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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.20389 of 2020

K.Mariammal

...Petitioner

Vs.

1. The Union of India,
rep. by its Secretary to Government,
Ministry of Home Affairs,
Freedom Fighters Division,
First Floor, Lok Nayak Bhavan,
New Delhi - 110 003.
2. The Government of Tamil Nadu,
rep. by its Deputy Secretary to Government,
Public (Political Pension) Department,
Secretariat, Chennai - 9.
3. The District Collector,
Coimbatore District,
Coimbatore.
4. The Special Deputy Collector,
Social Security Scheme,
Coimbatore.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 4th Respondent dated 06.10.2020 passed in proceeding No.O.Mu.18061/2020/A1 and quash the same as illegal and consequently direct the Respondents to sanction Central Government Freedom Fighter Family Pension to the Petitioner as legal heir/dependent of the Freedom Fighter namely (Late) C.Kanniah.



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For Petitioner : Mr.S.Sukumar
For 1st Respondent : Mr.R.Rajesh Vivekananthan
For Respondents 2 to 4 : Mr.L.S.M.Hasan Fizal,
Government Advocate

O R D E R

Petitioner has come up with this Writ Petition challenging the impugned order dated 06.10.2020 passed by the 4th Respondent vide proceedings No.O.Mu.18061/2020/A1 and for a consequential direction to the Respondents to sanction Central Government Freedom Fighter Family Pension to her, as she is the legal heir of the Freedom Fighter namely (Late) C.Kanniah.

2. It is not in dispute that, the Petitioner is the wife of the Freedom Fighter viz. Late C.Kanniah. All India I.N.A. Committee, vide Government of India, Ministry of Home Affairs Letter No.4-6-61-Ests (C), dated 23.05.1961, has certified that, the said C.Kanniah was a member of the Indian National Army and was a political sufferer and as such, he is entitled to all the concessions allowed to other political sufferers. The said C.Kanniah received Tamil Nadu State Government Freedom Fighter's Pension and after his demise in the year 1988, his wife Mariammal, the Petitioner herein is receiving State Government Freedom Fighter's Pension.

3. In the meantime, the Government of India introduced a family pension Scheme viz. Swatantrata Sainik Samman Pension Scheme (SSSP), 1980 to the widows of the deceased Freedom Fighter Pensioners. As per the guidelines framed under the Scheme, as on 01.04.2014, no pension shall be sanctioned in the name of the freedom fighter after his/her death even if his/her matter was under examination. The said Scheme also entails that, no Life Time arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter.

4. The said Scheme was taken into consideration by the Punjab and Haryana High Court in the case of Chand Kaur vs. The Secretary, Ministry of Home Affairs vide judgment dated 04.03.2020, relevant portion of which, reads thus:

"1.5 Sanction of pension after the death of Freedom Fighter - No pension shall be sanctioned in the name of the freedom fighter after his/her death even if his/her matter was under examination. This also



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entails that no life time arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter.

11. Reading of Para 1.5 would show that the said provision mainly concern with sanctioning of pension in the name of a freedom fighter after his or her death, even in a case in which the matter is under examination. The said provision will not in any manner disentitle the dependent of a freedom fighter in making an appropriate application claiming dependent 6 of 12 pension, which is evident from the provisions under Para 5 of Annexure-A1 which reads thus:

5. Sanctioning the dependent pension to spouse or daughters of Freedom Fighter:- Dependent pension shall be sanctioned to the spouse or unmarried daughters only if their names were appearing in the original application form submitted by the freedom fighter or the sanction letter issued by the Ministry. If the freedom fighter marries or has a daughter, either own or adopted, after the sanction of the pension, then family pension to such spouses or daughter shall not be admissible.

12. Going by Para 5 of Annexure-A1 sanctioning of dependent pension to the spouse or daughters of the freedom fighter is permissible, if their names were appearing in the original application form submitted by the freedom fighter or sanction letter issued by the Ministry. Further Para 5.2.2 of Annexure-A1 provides that the dependent pension shall be paid from the date of application by the spouse/daughters and not from the date of death of the pensioner, which would also make it explicitly clear that, even after the death of the freedom fighter his wife/daughters are entitled for dependent pension under the SSS pension scheme.

As such, it is clear that even in case of the deceased freedom fighter, his/her



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eligible dependant is entitled to dependant pension and 7 of 12 the application for grant of pension is to be considered from the date the application was moved and claim was raised. The reasoning given by the State Government while rejecting the application of the petitioner, therefore, cannot be sustained and deserves to be set aside.

...

As a result, impugned order dated 23.12.2017 (Annexure P-9) passed by respondent No.3 is set aside. A direction is issued to respondent No.3 to forward the application of the petitioner with its report for grant of pension as a dependent of the deceased freedom fighter under the Scheme to respondents No.1 and 2 within a period of four weeks from the date of receipt of certified copy of this 11 of 12 order. Considering the fact that the petitioner is already more than 80 years of age, respondents No.1 to 2 are directed to consider and decide the application so received from respondent No.3 within a period of four weeks thereafter and grant the pension, if the petitioner is found eligible and entitled thereto, from the date of submission of the application with arrears along with interest @ 9% per annum."

