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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.NO.17806 OF 2021

& W.M.P.NO.18998 OF 2021

M.S.Kairunisha

... Petitioner

Vs

1. The Additional Secretary to Government of Tamil Nadu,
Public (Political Pension-2) Department,
St.Fort George
Chennai - 600 009.
2. The Deputy Secretary to the Government of Tamil Nadu
Public (Political Pension - 3) Department,
St.Fort George,
Chennai - 600 009.
3. The District Collector,
Chennai District,
Chennai - 600 001.
4. The Tahsildar,
Tondiarpet Taluk Office,
Chennai - 600 081.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarid Mandamus, to call for the records of the proceedings of the 2nd respondent vide Government Letter No.24366/AO3 (1)/2019 - 6 dated 05.11.2020 and quash the same consequently direct the 1st respondent to pay Dependent freedom fighter pension payable by State Government of Tamil Nadu to the petitioner from the date of filing of the



petition i.e., from 20.02.2015 and to pay interest at the rate of 12% for the arrears amount and thus render justice.

For Petitioner : Mr.T.Muruganantham

For Respondents : Mr.D.Ravichander
Special Government Pleader

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O R D E R

The petitioner, a senior citizen, has filed this writ petition, challenging an order passed by the second respondent/the Deputy Secretary to the Government of Tamil Nadu, Public (Political Pension - 3) Department vide dated 05.11.2020 and a consequential direction to the Additional Secretary to the Government of Tamil Nadu, Public (Political Pension - 2) Department/R1 to pay dependent freedom fighter's pension from date of her application, that is, 20.02.2015, in connection with the service rendered by her father, Late Shri Sowgath Ali, a freedom fighter, to the Country.

2. The petitioner had approached this Court earlier by way of a writ petition in W.P.No.20426 of 2015 seeking a mandamus for payment of dependent freedom fighters pension. The said writ petition came to be closed by order dated 27.07.2015 noticing that proper procedure would be for the petitioner to approach the second respondent with an application along with required enclosures in support of her claim. The Court directed the respondents to consider the same and pass appropriate orders in accordance with law within a fixed time frame.

3. The petitioner's application came to be rejected challenging which order she approached this Court in W.P.No.14528 of 2017 seeking quash of order passed by the District Collector on 02.05.2017 and a consequential direction to recommend her case for grant of dependent freedom fighters pension. That writ petition came to be closed on 20.01.2018 with the following directions:-

"4. Accordingly, this writ petition is allowed and the impugned order is set aside by remitting the matter to the respondents with the following directions.

(a) The petitioner shall appear before the Regional Medical Board, Government Kilpauk Medical College & Hospital, Chennai, on 22.01.2018 or any other subsequent date as fixed by the Board for the assessment of her disability.

(b) The said Medical Board will assess the disability of the petitioner and communicate the same to the



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respondents within a period of seven days from the said assessment.

(c) On receipt of such report from the Medical Board, the respondent shall consider the claim of the petitioner for payment of State Freedom Fighter Family Pension under the category of differently abled persons from the date of her application and pass appropriate orders within a period of four weeks from the date of receipt of such report. No Costs. Consequently, connected miscellaneous petition is closed."

4. The impugned order has been passed once again rejecting her request, as against which the present writ petition has been filed.

5. When the matter had come up for hearing on 18.04.2022, the following order had been passed:-

"Admittedly there appears to be some delay in completing necessary paper work in this matter. While the petitioner has appeared before the Medical Board on 07.02.2018 and was referred to the Department of Physical Medicine and Rehabilitation to secure a report, it is unclear as to whether she has complied with the aforesaid requirement and completed the required procedure.

2. Seeing as she is senior citizen, she may appear before the Dean, Kilpauk Medical College, Chennai at 10.30 a.m. on 21.04.2022.

3. Let her be taken through the required procedure to enable her to go before the concerned Departments and secure the necessary recommendation. It is made clear that this order is passed solely to facilitate a speedy resolution of her grievance and nothing more. The assessment shall be made in line with the assessment to be made by the Medical authorities.

4. List this matter on 26.04.2022 under the caption 'for production of orders'

6. Pursuant thereto, the petitioner has been medically assessed and a memo dated 26.04.2022 has been filed by Mr. Ravichander confirming the disability of the petitioner as well as her entitlement to State Freedom Fighters pension. His memo reads thus:

This Hon'ble Court by its order dated 18.04.2022 directed the petitioner to appear before Medical Board. Pursuant to the same, the Petitioner appeared before the



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Medical Board and the board had assessed that the Petitioner is having a disability of 54%.

Thus the petitioner Tmt.M.S.Kairunisha D/o Late M.Soughat Ali is entitled to receive State Freedom Fighters Family Pension for the Differently Abled legal heirs of Freedom Fighters.

7. Her entitlement is thus not in question. The only issue that now survives is the effective date from which the petitioner should be entitled for pension. The claim of the petitioner is that her entitlement runs from the date of application, that is 20.02.2015.

8. Mr.Ravichander would object, arguing that her entitlement runs only from the present, as the intervening delay is on account of the failure of the petitioner to have submitted herself for medical examination. The delay is thus attributable to the petitioner and the authorities are not liable to be blamed for the same.

9. A careful perusal of records would show that the petitioner had, indeed, appeared before the authorities on 08.02.2018 for assessment. In the last medical report, the Medical Officer has noted as follows:

'Ref from RMB for Disability Certificates
64/F Informant
pt
Kathar 34/07
(Brother's son)
Weakness of Rt sided limits >10 yrs
Rt UL
then after 3M
RT LL
progressive,
Needs examination during sleep & awake period &
investigation
Please admit the pt. in Medical Ward
(thr. (not legible) delay Wd)'

10. Thus, the petitioner had been asked to admit herself in the medical ward for assessment. Learned counsel for the petitioner was requested to place on record material, if any, to establish that the petitioner had submitted herself to such admission and evaluation, or, at the least, made an attempt to comply with the direction of the medical officer on 08.02.2018. Nothing is placed on record to establish this position, that is, to indicate that the petitioner had appeared before the Board for evaluation/assessment. Thus, and in my considered view, there is no flaw in the order passed by the respondent granting



the pension only from date of order. As rightly contended on behalf of the respondent, the intervening delay cannot be attributed to the respondent and they cannot be held responsible for the consequences of the same.

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11. In light of the above, this writ petition is ordered holding the petitioner entitled to pension from the month of April, 2022. Connected writ miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. The Additional Secretary to Government of Tamil Nadu,
Public (Political Pension-2) Department,
St.Fort George
Chennai - 600 009.
2. The Deputy Secretary to the Government of Tamil Nadu
Public (Political Pension - 3) Department,
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Chennai District, Chennai - 600 001.
4. The Tahsildar,
Tondiarpet Taluk Office,
Chennai - 600 081.

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.29153

W.P.No.17806 of 2021 & W.M.P.No.18998 of 2021

SSI(CO)
PM/30/05/2022