



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :04.01.2022

PRONOUNCED ON :21 .01.2022

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.7215 of 2021

M.Sornam

... Petitioner

vs

1.The Union of India

represented by its Under Secretary (INA),
Ministry of Home Affairs,
Freedom Fighter Revenue Division (F.F.R.),
2nd Floor, NDCC, 2nd Building,
Jai Singh Road, New Delhi - 110 001.

2.The Union of India

represented by its Under Secretary (Policy),
Ministry of Home Affairs,
Freedom Fighter Revenue Division (F.F.R.),
2nd Floor, NDCC, 2nd Building,
Jai Singh Road, New Delhi - 110 001.

3.The Union of India

represented by its Senior Accounts Officer,
Pay and Accounts Officer,
(Pension and Miscellaneous),
Ministry of Home Affairs,
No.2/10, Jam Nagar House, New Delhi.

4.The Central Pension Accounting Officer,

The Central Pension Account Office,
The Government of India,
Trikoort H Complex,
Bhikaji Cama Palace (Behind Hotel),
Hyatt Regency, New Delhi-100 066.



- 5.The Accountant General,
(Accountant and Entitlement and Pension),
The Office of the Accountant General,
No.36, Anna Salai, Thenampet, Chennai - 600 018.
- 6.The State of Tamil Nadu represented by its
Deputy Secretary,
Public (Political Pension-III) Department,
St.George Fort, Secretariat,
Chennai - 600 009.
- 7.The District Collector,
The Office of District Collector,
Thanjavur District-613 006.
- 8.The Treasury Officer,
The Treasury Office, Thanjavur District.
- 9.The Branch Manager,
Canara Bank, Anna Nagar Branch,
Thanjavur District-613 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order, dated 21.08.2006 vide No.29/9/2006-FF(INA) of the first respondent and to quash the same as illegal, unconstitutional, unsustainable unfair, unjust, not proper, in-equality, contra to said scheme of Swatrantra Sainik Samman Pension, 1980, consequently, to direct the first respondent to sanction Family Freedom Fighter Monthly Pension to the petitioner as a widow of deceased husband, M.Muthaiya by authoring respondents 3 and 4 to grant and disburse the same to her from the month of her application, ie., from July 2004 with admitted dearness allowance till her life time in her Account No.1854101008858, Canara Bank, Anna Nagar Branch, Thanjavur District, Tamil Nadu - 613 006/9th respondent.

For Petitioner	:Mr.R.Suresh Kumar
For R1 to R4	:Mr.K.Sankararaman Central Government Standing Counsel
For R5	:No Appearance
For R6 to R8	:Mr.S.Kameswaran Government Advocate
For R9	:Mr.C.Karthik

**ORDER**

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking interference with an order of the first respondent/Under Secretary (INA) of the Union of India, Ministry of Home Affairs, Freedom Fighters Revenue Division (FFR), New Delhi, dated 21.08.2006 in No.29/9/2006-FF(INA) and to direct sanction of Family Freedom Fighters Monthly pension to the petitioner recognising the status of her husband, M.Muthaiya, a member of the Indian National Army, as a freedom fighter.

2.In the affidavit filed in support of the Writ Petition, the Writ Petitioner, M.Sornam, wife of M.Muthaiya and resident of Anna Nagar in Thanjavur District, stated that her late husband had served in the Indian National Army Section at Head Quarters Azad Hind Workers League (Burma), Rangoon and actively participated in the Indian Freedom struggle through the Azad Hind Street Workers League, Head Quarters (Burma), which was led by late lamented Nethaji Subhas Chandrabose. He was also issued a certificate. He was arrested while retreating with members of Indian National Army from Myikyina Front in Burma at Pegu, Burma and kept under detention in Pegu Detention Camp from May 1945 to end of July 1945 and thereafter, transferred to Rangoon Central Jail and incarcerated from August 1945 to till April 1946.

3.The petitioner stated that her husband was given Indian National Army registration No.92062 and his rank was Civilian/Sepoy. One of the co-prisoners, S.Raju, who was also a member of Indian National Army had suffered imprisonment from August 1945 to December 1945 had issued a certificate certifying to the detention of the husband of the petitioner.

4.The petitioner further stated that her husband was recognised by the State of Tamil Nadu for getting State Freedom Fighters pension and an order No.9571 was issued on 16.02.1981. During his life time, he had given representations on 03.02.1987 and on 05.06.1987 seeking Swatrantra Sainik Samman Pension. He unfortunately died on 09.07.1991.

