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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.392 of 2021

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.
- .. Appellants

Vs

1. N.V.Vadivelu
 2. The Secretary to Government of Tamil Nadu
Public (Political Pension-I) Department
Secretariat, Chennai - 600 009.
 3. The Collector
Dharmapuri District
Dharmapuri.
- .. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order made in W.P.No.25062 of 2016 on 10.3.2020.

Prayer in W.P.No.25062 of 2016: 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 Appellants

: Mr.K.Srinivasa Murthy
Senior Panel Counsel

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

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The matter pertains to the Freedom-Fighters' Pension Scheme of the Central Government.

2. The appellants question the judgment and order impugned dated March 10, 2020 on the ground that the writ petitioner in this case merely relied on a similar certificate as the one that he had used to seek the State pension on similar grounds. The appellants say that the Central scheme is completely at variance with the State scheme. While the Central scheme requires at least six months' imprisonment for any person to qualify to obtain pension, the State scheme requires the person to have suffered a three-month prison term.

3. The appellants challenge the order impugned on the ground that the Writ Court held that since the State Government had accepted the previous certificate relied upon by the writ petitioner, the State Government could not question the subsequent certificate of similar import, even though the Central Government may have sought the State Government's views thereon.

4. The Central Government may not have the machinery to ascertain the veracity of a certificate produced by an applicant seeking the freedom-fighters' pension. In such a scenario, the Central Government requires the State Government's opinion on the subject, based on the verification of the records. This is because old jail records are available with the State Government and the State Government can consult the same before verifying whether a certificate was appropriate or not.

5. It is nearly 74 years since Independence and however young the freedom-fighters may have been when they fought in the struggle or when they may have been imprisoned, only a handful of the genuine persons may still be alive. Many of the freedom-fighters suffered jail terms or incarceration without final adjudication or had to go underground for months together to avoid arrest or carry out what the rulers in those days would regard as nefarious and terrorist activities. It is possible that some applications are filed fraudulently. However, even if a genuine application were to be filed in recent times, say over the last 10 or 15 years or so, it would be difficult for the applicant to obtain a certificate or due corroboration from other acknowledged or acclaimed freedom-fighters.



6. At the end of the day, it is an amount of a few thousand rupees a month that a person qualifying under the scheme would obtain. Such expense is nothing for the Central Government, considering the huge amounts involved in today's day and world. It is possible that a genuine freedom-fighter, for want of adequate documents, may be deprived. While it is equally possible that some suspicious claimant may make merry by applying under the scheme, the object of the exercise should be to ensure that no genuine freedom-fighter is deprived for lack of proper documentation.

7. Given that only a few of the freedom-fighters may still be surviving, it may be judicious to err on the side of being liberal and allow a few disingenuous applicants to obtain the benefit so that no genuine freedom-fighter is deprived of the due despite the sacrifices made, for sheer want of documentation. The collective debt of the country to the freedom-fighters can never be repaid. If there is a leakage in the scheme that permits a few unwanted to gain undue benefits, that must be glossed over to ensure that no genuine person is left out. After all, the scheme can only last for the next ten years at the most. In the context of what the Indian economy is now worth, it can afford to commit the mistake and make payment to a few pretenders so that the real freedom-fighters do not lose out.

8. Considering that a degree of discretion was available to the Writ Court while assessing the matter and the discretion does not appear to have been exercised in a perverse manner, the judgment and order impugned cannot be interfered with. As a consequence, W.A.No.392 of 2021 is dismissed and the appellants are requested to expeditiously make the benefit due to the writ petitioner available in accordance with law. The time afforded to the appellants to comply with the order is extended by eight weeks from date.

There will be no order as to costs. Consequently, C.M.P.No.1551 of 2021 is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To:

1. The Secretary to Government of Tamil Nadu
Public (Political Pension-I) Department
Secretariat, Chennai - 600 009.

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+lcc to Mr.K.Srinivasamuthy, Advocate, SR.No.17457.
+lcc to Mr.M.Selvam, Advcoate, SR.No.17971.

W.A.No.392 of 2021

SS(CO)
CSR 24.03.2021