



W.P.No.25092 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.25092 of 2015

A.Nagoor Kani

... Petitioner

Vs

1.The Under Secretary,
Government of India,
Ministry of Home Affairs,
Freedom Fighter Pension, I.N.A. Cell,
Loknayak Bhavan,
New Delhi – 110003.

2.The Deputy Secretary of Government of Tamil Nadu,
Public (Political Pension III),
Fort St George, Secretary,
Chennai-09.

3.The District Collector,
Chennai District,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the 1st respondent herein to grant Freedom Fighter Pension by the Central Government payable from the date of



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application (i.e) 26/09/1997 within the stipulated period prescribed by this Court pursuant to the representation dated 10.03.2015.

For Petitioner : Mr.M.Rajkumar
for Mr.T.Muruganantham

For Respondents : Mr.S.Diwakar (for R1)
Central Government Senior Panel Counsel

Mr.Alagu Gautham (for R2 & R3)
Government Advocate

ORDER

The petitioner is a super senior citizen aged 92 years in 2015. In the affidavit filed in support of the Writ petition, he claims to be a repatriate of Burma who had participated in the freedom struggle alongside of Netaji Subash Chandra Bose in the Indian Independence League (ILL), a wing of the Indian National Army (INA).

2. He submits that he was arrested by the British and confined in the Central Prison, Rangoon between May 1945 and November 1945. He had applied on 26.09.1997 to the 1st respondent, being the Under Secretary, Ministry of Home Affairs, Government of India for the grant of freedom fighter pension in terms of Swatantrata Sainik Samman Pension Scheme (Scheme),



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dated 15.08.1981. The scheme in force prior to the 1980 scheme was known as Freedom Fighters' Pension Scheme, 1972.

3. The application of the petitioner is yet pending and hence this Writ petition seeking a mandamus directing R1 to grant freedom fighter pension from date of his application being dated 26.09.1997 onwards.

4. Inter-alia, the petitioner also states that he had sought for grant of freedom fighters' pension from the State. This request had been considered by R2 & R3 and by an order dated 01.02.2014 issued by the 2nd respondent i.e. the Deputy Director to Government of Tamil Nadu Public (Political Pension-III), he has received freedom fighters' pension qua the State.

5. The procedure normally followed by the authorities for grant of Central Freedom Fighters' pension is to receive a recommendation from the State. This recommendation is to ensure that the claim made is correct and proper in all respects and also to establish the bonafides of the individual making the claim. The State Government in this case has recommended the claim of the petitioner under minutes dated 26.12.2020, wherein the petitioner figures at serial no.2, as follows:-



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“Thiru.Nagoorkani, has not appeared before the District Level Screening Committee due to illness. But his son Thiru.MohammedKasim appeared before the DLSC and submitted the documents present with him and found that the petitioner is receiving the State Freedom Fighters' pension. The primary evidences such as the imprisonment/Detention certificate were not submitted before the committee. Hence, the secondary evidence such as the co-prisoner certificates(2) were submitted by the petitioner's son and were verified by the DLSC. In that, the co-prisoner certificates(2) issued by the freedom fighters (i.e., the certifier) should prove their jail sufferings of one year and who should be the applicant in the jail. But, in the co-prisoner certificates, the certifiers i.e., freedom fighters have suffered only 7 months in the jail. However, as per the instructions of the Hon'ble High Court, considering the old age of the petitioner, may consider the request of the petitioner for the grant of Central Freedom Fighters' pension.”

6. With this recommendation of the State that has been forwarded to the Central Government, no further clarification or doubt remains. However, vide affidavit dated 16.08.2022 filed on behalf of R1, the claim made by the petitioner is denied on the ground that he lacks the necessary eligibility, the deponent stating that *'Such pensions have to come to an end at a certain stage'*.

7. The validity or otherwise of the petitioners' claim has to be tested on the basis of the terms of the Scheme itself, and the satisfaction of such terms by



the applicant. Learned counsel for the 1st respondent objects on the ground that there is no certification by the State evidencing non-availability of records.

8. He draws attention to clause 5 of a document entitled ‘Salient features of Swatantrata Sainik Samman Pension Scheme, 1980’, that states that secondary evidence will be considered only if supported by a Non-Availability of Records Certificate (NARC). However, a perusal of the Scheme does not anywhere indicate the requirement of any such certificate to decide the grant of the pension.

9. The Court will, in deciding this issue, be guided strictly by the conditions of the Scheme dated 15.08.1981, that provides for, at clause 7, proof of the claim in the following terms:-

“7. How To Prove the Claims (Evidence Required)

The applicant should furnish the documents indicated below whichever is applicable:-

(a) Imprisonment/Detention Etc.

Certificate from the concerned jail authorities, District Magistrates or the State Government in case of non-availability of such certificates co-prisoner certificates from a sitting MP or MLA or Ex-MP or ex-MLA specifying the jail period (Annexure – I in the application form.)