5.Though the State Family Freedom Fighters pension scheme was extended to the petitioner by the seventh respondent/District Collector, Thanjavur, the petitioner had applied for Swatrantra Sainik Samman Pension scheme in April 2004 to the sixth respondent. She was informed that she must submit an application in a prescribed format through the seventh respondent/District Collector, Thanjavur.

The petitioner claimed that the seventh respondent/District Collector, Thanjavur, had recommended her application for grant of Family Freedom Fighters pension under Swatrantra Sainik Samman Pension scheme. She then applied to the sixth respondent/Deputy Secretary, Public (Political Pension-III) Department, State of Tamil Nadu in July 2004. Her application was forwarded to the first respondent on 17.10.2005. This was rejected by the first respondent on 21.08.2006 necessitating filing of the present Writ Petition.



6. She claimed that the reasons given for rejection, namely, that she had not given acceptable evidence to substantiate that her husband suffered imprisonment and that she had not given valid Non Availability of Records Certificate (NARC) from the Government of Tamil Nadu and that the co-prisoner certificate of S.Raju was not acceptable, have to be interfered with by this Court. She claimed that the Writ Petition should be allowed.

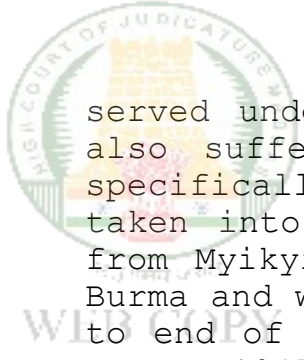
7. A counter affidavit had been filed on behalf of the first to fourth respondents by the Under Secretary, Ministry of Home Affairs, Freedom Fighters and Rehabilitation Division, New Delhi. It had been stated that the petitioner did not satisfy the eligibility criteria for grant of Swatrantra Sainik Samman Pension scheme. It had been further stated that the petitioner had claimed that her husband was imprisoned from April 1945 to February 1946, whereas, the co-prisoner, S. Raju, had given a certificate that her husband suffered imprisonment from May 1945 to December 1945.

8. It had also been stated that a Non Availability Records Certificate (NARC) had to be provided by the State Government. This certificate had not been forwarded by the petitioner. It had been stated that mere making an application cannot make the petitioner eligible for grant of Swatrantra Sainik Samman Pension. It had also been stated that the revised policy guidelines stated that no pension shall be sanctioned in the name of the Freedom Fighter after his death, even if his application was under examination. It had also been stated that the petitioner had filed the Writ Petition after a long period of 15 years. It had been stated that a positive recommendation of the State Government is not binding on the Central Government. It had been stated that the Writ Petition should be dismissed.

9. A counter affidavit had also been filed by the seventh respondent/District Collector, Thanjavur District, wherein, it had been stated that the co-prisoner certificate given by S.Raju indicated that the husband of the petitioner was a co-prisoner in Rangoon Central Jail from May 1945 to December 1945, which was for eight months and therefore, the petitioner was not eligible for grant of pension. It had been stated that the rejection of the application of the petitioner by the first respondent was proper and that the Writ Petition should be dismissed.

10. Heard arguments advanced by Mr.R.Suresh Kumar, learned Counsel for the petitioner, Mr.K.Sankararaman, learned Central Government Standing Counsel for first to fourth respondents, Mr.S.Kameswaran, learned Government Advocate for sixth to eighth respondents and Mr.C.Karthik, learned Counsel for the ninth respondents.

11. This is a case where a widow has knocked the doors of this Court seeking recognition of the services and sufferings of her late husband, E.Muthiya, who was a Sepoy in the Indian National Army and



served under the late lamented Nethaji Subhas Chandrabose and had also suffered imprisonment. In the affidavit, it had been very specifically stated by the petitioner that her husband had been taken into custody while retreating with the Indian National Army from Myikyina Front in Burma at Pegu, Burma and arrested at Pegu, Burma and was kept in detention at Pegu Detention Camp from May 1945 to end of July 1945 and then shifted to Rangoon Central Jail from August 1945 till April 1946.

