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W.A.No.3844 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:26.09.2023

Delivered on: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3844 of 2019

&

C.M.P.No.24245 of 2019

1. The Union of India
Rep by its Secretary
Ministry of Home Affairs
New Delhi

2.The Under Secretary
Ministry of Home Affairs
Freedom Fighters Division
Lok Nayak Bhavan, Khan Market
New Delhi-110 003

.. Appellants

Vs.

1.K.Subburaj

2.D.Joseph

3.S.R.Karuppannan

4.Raphel



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5.R.Raju

6.D.Victoriammal

7.Adailakam

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.6821 of 2001 dated 09.04.2011.

For Appellants : Mr.Venkatasamy Babu

For Respondents : R2,3,4 & 6-Died

Not ready notice reg R1 and 5

N.A for R7

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Union of India (Ministry of Home Affairs, New Delhi) is the appellant before us. The respondents filed the writ petition to quash the proceedings on the file of the appellant, declining to sanction freedom fighter's pension with effect from the date of their respective applications. The writ petitioners, all soldiers who served the Indian National Army made applications for grant of pension under the Central Government Pension Scheme that was being provided to freedom fighters. Though it is



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the case of the writ petitioners that the applications were considered favourably, pension was granted only with effect from 1989. According to the writ petitioners, pension ought to have been granted with effect from the respective date of their making the applications to the appellant.

2. The Writ Court, after hearing the parties allowed the writ petition and directed pension to be paid from the dates of the first application submitted by the respective petitioners and to also consequently pay the arrears.

3. The said order of the Writ Court is under challenge before us, on grounds that there was no evidence available on record to recognise the status of the writ petitioners as freedom fighters and that only on the strength of secondary evidence, namely, co-prisoner certificates, the appellant gave the benefit of doubt to the writ petitioners and granted pension prospectively. According to the appellant, therefore the request of the writ petitioners for anti-dating the pension was wholly unacceptable and unjustified as already the appellant had exercised the benefit of doubt in favour of the writ petitioners.



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4. We have heard Mr.Venkatasamy Babu, Standing counsel for the Central Government. Despite notices attempted to be served on the respondents, there has been no appearance on behalf of the respondents. Infact, we even directed the counsel who appeared for the writ petitioners before the Writ Court to get instructions, so that he could assist the Court in deciding the writ appeal. However, the counsel for the writ petitioners who had appeared in the Writ Court stated that despite making genuine attempts to get in touch with the writ petitioners, he has been unable to contact any of them.

5. In light of the said development, we decided to hear the writ appeal on merits. We have heard the counsel for appellants. We have also independently perused the records.

6. The main contention of the counsel for the appellant is that the writ petitioners have not been able to establish that they were imprisoned for the particular prescribed period of time, by providing adequate documentary evidence and that despite the same, the appellant has



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favourably considered the applications of the writ petitioners and sanctioned pension to them. In such circumstances, the writ petitioners cannot seek retrospective effect for the said grant of pension with effect from the date of their applications. The counsel for the appellant would also rely on the judgment of the Hon'ble *Supreme Court in Union of India and another vs Kaushalaya Devi* reported in (2007) 9 SCC 525 where the Hon'ble Supreme Court has held that when the government had chosen to recognize the status of any freedom fighter, giving a benefit of doubt, then the pension can only be sanctioned prospectively.

7. From the records, we are able to see that in and by proceedings dated 31.01.1983, the appellant themselves have decided to accept the certificates of co-prisoners from amongst renowned freedom fighters who had undergone imprisonment for not less than a period of one year in connection with the freedom struggle, those of them who are already receiving pension from the Government. Thus, it can be seen that the appellants have taken a conscious decision to accept the certificates of co-prisoners in order to sanction pension to freedom fighters who had made application for grant of such pension. In the present case, the petitioners



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have all admittedly produced co-prisoners certificate and the same was in line with the policy of the Government. Such being the case, the ratio laid down by the Hon'ble Supreme Court would not in any way benefit the appellant.

8. The Writ Court has also taken note of the decisions of the this Court in *N.Pallaniappan vs State of Tamil Nadu* reported in (2008) 3 *MLJ* 1382 and also Division Bench of this Court in *State of Tamil Nadu vs K.S.Annapparaja* reported in *CDJ 2007 MHC 1012* where consistently this Court had held that payment of pension would have to be from the date of first application. The Writ Court has discussed the contentions raised by the appellant and answered the same by giving reasons. We do not find any perversity in the said order of the Writ Court, warranting interference.

9. In the case on hand, the appellant department has not placed any relevant materials before this Court to show the bonafide for the delay in re-submitting application or furnishing particulars on the side of the respondents-freedom fighters. The application was submitted by the



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respondents-freedom fighters in the year 1982, but the pension was granted from the year 1989 as per communication from the Department, dated 25.09.2023 to the learned senior panel counsel appearing for the appellant. In the absence of any materials to show that the pension to be granted from the date of order by the appellant, the respondents-freedom fighters are eligible to be granted freedom fighter's pension from the date of their application i.e 25.08.1982. We make it clear that the present order cannot be cited as a binding precedent and the same has been passed on the peculiar facts and circumstances of the present case.

For all the above reasons, the writ appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
19.10.2023

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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(kpr)

Pre-delivery judgment in
W.A.No.3844 of 2019

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