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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 02.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.15654 of 2020

and

W.M.P.No. 19500 of 2020

M.Velu (INA)

...Petitioner

Vs

1. The Under Secretary to Govt. of India,
Ministry of Home affairs,
Freedom Fighters Divisions,
2nd Floor, NDCC - II Building,
Jai Singh Road, New Delhi - 110003.
2. The Govt. of Tamil Nadu,
Rep. by Additional Secretary,
Public (Political Pension-I) Department,
Secretariat, St. George Fort,
Chennai.
3. The Collector of Thiruvallur,
Thiruvallur - 602001.
4. The Thahsildar of Ponneri,
Ponneri - 601 204.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent pertaining to the Order dated 02.03.2020 of the first respondent made in F.No.52/CC/11/2018-FF/INA and quash the same and direct the first respondent to provide the central pension from the date of the application along with the arrears.

For Petitioner : Mr.V.Nandagopalan

For R1 : Mr.S.Diwakar
Standing Counsel

For R2 to R4 : Mr.S.Arumugam,
Government Counsel



ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

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2. The petitioner herein claims freedom fighters pension on the ground that he was imprisoned in Rangoon Jail from May, 1945 to December, 1945 for being a member of the Indian Independence League in the Kambe branch formed by Shri Nethaji Subash Chandra Bose's Indian National Army, under Swatantrata Sainik Samman Yojana from the Central Government. His application was favourably recommended by the State Government. However, the Central Government had rejected his application through the impugned order dated 02.03.2020, predominantly on the ground that he had not enclosed the Jail Certificate evidencing his imprisonment, which is a requirement under the scheme.

3. The learned counsel for the petitioner submitted that non-enclosure of the Jail Certificate would not be fatal, in view of the decision of the Hon'ble Supreme Court in the case of Gurdial Singh Vs. Union of India and others reported in (2001) 8 SCC 8.

4. Per Contra, the learned Central Government Standing Counsel appearing for the first respondent submitted that the requirement of the scheme requires to be strictly followed by an applicant and since the petitioner herein had not enclosed the Jail Certificate, which is a primary document, the impugned order cannot be found fault with.

5. The learned Government Counsel appearing for the State submitted that the Revenue Divisional Officer, Ponneri, had conducted an enquiry and had submitted a report, based on which, the petitioner's application was forwarded on 06.07.2019 to the Central Government with a recommendation for grant of the pension.

6. The only ground on which the petitioner's application has been rejected is that he had not enclosed the Jail Certificate evidencing that he was imprisoned between May, 1945 and December, 1945 in connection with his involvement in the freedom struggle. It is the specific case of the petitioner that he was a member of the Indian Independence League in the Kambe branch of the Indian National Army (INA) and was imprisoned for freedom struggle between May, 1945 and December, 1945 in Rangoon Jail. In connection with such a claim, the petitioner had produced two Co-prisoners' Certificate, both dated 03.12.2008 from Shri.T.Ramaiah and Shri.S.Arokiyasamy, both of whom were also members of the INA. Apart from the Co-prisoners' Certificates, Personal Knowledge Certificate, dated 25.08.2006 was issued by



Dr. (Col.) Lakshmi Sehgal, evidencing that the petitioner was a genuine INA freedom fighter who had actively participated in the freedom movement in Burma. Another Personal Knowledge Certificate, dated 17.09.2008 on the same lines was also issued by the Tamil Nadu INA Forum.