12.The petitioner had been granted pension under the State scheme. She applied for family pension under the Swatrantra Sainik Samman Pension scheme. That application had been rejected. It had been rejected primarily for two reasons, 1)the certificate of the co-prisoner, S.Raju, indicated that the husband of the petitioner suffered imprisonment at Rangoon Central Jail from May 1945 to end of December 1945 and that this statement was contrary to the claim of the petitioner that her husband suffered imprisonment from April 1945 to February 1946, though in the affidavit, it had been mentioned that he was in Rangoon Central Jail till April 1946 and 2) a Non Availability Records Certificate (NARC) had not been produced from the Tamil Nadu State Government.

13.The first reason can be straightaway rejected, because, the co-prisoner, S.Raju, had been incarcerated in Rangoon Central Jail from May 1945 to end of December 1945. Therefore, he can give a certificate about another co-prisoner, who had been similarly incarcerated, only during that particular period, namely, from May 1945 to December 1945. Thereafter, S.Raju had been released, but the husband of the petitioner continued to be detained till April 1946. It is only obvious that, S.Raju, since he had been released in December 1945, cannot give any certificate about the further incarceration of the husband of the petitioner after December 1945.

14.I am unable to understand the reasoning of the respondents in rejecting the certificate issued by the said S.Raju. A careful perusal will show that S.Raju had given a truthful certificate certifying to the incarceration of the husband of the petitioner during the period when he himself was in jail. After he had been released, he cannot certify regarding a prisoner, who remained back in jail, since the only fact to his direct knowledge was the period between May 1945 and December 1945 and to that extent, he had given a certificate.

15.I am equally surprised that even the seventh respondent/District Collector, Thanjavur had also not examined this particular aspect, but had merely parroted the counter affidavit of the first to fourth respondents. The District Collector must realise that his own office had examined the certificates of the petitioner and had approved them. As a matter of fact, the State Government had recognised the fact that her husband had suffered for the cause of the nation and had granted State Government pension. It logically follows that the petitioner should also be granted the pension under the Central Government Scheme.



16. With respect to the second reason, namely, non production of Non Availability of Records Certificate (NARC) from the Tamil Nadu Government, I hold that this is an issue between the Central Government and the State Government and anyone of the first to fourth respondents, if they had bestowed a little interest and understanding on the plight of widows of the freedom fighters who suffered during the Freedom Struggle could have sought a clarification directly from the State Government.

17. It had been further contended by the respondents that since the husband of the petitioner had not been granted pension under Swatrantra Sainik Samman scheme, the petitioner cannot be considered for grant of such pension.

18. In **Gurdial Singh Vs Union of India and others**, reported in (2001) 8 SCC 8, the Hon'ble Supreme Court had observed as follows:

"7..... Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

8. We have noticed with disgust that the respondent authorities have adopted a hypertechnical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the Scheme intended to give the benefit to the sufferers in the freedom movement....."

19. In **State of Tamil Nadu and another vs A.Manickam Pillai**, reported in (2010) 2 SCC 669 while examining a similar case, the Hon'ble Supreme Court, while rejecting an appeal by the State of Tamil Nadu against an order of a Division Bench of this Court, which had recognised the respondent therein as a Freedom Fighter, had observed as follows:

"This appeal is an example and a reflection of the way we treat our freedom fighters inasmuch that while we applaud their contributions to the fight for freedom, deny them a pension, which, even if granted, amounts to a pittance and while many who apply are under financial distress, all without exception, wear it as a badge of honour and as a certificate of recognition of their efforts in the

struggle for independence."



20. In **Mukund Lal Bhandari and others vs Union of India and others**, reported in **AIR 1993 SC 2127**, the Hon'ble Supreme Court had observed as follows:

"7. As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependants and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit."

21. In **Union of India vs K. Duraisamy and others**, reported in **(2018) 8 MLJ 223: 2018 SCC Online Mad 2992**, a Division Bench of this Court had observed as follows:

"6. As noticed above, the Scheme for the grant of pension to the freedom fighters from central revenues was introduced by the Government of India to honour the Freedom Fighters. In fact, the pension is not only to lead the life of freedom fighters but also to the families, as



even if they are not alive, it has to be extended to the family members of martyrs. The benefit of the Scheme is extended to all Freedom Fighters as a token of SAMMAN to them.

