



1

W.P.(MD)NO.19194 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.03.2023

PRONOUNCED ON : 21.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19194 of 2022

Mariammal @ Deivanayaki

... Petitioner

Vs.

1. The Secretary to Government,
Government of India,
Freedom Fighters Department,
Ministry of Home Affairs,
Lok Nayak Bhavan,
New Delhi -3.
2. The District Collector,
Tiruchirappalli District,
Collectorate,
Tiruchirappalli -1.
3. The Tahsildar,
Tiruchirappalli East Taluk,
Taluk Office,
Tiruchirappalli.
4. The Special Secretary to Government,
Public (Political Pension-I) Department,
Secretariat,
Chennai.

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Special Secretary to the Government, Public (Political Pension I) Department, Secretariat, Chennai, vide Government Letter No.40345/PP-I/2018-11 dated 08.06.2022, quash the same, consequently directing the respondents 2 and 4 to properly follow the direction of this Court in W.P.(MD). No.23228 of 2018 dated 15.12.2021

For Petitioner : Mr.S.K.Mani

For R-1 : Mr.K.Asok Kumar Ram,
Senior Panel Counsel.

For R-2 to R-4 : Mr.M.Lingadurai,
Special Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The case of the writ petitioner is that her father Kaliappan served in Indian National Army (INA) under the leadership of Netaji Subhash Chandra Bose and that she should be given Freedom Fighters' Pension. The petitioner had earlier moved this Court by filing W.P.



(MD)No.23228 of 2018. A learned Judge of this Court disposed of the

writ petition vide Order dated 15.12.2021 in the following terms:-

“ 9.This is an unfortunate case, which should not have entered the portals of the Court at all. The father of the petitioner had forwarded an application directly to the first respondent along with the requisite enclosures claiming that he was a Freedom Fighter and had participated in the Freedom Struggle, as member of Indian Independence League at Dallah Branch in Rangoon, Burma and that he was arrested by the British Army on 25.05.1945 and imprisoned in Rangoon Central Jail upto December 1945. He had also given the certificate of a co-prisoner in this regard. He had also enclosed INA Certificate of Honour issued by the Former Personal Secretary to Nethaji Subash Chandrabose. This application had been unfortunately forwarded directly to the first respondent.

10.The rules stipulates that the State Government should recommend grant of pension. The first respondent, therefore, forwarded the entire



WEB COPY



application to the second respondent to verify the details. I am deeply pained by the affidavit of the second respondent in questioning the credentials of the father of the petitioner. The petitioner had stated that the Tahsildar, Thiruverumber, had examined the genuineness of the certificates and had recommended that they are genuine in nature. But, the second respondent had taken a different stand. It is not known whether he actually signed the affidavit in the counter with knowledge of the contents or with deliberate intention to deny pension to the petitioner. I would straight away reject the contents in the counter affidavit of the second respondent.

11.The petitioner had stated that the Tahsildar, Thiruverumbur, had examined the documents filed by the petitioner. As a matter of fact, it is also seen that a notice had been issued to the petitioner to approach the second respondent with all the requisite documents.

...

13.It is very unfortunate that the Collector,



WEB COPY



Tiruchirappalli had also acted in the very manner which had been deprecated by the Honourable Supreme Court. I had actually been stated that the Honourable Supreme Court was disgusted with such hyper technical approach.

14.I would therefore, allow the Writ Petition and direct the petitioner herein to approach the second respondent with a representation in writing enclosing all the relevant documents and the application form as originally forwarded by the father of the petitioner to the Central Government. Such a representation in writing along with requisite documents should be forwarded by the petitioner herein to the second respondent/District Collector, on or before 10.01.2022. On receipt of the same, a direction is issued to the second respondent/District Collector, Tiruchirappalli, to issue notice to the petitioner to appear in person and thereafter, bestow personal attention to the grievance of the petitioner, examine the documents and if further enquiries are required, call upon the third respondent to



WEB COPY



do such enquiries and obtain a report from the third respondent or satisfy himself or herself with a personal enquiry and take a decision in this regard on or before 10.02.2022.

14.1.The second respondent is further directed to forward the recommendations, through proper channel, through the relevant Ministry in the Government of Tamil Nadu, to the first respondent and on receipt of the same, the first respondent should pass necessary orders within a period of four weeks thereafter.

