

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.25669 of 2018

Seeni Margina

...Petitioner

vs.

1. The Joint Secretary to Government of Tamil Nadu,
Public (Political Pension III) Department,
Fort St. George, Chennai - 09.

2. 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 Certiorarified Mandamus, to call for the records relating to the proceedings of the 1st respondent vide Letter No.26551/A.O.3/2018-1 dated 13.08.2018 and quash the same and consequently direct the 1st respondent to pay the arrears of the pension payable from the date of representation i.e., 19.06.2015 till the order is passed on 01.03.2018.

For Petitioner : Mr.T.Muruganantham

For Respondents : Mrs.V.Yamuna Devi,
Special Government Pleader

O R D E R

The challenge in this writ petition is to the rejection of the claim of the petitioner for arrears of Freedom Fighters pension.

2. The petitioner who is the daughter of a Freedom Fighter Mr.Fakir Mohideen, who was receiving Freedom Fighters pension under the scheme for grant of pension to Freedom Fighters framed by the Government of Tamil Nadu under G.O.Ms.No.2064 dated 28.09.1966.

3. The said Fakir Mohideen died on 04.01.2007. Thereafter, the Freedom Fighters pension was paid to his wife, who also died on 21.04.2015. In 1995, the Government of Tamil Nadu extended the benefits of Freedom Fighters pension to the disabled dependents of a Freedom Fighter also under the G.O.Ms.No.748 dated 11.08.1995. Under the said Government Order, the children of Freedom Fighters who suffer from any disorder or disability of mind or who are physically crippled or disabled so as to render him or her unable to earn a living, even after attaining the age of 18 years in case of son and 21 years in the case of daughter, were entitled to get pension till their life time. Claiming that the petitioner has been crippled due to Tuberculosis and she is dependent on wheel chair, the petitioner made application for grant of pension on 19.06.2015.

4. The said request of the petitioner was rejected by the Government on 13.01.2016 on the ground that the Tuberculosis alone is not a ground for grant of pension under G.O.Ms.No.748 dated 11.08.1995. This order of rejection was challenged before this Court in W.P.No.7712 of 2016. This Court had by order dated 18.09.2017 allowed the writ petition directing the respondents to consider the claim of the petitioner for pension, taking into consideration the disability certificate and other documents produced by her. Subsequently, the Government by an order dated 01.03.2018 granted Freedom Fighters pension to the petitioner on the conclusion that she has suffered a disability and she will be unable to earn her living on her own. The Authorities started paying her pension from 01.03.2018 i.e., date of issuance of the order by the Government.

5. The petitioner on 25.07.2018 made a request for payment of pension from the date of her application i.e., 19.06.2015. This was rejected on the ground that the original scheme does not provide for payment of arrears and it is explicit that the pension sanctioned under the Rules will be paid from the date of issuance of the sanction order and it cannot be commuted in exchange for lump-sum. It is this rejection of the claim of the petitioner for the period between 19.06.2015 and 28.02.2018 i.e., subject matter of challenge in this writ petition.

6. I have heard Mr.T.Muruganantham, learned counsel appearing for the petitioner and Mrs.V.Yamuna Devi, learned Special Government Pleader appearing for the respondents.

7. The original records have been produced. No doubt, the Rules framed under the scheme viz., G.O.Ms.No.2064 dated 28.09.1966 provide for pension would be payable only from the date of sanction. Rule 14 of the said Rules reads as follows:

14. The pension sanctioned under these rules will be payable from the date of issue of the sanction order and it cannot be commuted in exchange for lump-sum.

8. However, Rule 15 enables the Government to consider payment of arrears to the claimant in exceptional circumstances. Rule 15 reads as follows:

15. In the case of the death of a pensioner, the amount of pension due till his date of death including unpaid arrears shall lapse. The Government may however consider the payment of arrears to a claimant in exceptional circumstances.

9. In the case on hand, the petitioner had made an application on 19.06.2015. Her application was rejected by the Government on a wrong premise on 13.01.2016. Thereafter, upon direction of this Court made in W.P.No.7712 of 2016, the issue was re-considered and the Government sanctioned the pension. The order sanctioning pension does not say that it shall take effect from the date of sanction.

10. Considering the fact that the petitioner had applied for pension on 19.06.2015 and the records available would show that the petitioner had suffered a disability well before the date of application. I am of the opinion that this case would come within the exceptional circumstances contemplated under Rule 15 of the Rules framed under the Scheme. We must also bear in mind the fact that the request of the petitioner was rejected unjustly in the year 2016 and the same was reversed by this Court and only thereafter the Government accepted the claim of the petitioner and granted pension.

11. Therefore, in my considered opinion, the Government should have treated this as an exceptional case and granted pension to the petitioner at least from the date of her application, if not from a prior date. The medical certificate and the disability certificate issued by the Doctor, which forms part of the records would show that the petitioner was confined to a wheel chair at least from 2012. Considering the totality of circumstances, I find that this is a fit case for applying exemption provided under Rule 15 of G.O.Ms.No.2064 dated 28.09.1966 and the petitioner should be favoured with an order

for payment of pension from the date of her application i.e., 19.06.2015.

12. Hence, this Writ Petition is allowed and the order impugned in this writ petition is quashed. There will be a direction to the respondents to pay arrears of pension from 19.06.2015 to 28.02.2018 within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Joint Secretary to Government of Tamil Nadu,
Public (Political Pension III) Department,
Fort St. George, Chennai - 09.
2. The District Collector,
Chennai District, Chennai.

+lcc to Government Pleader SR. No. 39625

+lcc to Mr.T.Muruganantham, Advocate SR. No. 39436

WP.No.25669 of 2018

PL (CO)
PR (15/07/2022)