7. It is pertinent to state that though in the absence of the primary evidence, secondary evidence could be placed on record to seek the relief, one of the reasons for rejection is non-production of the primary evidence, which is wholly unjustified. Further, the State Government had recommended the claim of the writ petitioner/first respondent. Hence, the question production of a valid "Non-Availability of Records Certificate (NARC)" does not arise at all. Despite the fact that the writ petitioner/first respondent has produced the certificate as required by the Scheme, the appellant had not considered the grant of freedom fighters pension to the writ petitioner/first respondent in its proper perspective. In such circumstances, the learned Single Judge, by placing reliance on a catena of decisions of the Apex Court, had directed the appellant to grant freedom fighters pension to the petitioner under the Scheme within a period of eight weeks from the date of receipt of a copy of this order.

8. The sheet-anchor of the rejection order is that the Co-Prisoners are not eligible to issue the certificates, since they have undergone the imprisonment for less than one year. When the genuineness or otherwise of the said certificates are not doubted by the appellant, he is not right in rejecting the request of the Freedom Fighter on flimsy grounds, as assigned in the order impugned before the writ court. The object of the certificate is for the purpose of affirming the imprisonment undergone by the applicant and the hyper-technical approach of the appellant in rejecting the claim of the Freedom Fighter cannot be appreciated. On the other hand, the appellant should undertake a survey, in collaboration with the State Governments, to find out the living Freedom Fighters, who were the torch-bearers of this nation, and extend the fruits of the Scheme, on its own, at this doorsteps. It is painful to see that the authorities are making those selfless nationalists to undergo rigorous process of red-tapism, quoting some rules."

22. The ratio in the observations referred supra would apply with full force to the facts of this case. The respondents have not stated that they doubt the genuinity of the claim of the petitioner that her husband served in the Indian National Army and that he suffered imprisonment. They only doubt the certificate issued by S. Raju. That doubt is unjustified as S. Raju had given a certificate



only for the period when he was incarnated along with the husband of the petitioner at Rangoon Central Jail.

23.The executive arm should realize that every step towards achieving the goal of independence required sacrifice and suffering of the freedom fighters, who, each, by taking their own small step, had played a part in achieving that goal. A fervent hope can only be expressed that there will be an attitudinal change in the mindset of the officialdom in recognizing at least, the widows of those valiant warriors. The Raj era had ended. Let Swaraj be given to these unfortunate victims who now suffer at the hands of the modern day bureaucrat.

24.Even in the instant case, the petitioner cannot be faulted for non production of Non Availability of Records Certificate. As stated by the Division Bench of this Court, the averment that such certificate had not been produced is wholly unjustified, since the State Government had recommended the claim of the Writ Petitioner.

25.In view of the above observations, the impugned order of the first respondent, dated 21.08.2006 in No.29/9/2006-FF(India) is interfered with and is set aside. The first respondent is directed to process the application of the petitioner and grant the pension under the Swatantrata Sainik Samman Pension Scheme, 1980, and grant pension with arrears from the date of application and till date. The pension shall be continued to be paid till the life time of the petitioner. The said exercise shall be completed and the pension shall be sanctioned within a period of twelve weeks from the date of receipt of a copy of this order.

26.With the said observations, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cmr

To

1.The Deputy Secretary,

The State of Tamil Nadu,

Public (Political Pension-III) Department,

St.George Fort, Secretariat,

Chennai - 600 009.



- 2.The District Collector,
The Office of District Collector,
Thanjavur District-613 006.
- 3.The Treasury Officer,
The Treasury Office, Thanjavur District.
- 4.Under Secretary (INA),
Ministry of Home Affairs,
The Union of India,
Freedom Fighter Revenue Division (F.F.R.),
2nd Floor, NDCC, 2nd Building,
Jai Singh Road, New Delhi - 110 001.
- 5.The Central Pension Accounting Officer,
The Central Pension Account Office,
The Government of India,
Trikoot H Complex,
Bhikaji Cama Palace (Behind Hotel),
Hyatt Regency, New Delhi-100 066.
- 6.The Branch Manager,
Canara Bank, Anna Nagar Branch,
Thanjavur District-613 006.
- 7.The Accountant General,
(Accountant and Entitlement and Pension),
The Office of the Accountant General,
No.36, Anna Salai, Thenampet, Chennai - 600 018.
- 8.The Senior Accounts Officer,
Union of India,
Pay and Accounts Officer,
(Pension and Miscellaneous),
Ministry of Home Affairs,
No.2/10, Jam Nagar House, New Delhi.

+1 CC to M/s.R.SURESH KUMAR, Advocate (SR-2274[F] dated 25/01/2022)

+1 CC to M/s.SPL.GP (SR-2389[F] dated 25/01/2022)

W.P. (MD)No.7215 of 2021
21.01.2022