7. The Hon'ble Supreme Court in the case of Gurdial Singh's case (supra) had taken note of the fact that it was most of the time difficult for the freedom fighters to produce the primary documents which were considerably old and the problem of getting those records from foreign countries were merely impossible. The Hon'ble Supreme Court had also observed that the pension payable under the scheme would be from the date on which the application is made. It is in this background, the Hon'ble Supreme Court had held that the case of the claimant under the Central Government scheme requires to be determined on the basis of probabilities and not on the touch-stone of the test of "beyond reasonable doubt". The relevant observation of the order reads thus:

"The scheme was introduced with the object of providing grant of pension to living freedom fighters and theirs families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any exception of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where thy had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukand Lal Bhandari's case (supra) observed:

"The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all of the country in the hour of its need. In fact, many of those who do no have sufficient income to maintain



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themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

The Court categorically mentioned that the pension under the scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job



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of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

8. A similar approach has also been taken by a learned Single Judge of this Court by placing reliance on another decision in the case of R.Ramalingam Vs. The Union of India passed in W.P.No.5521 of 2014 dated 21.06.2018, in the following manner:

"7. It is pathetic to note that the freedom fighters who deserve high honour and respect from the administrators and citizens of our country, are forced to go before them with begging bowls. Such situation is heavily condemned by the Honourable Supreme Court as well as by this Court in various cases. In P.S.Periaiah and others v. The Government of India, represented by its Under Secretary, Ministry of Home Affairs (FFR Div.) New Delhi 110 003 and another [W.P(MD)No.4609 of 2014, decided on 28.04.2017], my learned Brother Judge [V.Parthiban,J.] following several judgments of the Honourable Supreme Court and this Court, observed as under:

"16.It is an admitted fact that the original petitioner is 91 years old freedom fighter, when he filed this Writ Petition. The status of the petitioner as freedom fighter has been recognized and pension is also sanctioned and being paid to the petitioner by the State Government. In fact, even this claim for grant of pension under the samman scheme was also recognized by the Collector of District committee constituted for the said purpose."

9. By attaching the ratio laid down in the aforesaid cases, this Court is of the view that the petitioner herein, who is also aged about 97 years now, should not be made to run from pillar to post just because he does not possess the Jail



Certificate. The test of probability could be adopted by placing reliance on other certificates enclosed by the petitioner, namely the Personal Knowledge Certificate issued by Dr.(Col.) Lakshmi Sehgal, dated 25.08.2006; the Personal Knowledge Certificate issued by the Tamil Nadu Indian National Army Forum, dated 17.09.2008; the Co-prisoners' Certificates each dated 03.12.2008 from Shri.T.Ramaiah and Shri.S.Arokiyasamy respectively.

10. This Court is of the view that these certificates would be sufficient enough to come to the conclusion that there was much probability that the petitioner belongs to INA and was also imprisoned in the Central Rangoon Jail from May, 1945 to December, 1945. Accordingly, the petitioner can be declared as a freedom fighter who was under imprisonment during his involvement in the freedom struggle. Consequently, the petitioner would be entitled for the pension under the Swatantrata Sainik Samman Scheme.

11. In view of the ratio laid down by the Hon'ble Supreme Court in Gurdial Singh's case (supra), the reasoning adduced by the second respondent in rejecting the petitioner's application, cannot be sustained.

12. In the light of the above observations, the impugned order dated 02.03.2020 passed by the first respondent herein is quashed. Consequently, there shall be a direction to the second respondent herein to forthwith pass orders, sanctioning the freedom fighters' pension under Swatantrata Sainik Samman Scheme, as expeditiously as possible. The second respondent shall bear in mind that the petitioner is now aged about 97 years and hence shall take efforts to pass such orders and consequently disburse the arrears of pension from the date of the petitioner's original application, atleast within a period of one week from the date of receipt of a copy of this order. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

hvk/drm



To

1. The Under Secretary to Govt. of India,
Ministry of Home affairs,
Freedom Fighters Divisions,
2nd Floor, NDCC - II Building,
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2. The Additional Secretary,
The Govt. of Tamil Nadu,
Public (Political Pension-I) Department,
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3. The Collector of Thiruvallur,
Thiruvallur - 602001.
4. The Tahsildar of Ponneri,
Ponneri - 601 204.

+2ccs to Mr.V.Nandagopalan, Advocate, S.R.No.44136
+1cc to Mr.S.Diwakar, Advocate, S.R.No.44120
+1cc to the Government Pleader, S.R.No.44562

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