14.2.It is hoped that the time lines aforementioned would be kept by the petitioner, second respondent and the first respondent. If the second respondent requires further clarifications, then they may be sought in writing and obtained in person and forwarded to the first respondent to take a final decision on grant of pension to the petitioner in view of the services rendered by her father, Kaliappan, who was a prisoner in Rangoon Central Jail between 25.05.1945 and December 1995.



15. With the said observations, this Writ Petition

is allowed. No costs. Consequently, connected miscellaneous petition is closed.”

3. In terms of the aforesaid order, the writ petitioner submitted representation dated 05.01.2022. However, the petitioner's request was once again rejected vide Government Letter No.40345/PP-I/2018-11 dated 08.06.2022. Challenging the same, this writ petition has been filed.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

5. Counter affidavit has been filed by the second respondent and the learned Special Government Pleader took me through its contents. He submitted that the impugned order is a reasoned one and no case for interference has been made out. He pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.



WEB COPY

7. The stand of the State Government is that only if the freedom fighter had availed pension, after his demise his legal heirs if eligible, can be granted pension. Once it is conceded that a destitute unmarried daughter of the freedom fighter is also eligible for Freedom Fighters' Pension, the fact that the parent did not avail pension is irrelevant. Thousands and thousands of persons fought for our freedom. But not all of them applied for pension. Many did not even bother about obtaining even the Certificate of Honour (Tamrapatra). Some of them in their later years faced economic difficulties and therefore, had to apply for pension. In this case, the specific stand of the petitioner is that towards the fag end of his life, her father applied for pension and even before it could be considered, he passed away. What is relevant is only the entitlement of the petitioner's father and his status as a freedom fighter. That he was not sanctioned or granted pension is irrelevant. The authority who passed the impugned order had thus misdirected himself in law.

8. The second reason for rejecting the petitioner's request was that she did not enclose the original documents. This reason again is unsound. The petitioner's father submitted an application dated 02.08.1999 and the



Government of India forwarded the same to the Government of Tamil Nadu on 01.09.1999 with a request to verify the genuineness of the claim. It appears that the papers have subsequently gone missing. The petitioner cannot be blamed for the same. The petitioner's father passed away in the year 2000. Those who had served in Indian National Army had formed a forum and the State President of the Screening Committee had issued Personal Knowledge Certificate on 05.08.2001 certifying that the petitioner's father was an INA freedom fighter. The said forum had also issued certificate to the petitioner herein as the legal heir of the deceased freedom fighter. In matters such as this, the issue has to be decided based on co-prisoner certificates. Such certificates were furnished in this case. There is no justification for negating the petitioner's claim.

9. Only two reasons have been given in the impugned letter. I find both the reasons to be unsustainable in law. The impugned communication is set aside.

10. This is second round of litigation. In the first round, a learned Judge of this Court had observed that the petitioner ought not to have



been made to knock the doors of this Court. Though the learned Judge did not issue any formal direction for grant of pension, the observations and findings found in the order dated 15.12.2021 in W.P.(MD)No.23228 of 2018 were more than sufficient to nudge the Government to favourably consider the petitioner's claim. The petitioner's request ought not to have been rejected.

11. I therefore direct the respondents to grant Freedom Fighters' Pension to the petitioner. The petitioner had moved this Court only in the year 2018. The respondents are directed to sanction and pay pension to the petitioner with effect from 01.06.2018. The petitioner is a senior citizen. I only hope that since the direction has been given for payment of pension only from 01.06.2018, the authorities will comply with the order passed by this Court. This writ petition stands allowed accordingly. No costs.

21.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU



To:

WEB COPY

1. The Secretary to Government,
Government of India,
Freedom Fighters Department,
Ministry of Home Affairs,
Lok Nayak Bhavan,
New Delhi -3.
2. The District Collector,
Tiruchirappalli District,
Collectorate,
Tiruchirappalli -1.
3. The Tahsildar,
Tiruchirappalli East Taluk,
Taluk Office,
Tiruchirappalli.
4. The Special Secretary to Government,
Public (Political Pension-I) Department,
Secretariat,
Chennai.



WEB COPY



12

W.P.(MD)NO.19194 OF 2022

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)No.19194 of 2022

21.06.2023