impugned order in proceedings No.129/Gen/02/TN/2012-FF (SZ) Government of India / Bharat Sarkar, Ministry of Home Affairs / Grih Mantralaya (FFR Division SX Section) dated 17.03.2016 passed by the second respondent is set aside and the first respondent is directed to grant pension to the petitioner at least during his lifetime. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

7. The Writ Petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

TK

To

- 1.The Secretary to Government of India
Ministry of Home Affairs
Parliament Street,
New Delhi - 110 001.
- 2.The Deputy Secretary Government of India
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- 3.The Secretary to Government of Tamil Nadu
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Secretariat,
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- 4.The Collector
Dharmapuri District,
Dharmapuri.

+1cc to Mr.M.Selvam, Advocate SR.No.21093

+1cc to Mr.G.Karthikeyan, Advocate SR.No.21268

+1cc to Government Pleader SR.No.21676

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W.P.NO.25062 OF 2016

SPD (CO)
GMY (16/03/2020)