



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 10344 of 2023

And

W.M.P.No. 10314 of 2023

Ms.Thillai Lokanathan

... Petitioner

..Vs..

The Government of Tamil Nadu
Represented by its Secretary
Public (Political Pension-I) Department
Secretariat, Chennai – 600 009

... Respondent

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the letter of the first respondent dated 14.02.2023 in file No.1067/PP-1/2023-1, to quash the same and consequently direct the respondent to grant dependent freedom fighter pension to the petitioner from the date of filing of this Writ Petition.

For Petitioner

:: Mr. A.P.Surya Prakasam

For Respondent

:: Mr. S.J.Mohamed Sathik
Government Advocate



WEB COPY



ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to a letter of the first respondent / the Government of Tamil Nadu, represented by its Secretary, Public (Political Pension-I) Department Secretariat, Chennai, dated 14.02.2023 in file No.1067/PP-1/2023-1 and quash the same and direct the respondent to grant dependent freedom fighter pension to the petitioner from the date of filing of this Writ Petition.

2. The petitioner Ms. Thillai Lokanathan, is the daughter of Shanmuga Thevar. In her affidavit, she had stated that her father Shanmuga Thevar was a Freedom Fighter, running a diamond and gold jewelry business and was a rich Tamil business man in Burma Heeding to the call given by late Netaji Subash Chandra Bose to assist the Indian National Army to fight the British army, he joined INA civilian wing particularly the finance wing of INA and took an active part in the freedom struggle. He was also arrested by the British Government and he suffered incarceration in Rangoon Central Prison Burma and spent more than six months in jail as a Freedom Fighter. The mother of the petitioner was also arrested but released from Rangoon Central Prison, Burma, after spending one month in jail. It had been stated that the Government of India recognised the



father of the petitioner as a Freedom Fighter.

WEB COPY

3. The mother of the petitioner was forced to flee Burma and had sought refuge in Tamil Nadu with other refugees. It had been stated that after coming back to India, the mother of the petitioner had applied for Freedom Fighter Family Pension from the Government of Tamil Nadu as well as from the Government of India. The Government of India had sanctioned Freedom Fighters Family Pension to the mother of the petitioner in PPO No. MHAF0801048. The State of Tamil Nadu had also recognised the sacrifices made by the father of the petitioner and also granted State Freedom Fighter Family Pension to the mother of the petitioner till her death on 03.05.2013.

4. The petitioner had married but unable to bear the physical and mental torture suffered at the hands of her husband, had been forced to obtain divorce at Singapore and returned to India and settled with her aged mother. She had further stated that there was nobody else to take care of the petitioner after the death of her mother. She had been divorced from her husband. It had been stated that except for the Freedom Family Pension of the mother, she had no other independent income. It is under those circumstances that the petitioner had applied for the Freedom Fighters Pension to be



extended to her claiming to be a dependent divorced daughter.

WEB COPY

5. But however, the Government of Tamil Nadu had informed her on 14.02.2023 that her application could not be considered as she did not meet the eligible criteria. It had been stated that since she was a divorced daughter, she stood disqualified from being recognised as being eligible to be granted the Freedom Fighters Family Pension after her mother's death. Questioning that particular proceedings, the present Writ Petition has been filed.

6. A counter affidavit had been filed on behalf of the respondent wherein it had been stated that the claimant of a family pension should fulfill the twin conditions of falling into the eligible category of relationship that is widow/widower, unmarried daughter/mother or father and their dependents and must also be dependent on the deceased from the freedom fighter. It must also be certified that the dependent did not have any independent means of livelihood. It had been further stated that the claim of the Central Government Freedom Fighter can be processed by the Ministry of Home Affairs, FFR Division, Government of India by circular No.45/3/2014-FF(P), dated 06.08.2014 wherein it had been stated that the dependent pension shall be sanctioned to the spouse or



unmarried daughters and that widowed / divorced daughters, are not eligible for Samman Pension. Placing reliance on the said circular, the respondents have sought dismissal of the Writ Petition.

7. Arguments had been advanced. I have carefully perused the materials on record.

8. The fact that the petitioner's father Shanmuga Thevar was a Freedom Fighter and his sacrifices have been recognised by the Central Government and by the State Government cannot be either denied or disputed by the respondent. The fact that after his death, the mother of the petitioner, who had been granted family pension again cannot be denied or disputed. The mother of the petitioner died on 03.05.2013 due to old age.

9. It is contended by the learned counsel that though the father was a rich business man in Burma, he had responded to the call of late Netaji Subash Chandra Bose and had joined the Indian National army to fight the British Army. He also participated in the Freedom Struggle. He had been arrested by the Burma Police and he had been sent to jail in Rangoon Central Prison for more than six months jail. Even the mother of the petitioner was arrested but she had in jail only



for one month.

WEB COPY

10. The Government had recognised the services rendered by the father of the petitioner and had granted him pension. Later, the mother of the petitioner had also been granted pension.

11. The petitioner had married but later owing to various circumstances, was forced to obtain divorce from a Court in Singapore. It must also be mentioned that the mother of the petitioner had to flee Burma and take refuge in this State. After obtaining divorce, the petitioner having no other means and no other support to look after her, came back to Tamil Nadu and stayed with her mother. The pension which they received owing to the sacrifices of the father of the petitioner was the only source of income. After the death of the mother, since the petitioner's status also became worse, she also applied for dependent family pension. That was rejected on the ground that she was a divorced daughter. I am not able to understand the purport of that particular statement made by the respondent herein.

