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W.P.No.11562 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2023

Pronounced on : 15.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.11562 of 2020  
and WMP.No.14154 of 2020

1.G.Mahalakshmi  
2.G.Meena

... Petitioners

Vs.

1.The Government of India  
Rep by the Secretary  
Ministry of Home Affairs  
Freedom Fighters Division (FFD)  
Loknayak Bhavan, New Delhi - 100 011.

2.The Deputy Secretary  
Government of India  
Ministry of Home Affairs (FFR Division)  
II Floor, New Delhi City Centre-II  
Parliament Street  
New Delhi - 110 001.

3.The Secretary to Government  
Public (Political Pension-1) Department  
Secretariat, Chennai - 600 009.

4.The District Collector  
Madurai District  
Madurai.

... Respondents



W.P.No.11562 of 2020

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records pertaining to order dated 17.12.2012 passed by the second respondent rejecting petitioner's claim of SSS Family Pension as per SSS Pension Scheme 1980 and quash the same, and direct the second respondent to sanction Freedom Fighters' pension to the petitioners' deceased father S.Gopal from the date of his application dated 16.12.1982 with arrears accruing thereof with applicable rate of interest and to sanction family pension to the petitioner's mother Tmt.Chellam @ Chellammal as widow of deceased freedom fighter S.Gopal from the date of death of her husband i.e., 12.10.2000 to till her death i.e., 04.05.2004 with arrears accruing thereof with applicable rate of interest and to sanction family pension to the petitioners as they are the unmarried and unemployed daughters of the deceased freedom fighter S.Gopal from the date of death of their mother Tmt.Chellam @ Chellammal i.e., 04.05.2004 with arrears accruing thereof with applicable rate of interest and to pass orders.

For Petitioners : Mr.S.Pushpakaran

For Respondents : Mr.N.Ramesh  
Senior Standing Counsel for R1 & R2  
Mr.S.J.Mohamed Sathik  
Government Advocate for R3 & R4



W.P.No.11562 of 2020

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## **ORDER**

1. The petitioners herein claim SSS Family pension on the ground that the petitioners' father was a freedom fighter. This is rejected by the second respondent vide impugned proceedings dated 17.12.2012.

2. The case of the petitioners is that:

- a) Father of the petitioners was certain Gopal. He participated in the freedom struggle, and between 28.03.1942 and 21.12.1943, he was forced to remain underground, supporting the cause of our freedom.
- b) Years rolled by, and on the occasion of the silver jubilee of our independence, a Central scheme for the grant of pension to the freedom fighters was introduced. This scheme was later renamed as *Swatantra Sainik Samman Pension*, 1980.
- c) The petitioner's father first made an application for pension in 1982, but till his death on 21.10.2000, the 3<sup>rd</sup> respondent was essentially seen returning his application to the 4<sup>th</sup> respondent, on one pretext or the other.
- d) Earlier, the petitioner's mother one Chellammal, had moved this Court



W.P.No.11562 of 2020

WEB COPY

with an identical relief in W.P.No.38194 of 2002, and she died during the pendency of the petition. On 07.07.2006, this Court disposed of the matter, granting liberty to the legal heirs of the deceased Chellammal, the petitioners herein, to approach the authorities with a fresh representation.

- e) Thereafter, the petitioners had approached the authority concerned with a representation, but the same did not evoke any response till 2010. Hence, the petitioners have filed a second writ petition in W.P.No.8722 of 2011. In its order dated 17.07.2020, the learned Single Judge of this Court has recorded that the petitioners were refused pension in view of a communication dated 17.12.2012 issued by the Ministry of Home Affairs, Government of India. Since the petitioners expressed their intent to challenge the very communication, this Court gave them an opportunity and disposed of the petition.

3. Now, in this proceeding, the very communication of the Ministry of Home Affairs, Government of India, dated 17.12.2012 is under challenge.

However, at the time when this petition was filed, 2012, communication of



W.P.No.11562 of 2020

Ministry of Home Affairs, was replaced by 23.02.2017 notification of

Ministry of Home Affairs has come into force. Both sides placed their arguments on the basis of the 2017 notification.

4. The learned counsel for the petitioners would submit that they are eligible for claiming pension under Clause 1.5 of the Notification, dated 23.02.2017. The learned counsel also relied on paragraph 4 of the judgement of this Court in W.P.No.20389 of 2020, dated 01.07.2021, and Clause 5 of the guidelines for disbursement of pension to freedom fighters.

5. Citing Clause 1.5 of the guidelines for disbursement of pension to freedom fighters, the learned counsel for the respondent submitted that "***no pension can be sanctioned in the name of the freedom fighter after his or her demise, and added that even the petitioners' father was not granted any pension***". It was also argued that contrary to the contention now made, petitioners' father had not made any representation for pension as a freedom fighter, and that the petitioners have not produced any document to show that it was actually received by the respondent.



W.P.No.11562 of 2020

6.1 On 23.02.2017, the Ministry of Home Affairs, FFR Division had come up with a notification regarding disbursement of pension to freedom fighters. The relevant clauses pressed into service before this Court are Clauses 1.5 and 5. They read:

**"1.5 Sanction of pension after the death of Freedom Fighter :**

*No pension shall be sanctioned in the name of the freedom fighter after his/her death even if his/her matter was under examination. This also entails that no Life time arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter.*

**5. Sanctioning of dependent pension to spouse or daughters of Freedom Fighter:-**

*Dependent Pension shall be sanctioned to the spouse or unmarried daughters only if their names were appearing in the original application form submitted by the freedom fighter or the sanction letter issued by the Ministry. If the Freedom Fighter marries or has a daughter, either own or adopted, after the sanction of the pension, then family pension to such spouse or daughter shall not be admissible.*

6.2 A combined reading of Clause 1.5 and 5 of the notification dated 23.02.2017, make the following aspects evident :



W.P.No.11562 of 2020

WEB COPY

(a) for the heirs of a freedom fighter to obtain family pension, the freedom fighter should have been granted family pension in the first place, and that he should have mentioned the names of his dependants in his application, or in the nomination;

(b) that if a freedom fighter dies even while his application is under consideration, then he will not be entitled to any family pension.

7. The issue before this Court falls squarely within the bounds of what are herein above stated. Even as per the case of the petitioners, their father had not been granted any pension till his demise, and that it was not even in active consideration, because twice the 3<sup>rd</sup> respondent did not accept one of the certificates of the freedom fighters which the petitioner's father had enclosed with his application. So the case of the petitioner fails even before it crossed the first stage. To compound it, the petitioners were not seen to have been shown as his heirs and that they are eligible for family pension.

8. The decision to grant family pension, and regulating it falls within the realm of the policy decision of the Government. Going by the clauses



W.P.No.11562 of 2020

relevant for the current purposes which the parties rely on, it can be said that the only circumstance when the petitioners as daughters of a freedom fighter may be entitled to claim family pension is, only when the freedom fighter himself was a recipient of pension. It makes clear that pending consideration of any application seeking freedom fighter's pension, if the applicant dies, his heirs will not be entitled to any pension.

9. In the end, this Court does not find any merit in the petitioners' claim and hence, this petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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W.P.No.11562 of 2020

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N.SESHASAYEE.J.,

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Pre-delivery order in  
W.P.No.11562 of 2020

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