



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.15150 of 2020 &
WMP.Nos.18905 & 18906 of 2020

R.K.Venkatachalam

...Petitioner

Vs

1. The Under Secretary to Government of India,
Ministry of Home Affairs,
Freedom Fighters Divisions,
2nd Floor, NDCC - II Building,
Jai Singh Road, New Delhi - 110 003.

2. The Collector of Thiruvallur,
Thiruvallur.

3. The Tahsildar of Ponneri,
Ponneri.

4. The Government of Tamil Nadu
Rep. by Additional Secretary,
Public (Political Pension) Department,
Secretariat, St.George Fort,
Chennai.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the record of the respondent pertaining to the order dated 27.07.2018 of the 1st respondent made in F.No.52/CC/01/2018-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 Respondents : Mr.Sudhir Kumar,
Sr.Central Government
Standing Counsel - R1

Mr.D.Ravi Chander,
Spl. Government Pleader
for Mr.Jaya Prakash,
Government Advocate - R2 to R4



O R D E R

The petitioner is one Shri.R.K.Venkatachalam, who is 94 years old at the time when this order is passed. He challenges an order passed by the first respondent rejecting his request for pension under the Swantantra Sainik Samman Yojana Scheme (SSSY Scheme) that provides for a samman/pension in cases of those who have engaged in the Indian freedom struggle.

2.Entitlement under the Scheme is conditional upon the concerned person having suffered minimum imprisonment of six months (3 months in case of women and SC/ST freedom fighters) on account of participation in freedom struggle. The incarceration is required to be established in one of two ways. The first method is direct, by way of primary evidence that the concerned person had suffered imprisonment. Such primary evidence is required to be by way of an imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

3.In the event of primary evidence not being available, secondary evidence may be produced in the form of 2 co-prisoner certificates (CPC) from freedom fighters who had a proven jail suffering of a minimum of one (1) year and who were serving their sentences with the applicant in the same jail. The State Government/Union Territory concerned, after due verification of the claim and its genuineness, is also required to certify both the claim, as well as the availability/non-availability of the documentary evidences from the official records. In case the person certifying the incarceration being a sitting or Ex. M.P./M.L.A., only one certificate in place of the two was required.

4.Both the State and the Centre have made provisions for payment of pension to freedom fighters and the present petitioner has been assessed and found eligible for State pension which he is presently receiving. Since there are differences in the parameters to be applied as regards the State and Central Schemes, the mere fact that the petitioner has been found entitled to the State Scheme would not automatically entitle him for Central pension as well. There is no dispute on this settled position.

5.Applicants seeking Central Samman are mandated, in addition to the evidence required under the Scheme, to seek and obtain a recommendation from the State Government in respect of their eligibility under the Central Scheme. The State has recommended the petitioner's case pursuant to a decision passed in W.P.No.734 of 2018, by order dated 19.03.2018.

6.That apart, the State Level Screening Committee has



convened on two occasions, effectively disposing several applications for Central Samman either recommending or rejecting the claims. At the meeting held on 16.04.2022, the case of the petitioner was once again considered and found to be acceptable. This, however, has cut no ice with the Centre, that has proceeded to assess the petition based on the parameters of the Central Scheme, finding it wanting.

7. Admittedly, no primary evidence is available in this case. Had it been so available, it would consequently only require the petitioner to establish imprisonment of six (6) months. Secondary evidence has however, been produced in the form of two co-prisoners certificates, Shri.S.V.Subramani and Shri.K.Thiyagarajan. The certificates establish that i) they, along with the petitioner, were members in the Indian Independence League constituted by Netaji Subash Chandra Bose in the far East to the Kyanktan Syrian Branch, Rangoon, Burma, ii) they were arrested by British forces and imprisoned as prisoners in the Rangoon Central Jail, iii) their incarceration spanned May, 1945 to December, 1945 and iv) the petitioner was a co-prisoner with them in the Rangoon Central Jail between May and December, 1945.

8. The bonafides of the co-prisoners and genuineness of the statements in their certificates have not been disputed by R1. However, the Scheme provides that certification of a co-prisoner, to be acceptable, must require the co-prisoner to have been incarcerated for a minimum period of one year.

9. In the present case, their period of incarceration is only 8 months and hence, for this reason their certificates have been rejected and the petitioner's claim found unacceptable. No doubt, the provisions of the Scheme are required to be satisfied *stricto sensu*. However, the interpretation of the Scheme must be such that all provisions are in harmony.

10. All learned counsel concur upon the position that production of direct evidence of incarceration, by way of certificate from the Jail authorities, is impossible of compliance as at present. Thus, it is secondary evidence alone, if at all, that an applicant may obtain in support of the application. The condition in this regard is more rigorous, as the period of incarceration that the co-prisoner is expected to have undergone, is one year as against six (6) months.

11. In cases where certificates produced by the co-prisoners are accepted on all counts as in the present case, the period therein of incarceration of the co-prisoner, if it exceeds six months would clearly establish that the claimant has himself been incarcerated for a period of six months, which is the requirement under the direct method. This, in my considered view, would suffice to establish his eligibility for the pension.



12.In this regard, I draw support from two judgments of the Hon'ble Supreme Court in State of Tamil Nadu V. A.Manickam Pillai ((2010) 2 MLJ 413 and Surja V. Union of India (1991 SC 462) that have been referred to and applied by the Madurai Bench of this Court in Union of India V. K.Duraisamy and others ((2018) 8 MLJ 223).

13.In the aforesaid decision, secondary evidence had been produced by the petitioner therein that had been rejected on the ground that the co-prisoners had not undergone imprisonment for more than a year. This ground of rejection was found unacceptable on the ground that the genuineness of the certificates had not be doubted and hence there was no justification in rejecting the claim.

14.In line with the discussion as above, the petitioner is found eligible for the Central Samman/pension and the impugned order dated 27.07.2018 is set aside.

15.As regards the effective date for computation of pension, learned counsel for the petitioner would urge that the effective date be taken to be the date of application i.e., 12.10.1974.

16.However, Mr.RajeshVivekanandan draws attention to the judgment of the Hon'ble Supreme Court in the case of Union of India and another V. Kaushalya Devi ((2007) 9 SCC 525), wherein an identical question came to be answered by the Hon'ble Supreme Court stating that the grant of pension based upon secondary evidence, should be from date of order granting pension and not from date of application.

17.In the present case, the date of order of the District Collector recommending the case of the petitioner for Central Pension is 04.02.2003. Hence, applying the aforesaid ratio of the judgment of the Hon'ble Supreme Court, pension will be computed and paid over to the petitioner from 04.02.2003 onwards. Let the arrears be computed and paid over within a period of six (6) from date of this order.

18.This Writ Petition is allowed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Under Secretary to Government of India,
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Freedom Fighters Divisions,
2nd Floor, NDCC - II Building,
Jai Singh Road, New Delhi - 110 003.

2. The Collector of Thiruvallur,
Thiruvallur.

3. The Tahsildar of Ponneri,
Ponneri.

4. The Additional Secretary,
The Government of Tamil Nadu
Public (Political Pension) Department,
Secretariat, St.George Fort, Chennai.

+1cc to Mr.V.Nandagopalan, Advocate, S.R.No.27839

+1cc to the Government Pleader, S.R.No.27982

W.P.No.15150 of 2020 &
WMP.Nos.18905 & 18906 of 2020

NRL(CO)
RGA(27/05/2022)