(b) Remained Underground:

- i. Documentary evidence by way of Court's/Government orders proclaiming the*



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- applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention.*
- ii. *Certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.*
- (c) *Internment or Externment*
- i. *Order of internment or externment or any other corroboratory documentary evidence.*
- ii. *Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available. (Annexure – II in the application)."*

10. Thus, upon production of a certificate from the co-prisoner which would evidence jail term, the condition under the Scheme stands satisfied. There is no dispute in the present matter that the petitioner has furnished the certificate of co-prisoner dated 31.08.2006 to following effect:-

"Co-Prisoner's Certificate

I, K.C.Ramasamy, Son of Chellaiah, Indian, aged about 80 years, and residing at No.300, 16th Street, Jeevanagar, Korrukkupet, Chennai – 600021, do hereby solemnly affirm and sincerely state as follows:-

- 1. That I know personally well from RANGOON BURMA by A.NAGOOR GANI, S/o.ABDUL RAHMAN, Indian Muslim and residing at No.222, 10th Street, Kamaraj Nagar, Korukkupet, Chennai-600 021.*
- 2. That the abovesaid A.Nagoor Gani has been attached to the Indian Independence League in DALLAH*



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BRANCH, Rangoon, Burma under the Chairmanship of Sri V.A.Rangaswamy during the above Freedom British Movement from 1943 to 1945.

- 3. I declare that I was arrested by the British forces and imprisoned in the Rangoon Central Jail and the said A.Nagoor Gani was a Co Prisoner with me in the said Rangoon Central Jail from May 1945 to November 1945 and for which the same had been imprisoned by me.*
- 4. I declare that I am a Freedom Fighter Pensioner and I am getting my FF Pension under Order No.29/MDS/1151/94-FF(INA) dt.29-4-1998 by the MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, New Delhi.*
- 5. I declare that as a freedom fighter the above said A.Nagoor Gani is entitled and eligible for both the pensions.*
- 6. I wish him all the success in his future career.*
- 7. The facts are true and correct.*

*Solemnly affirmed at Chennai
this the 31st day of August 2006
and signed his name in my presence*

Sd/-

Before me

Sd/-

S.Narayanan

Advocate & Notary

11. The genuineness of the above certificate is not in dispute, the State having accepted the same for grant of State pension. I thus see no further impediment to the grant of Central Pension to the petitioner.



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12. My view also finds support by a recent decision of the First Bench of this Court in W.A.No.1958 of 2019 dated 20.07.2022, wherein, the Bench, in very similar circumstances as before me now, has accepted the claim for pension on the basis of the certification by the State. The relevant paragraphs read thus:

"8. When the State Government, after due verification and satisfaction, have come forward to extend the benefit of the State Freedom Fighters' Pension to the respondent at the rate of Rs.50/- per mensem way back in the year 1970, the argument advanced by the learned Assistant Solicitor General appearing for the appellant before this Court that a mere grant of pension by the State Government to the freedom fighters' cannot be the foundation or reason to compel the Central Government to fall in line with the State Government for providing pension, is liable to be rejected. Besides, in the case on hand, a perusal of the certificates given by the two co-prisoners-Sri V.Vadivelu and Sri N.Packirisamy would clearly show that they have not only stated that the respondent's husband late Lakshmana Thevar was known to them, but, as a matter of fact, have specifically mentioned that when they were undergoing imprisonment in the Chitra Camp Jail during the period from 15.08.1945 to 28.02.1946, the respondent's husband late Lakshmana Thevar was also similarly undergoing imprisonment in the same jail and that both the co-prisoners have been awarded pension by the Central Government. Therefore, the contention of the appellant that a recipient of the State Government Freedom Fighters' Pension will not automatically entitle the same applicant to seek a similar



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benefit from the Central Government Freedom Fighters' Pension Scheme, is unacceptable. As we have highlighted above, the State Government had verified the genuineness of the documents produced by the respondent in support of such claim and only after fully satisfying with the materials, the State Government had sanctioned the freedom fighters' pension to the respondent in the year 1970. When such being the factual position, the appellant/Central Government is not justified in denying the Central Government Freedom Fighters' Pension to the respondent/writ petitioner, when they have already granted the benefit of the said pension in the year 1977 itself to the similarly situated two co-prisoners, namely, Sri. V.Vadivelu and Sri N.Packirisamy vide the Ministry of Home Affairs order No.29/7670/75 FF.I.N.A dated 15.01.1977 and order No.28/7044/73 FF.I.N.A dated 12.01.1977, respectively. Moreover, in our considered view, the appellant ought to have construed the co-prisoners' certificates themselves as primary evidence while considering the claim of the respondent for grant of central pension, leave alone the fact that she is a recipient of the freedom fighters' pension from the State Government. Therefore, this Court is not able to find any merit in the appeal. Accordingly, confirming the order passed by the learned single Judge, the writ appeal stands dismissed. The appellant is directed to comply with the order passed by the learned single Judge within a period of four weeks from the date of receipt of a copy of this order. Consequently, C.M.P.Nos.13270 & 18742 of 2019 are closed. However, there is no order as to costs."

13. In the light of the discussion as above, R1 is directed to process the application of the petitioner forthwith and commence payments within a period



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of eight (8) weeks from today. Arrears to be computed and settled within the same period. This Writ petition is allowed. No costs.

kbs

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Index : Yes
Speaking Order

Dr.ANITA SUMANTH, J.

kbs

To

- 1.The Under Secretary,
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