

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.26365 of 2019

C.Sidhasamy

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary to Government,
Public (Political Pension-4) Department,
Fort St.George,
Chennai 600 009.

2.The District Collector,
Dharmapuri District,
Dharmapuri.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned proceedings passed in Na.Ka.No.23113/2011/Pa2 dated 20.07.2019 on the file of the second respondent herein, quash the same and consequently direct the respondents herein to grant freedom fighters pension to the petitioner herein with interest.

For Petitioner : Mr.K.Govi Ganesan

For Respondents: Mr.D.Suryanarayanan for R1 and R2
Additional Government Pleader

O R D E R

The petitioner is a freedom fighter aged about 92 years. He is aggrieved against the order of the second respondent dated 20.07.2019, rejecting the request of the petitioner for grant of freedom fighters pension under the State Scheme.

2. The case of the petitioner, in short, is as follows:

He took active participation in the freedom movement and underwent lot of physical and mental sufferings for the freedom of this country. He was arrested and imprisoned at Alipuram

Camp Jail for three months from 30.09.1942 to 30.12.1942. After independence, the petitioner is leading the life with poverty. Hence, he applied for freedom fighters pension before the first respondent on 14.05.2008 by enclosing necessary documents like Co-pensioners Certificate, Not Traceable Certificate issued by the jail authorities. However, the second respondent passed an order on 11.08.2017, rejecting his request. The same was challenged before this Court in W.P.No.28764 of 2017. By order dated 17.12.2018, this Court set aside the said order dated 11.08.2017 and remitted the matter back to the respondents to consider the representation of the petitioner in the light of the observations made therein and pass appropriate orders. Once again the second respondent rejected the request of the petitioner by passing the impugned order.

3. A counter affidavit is filed by the second respondent, wherein it is stated that non traceable certificate issued by the jail authorities is not only the basis for claiming the pension. The Government has directed that the applications for the grant of State Freedom Fighter Pension may be received for consideration from persons who are aged 70 and above as on 15.10.1988. The writ petitioner did not produce Co-prisoners certificate, who were incarcerated along with the petitioner during the relevant period. The petitioner age as on 15.10.1988 was only 65 years 9 months as per his horoscope.

4. Mr.Govi Ganesan, learned counsel for the petitioner submitted that the age of the writ petitioner at the time of his participation in the freedom fight movement cannot be the criteria for deciding his application for pension by fixing minimum age of 70 years as on the date of 15.10.1988. He relied on a Division Bench decision of this Court made in W.P.(MD) No.6412 of 2016 dated 15.12.2016 in support of such contention. Likewise, the learned counsel submitted that the reasons stated by the second respondent in rejecting the Co-prisoners certificate also cannot be sustained, as those reasons are based on mere presumption and assumption regarding variation in the signature of the Co-prisoner, who issued the certificate in favour of the petitioner.

5. Mr.D.Suryanarayanan, learned Additional Government Pleader appearing for the respondents, on the other hand submitted that the impugned order was rightly passed by the second respondent by considering all the facts and circumstances.

6. Heard both sides. Perused the materials placed before this Court.

7. The petitioner claims freedom fighters pension under the State Scheme. He claims that he was a participant in the freedom fight movement and in connection with such struggle, he was imprisoned between 30.09.1942 to 30.12.1942 at Alipuram camp prison. In support of his contention, the petitioner produced two Co-prisoner Certificate viz., one by S.K.Kaliappan and S.P.Koonmari. The second respondent has chosen to reject those two Co-prisoners certificate on the reason that the said S.P.Koonmari was not a member of the committee, entitled to issue such certificate. The second respondent also rejected the certificate issued by S.K.Kaliappan on the reason that signature of the said Kaliappan varies with other document. It is also found by the second respondent that the said Kaliappan died on 03.06.2006.