5. In the case on hand, the main contention of the learned counsel appearing for the 1st Respondent is that, the Petitioner's husband has not mentioned about his dependents while applying for pension. This Court is of the view that, it is only a technical objection, moreso, when the benefits of Freedom Fighter's Pension have been extended to the Petitioner by the State Government.

6. Many of us who were born after 1947 may not be aware as to how the struggle for independence took place and we are enjoying the benefits of freedom and some are misusing it. It is not in dispute that, the Petitioner's husband was a freedom fighter and he had the benefit of pension and after his demise, his wife, the Petitioner herein is receiving State Freedom Fighter's Pension.



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7. To substantiate his stand, learned counsel appearing for the 1st Respondent relied on a decision of the Apex Court in the case of Union of India vs. A.Alagam Perumal Kone reported in 2021 SCC Online SC 126, relevant portion of which, reads thus:

"30. It may be true that, the 1st Respondent is getting pension as per the Scheme, mooted by the State, but, at the same time, to claim pension under the Scheme of 1980, the 1st Respondent has to furnish the required proof as contemplated under the scheme. When the claim is under a particular scheme, unless one fulfills the eligibility criteria for grant of pension, as mentioned in the Scheme, no Applicant can claim such pensions, as a matter of right."

8. As the Petitioner herein, who is the wife of the deceased freedom fighter, is already receiving State Freedom Fighter's pension, the finding rendered in paragraph 30 of the said decision may not be applicable to the facts of this case.

9. Learned counsel appearing for the 1st Respondent has also relied on yet another Apex Court decision in the case of Jagdamba Devi vs. Union of India reported in (2017) 3 SCC 688, to contend that, the 1980 Pension Scheme mentioned supra was to extend the benefits of pension to all the freedom fighters, as a token of respect to them. Relevant portion of the said decision is extracted hereunder:

"6. The learned counsel for the appellant contended that, the Respondent authorities adopted a hypertechnical approach while dealing with the case of freedom fighter and ignored the basic objectives of the scheme, which is to honour and benefit the kith and kin of the freedom fighters. It was contended that the contradictions and discrepancies noticed in the case of the appellant by the High Court are not material to deprive the appellant of her right to get pension. It was further submitted that the impugned order was passed in complete disregard of the findings of this Court in Gurdial Singh vs. Union of India, which is to the effect that, the standard of proof required in cases dealing with the Swatantrata Sainik Samman Pension Scheme, 1980, is not such which is required in a criminal case."



10. Extension of pension to the dependent after the demise of the freedom fighter itself is an ample proof that, the eligibility criteria to receive pension has been fulfilled. In the case on hand, when the freedom fighter has been recognized and when the Petitioner herein has been recognized as his spouse, standing on technicalities that, no Application has been forwarded by the State Government to the Central Government, will not serve the purpose. Illegality cannot be condoned, but irregularity can be condoned and benefits can be extended. The object of 1980 Pension Scheme is to benefit the kith and kin of freedom fighters. Mere contradictions and discrepancies may not be material to deprive pension.

11. The Petitioner herein is now 73 years old. Respondents need to realize that, old age memory fails and they may not know what to do. Due to old age, the Petitioner may not be in a position to read and understand the guidelines framed in the Pension Scheme. Without requisite documents, the State Government would not have extended pension to the Petitioner. It is an admitted fact that, the Petitioner is drawing State Government Freedom Fighter's Pension after her husband's demise. Merely standing on technicalities, the State Government cannot reject the request of the Petitioner.

12. Learned counsel for the Petitioner submitted that, the Petitioner is willing to make an Application seeking sanction of Central Government Pension and that, benefits may be extended to her from the date of making such Application.

13. Hence, this Court is of the view that, the impugned order dated 06.10.2020 passed by the 4th Respondent, rejecting the request of the Petitioner is not sustainable and the same is interfered with. The State Government is expected to forward the request of the Petitioner to the Central Government within one month from the date of receipt of a copy of this order and taking note of the factual situation, the Central Government is expected to extend the benefits of 1980 Pension Scheme to the Petitioner, in a broader perspective.

14. Since the Petitioner has filed all the documents in the typed set of papers, learned Government Advocate is expected to advise the State Government to forward the same to the Central Government without standing on technicalities.

15. Requisite documents may be called for from the Petitioner in order to enable the State Government to process extension of Central Government Freedom Fighter's Pension to her and the list of requisite documents may be furnished to the Petitioner.



In fine, the Writ Petition is allowed with the above direction and observation. No costs.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary to Government,
Union of India, Ministry of Home Affairs,
Freedom Fighters Division, First Floor,
Lok Nayak Bhavan, New Delhi - 110 003.
2. The Deputy Secretary to Government,
Government of Tamil Nadu,
Public (Political Pension) Department,
Secretariat, Chennai - 9.
3. The District Collector,
Coimbatore District, Coimbatore.
4. The Special Deputy Collector,
Social Security Scheme, Coimbatore.

+1cc to Mr.R.Rajesh Vivekananthan, Admin, S.R.No.30948

+1cc to Mr.S.Sukumar, Advocate, S.R.No.30757

+1cc to the Government Pleader, S.R.No.30830

W.P.No.20389 of 2020

SS(CO)
RGA(23/08/2021)