8. The counter filed by the respondents in this writ petition solely proceeded on the age of the petitioner and has not stated anything on the Co-prisoner certificate produced by the petitioner. Insofar as the objection regarding the age of the petitioner is concerned, I myself considered the said objection in W.P.(MD) No.6412 of 2016 dated 15.12.2016 in the case of other freedom fighters case and rejected the same by observing as follows:

"6. While considering the other objection, namely, the age of the petitioner at the time of participation in the freedom struggle is concerned, it is seen that at the relevant period in which he has gone underground, would certainly indicate that he would have completed the age of 18 years. Here again I would like to point out that this hyper technical objection raised by the second respondent 5 cannot stand in the way of disbursing the freedom fighter pension to the petitioner, more particularly, when such objection is not sustainable by considering the factual aspects of the matter including the verification of the Voter I.D.Card issued to the petitioner annexed in the typed-set of papers, indicating that the petitioner was aged 75 years as on 01.01.1995. Even assuming that the petitioner had not completed the age of 18 years at the relevant point of time, that can never be a disqualification, rather it has to be considered as a great sacrifice of a young boy in taking part in the freedom struggle. Further it is seen that similar objection raised by the second respondent in the case of another freedom fighter, namely, R.Paramasivam who filed a Writ petition before this Court in W.P.(MD)No.13594 of 2012, was rejected by this Court while allowing the said Writ petition. "

Therefore, I am not in a position to accept the contention raised by the second respondent regarding the age of the petitioner as on 15.10.1988, by saying that he has not completed 70 years. What is to be seen is as to whether the petitioner had participated in the freedom fight movement and suffered with imprisonment. If a person who is aged about 16, 17 or 18 years, had participated in the freedom fight movement at that relevant point of time and suffered the imprisonment, can it be said that he is not a freedom fighter? To decide such status, age cannot be the criteria but the intention and participation of such movement. Therefore, fixing the 70 years age as on 15.10.1988 has no relevance to achieve the object of paying the freedom fighters pension. In any event, the Co-prisoner Certificate issued by two persons clearly indicate that this person was imprisoned between 30.09.1942 and 30.12.1942. Merely because one of such person was not a member in the Committee constituted by the Authority for issuing such Certificate, it cannot be said that the suffering met out by the petitioner is false.

9. Likewise, in respect of the Certificate issued by S.K.Kaliappan, it is stated that his signature varies and that he died on 03.02.2006. It is seen that the said Kaliappan has issued the said certificate on 25.07.2003. Needless to state that unless the second respondent is in a position to disprove that the said certificate was not issued by the said S.Kaliappan, minor variant in the signature itself cannot be the reason to deny the claim of the petitioner going by the age of the person who issued the certificate. There is always a possibility of minor variation in the signature of old people from time to time. No legal heirs of S.K.Kaliappan was examined by the second respondent to establish that the said certificate was not issued by the said person. Therefore, I find that the order passed by the second respondent in rejecting the claim of the writ petitioner cannot be sustained.

10. Apart from the above reasonings, it is also to be noted that when this petitioner approached this Court earlier and challenged the order of the second respondent, the said writ petition was disposed of with a direction to the respondents to consider the claim of the petitioner and pass orders. Now, the second respondent herself passed the order rejecting the claim of the petitioner, which in my considered view, is not consonance with the earlier order passed by this Court in W.P.No.28764 of 2017. The second respondent at the best can be only a recommending authority while the first respondent Government is the competent authority to pass order on application for sanction of freedom fighters pension. Therefore, I find that the writ petitioner is entitled to succeed.

Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the first respondent to consider the claim of the petitioner and pass orders granting freedom fighters pension under the State Scheme from the date of the application within a period of four weeks from the date of receipt of a copy of this order, since it is stated that the petitioner is in death bed. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Public (Political Pension-4) Department,
Fort St.George,
Chennai 600 009.

2.The District Collector,
Dharmapuri District,
Dharmapuri.

+1cc to Mr.Govi Ganesan, Advocate, SR.No.17956.
+1cc to SPL GP SR.No.18233.

RSY(CO)
CSR: 04.03.2020

W.P.No.26365 of 2019

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