12. A daughter is a daughter whether she is married or unmarried. If she is married, she enters another house and gets



support for her future. If the marriage is dissolved, then the support which she expected to be rendered during her lifetime stood frustrated. She again has to be dependent on her parents for her financial and other needs.

13. The respondent had put up a clause that a widowed daughter or a divorced daughter would not be entitled for pension. When such an irrational condition is put up by the respondent, it is for the Court to step in and set right that particular irrationality. There is no logic or reason in not including a widowed daughter or a divorced daughter from being categorised as dependent on her parents or on her relatives or on the family in which she was born.

14. The learned counsel for the petitioner had placed reliance on the Division Bench Judgment of the **Delhi High Court** in **Review Petition No. 21 of 2022** in **LPA No. 476 of 2021, [Union of India Vs. Kolli Uday Kumari]**. By a Judgment dated 20.01.2023, the Division Bench had expressed views on the eligibility of a divorced daughter to be considered as dependent and eligible and entitled to receive dependent family pension which was paid to a Freedom Fighter. It had been very specifically observed that such pension was extended by the Government as recognition of the sacrifices made by a Freedom Fighter and that owing to such sacrifices, today we live in



a better world in this country.

WEB COPY

15. If the family members, a daughter or other dependent of such Freedom Fighter live in penury, then the obligation of the Government to extend the pension to such dependent is predominant.

16. We are now more than 75 years from the date of attaining independence. It would be practically impossible for a Freedom Fighter to be still alive but their contributions cannot be forgotten and wiped away from history. They can be remembered through their family members. If owing to various unfortunate circumstances, a daughter becomes a widow or gets divorced, then the Government has a duty to extend its arms to help such daughters.

17. The condition imposed by the respondent that a widow or divorced daughter will not be eligible to seek family pension or claim to be dependent has no logic and is straight away set aside by this Court.

18. I had mentioned about the Division Bench Judgment of the Delhi High Court. There is yet another Judgment of the Division Bench of the ***Punjab and Haryana High Court*** reported in ***2016 SCC OnLine P&H 15867 [Khajani Devi Vs. Union of India and Others]*** wherein it had been very clearly held that a divorced



daughter would be eligible for pension.

WEB COPY

19. The Special Leave Petition and also the Review Petition filed by the Union of India against the said Judgment were dismissed on 27.09.2019 and on 19.01.2021 respectively.

20. The reasoning of the Division Bench of the Delhi High Court in **Kolli Uday Kumari** referred supra is as follows:-

"32. Besides this, it has to be borne in mind that the Division Bench of the Punjab and Haryana High Court in Khajani Devi's case, in a somewhat similar situation, in our view, correctly ruled that the expression "unmarried daughter" included a divorced daughter. In this regard, the Division Bench of the Punjab and Haryana High Court made the following observations:

"5. The underlying object in the clause of the Scheme listing eligible dependents is that only one be granted the pension. Therefore, the authorities have to construe the admissibility of benefit from that angle. It is not the case that the daughters are excluded altogether. An unmarried daughter finds mention in the list of eligible dependents. It would, thus, be a travesty to exclude a divorced daughter. There



would be no rationality to the reason that the unmarried daughter can be included in the list of eligible dependents and a divorced daughter would stand excluded, particularly when she is the sole eligible dependent and thus, qualifies for the benefit, which is concededly made admissible only to one dependent. Even otherwise, we are of the opinion that a beneficial Scheme such as the one in hand should not be fettered or constructed by a rigorous interpretation which tends to deprive the claimants of the benefit to result in virtual frustration or negation of the laudable motive of the Scheme itself. We also notice that the Ministry of Defence has issued instructions dated 14.12.2012 (on record as Annexure P8) which included a divorced daughter in the category of eligible dependents for grant of liberalized/special family pension beyond 25 years. We may extract the same herebelow:

"2. The above matter is considered by the Government and it has been decided in consultation with Department of P&PW that unmarried/widowed/divorced daughter shall also be eligible for grant of liberalised/special family pension beyond 25 years of age subject to fulfillment of other prescribed conditions as hitherto fore."



6. Both the liberalized/special family pension and Swatantarta Sainik Samman Pension Scheme are intended to honour the valour of the 3 of 4 uniformed people who laid down their lives or suffered for the cause of the country. We would, thus, not place any demeaning interpretation on the Scheme to deprive the unsung heroes of the country of benefits meant to ensure a life of dignity to their dependents.

33. As is evident upon the perusal of the aforesaid extract culled from the judgement in Khajani Devi's case, the court adverted to Ministry of Defence's instructions dated 14.12.2012, which extended the benefits under the liberalized/special family pension beyond 25 years to a divorced daughter. The court, in our opinion, once again, correctly observed that if the intention was to honour those who laid down their lives or had suffered for the cause of the country, whether in uniform or otherwise, the expression eligible dependent should include a divorced daughter.

*34. The Supreme Court, while dismissing the SLP preferred by the UOI in **Khajani Devi's** case, did not simply dismiss it in limine. The court, after hearing the counsel for the contesting parties, via the order dated 27.09.2019 dismissed the appeal preferred by*



the UOI. The said order, being brief is extracted below:

"Delay condoned.

We have heard learned counsel for the parties. We are of the view that the impugned order adopts a progressive and socially constructive approach to give benefits to daughter who was divorced treating her at parity with the unmarried daughter. We fully agree with this view.

No ground for interference is made out. The special leave petition is accordingly dismissed.

Pending application shall also stand disposed of."

*34.1. To our minds, a plain reading of the order of the Supreme Court would show that the dismissal of the SLP was on merits and not in limine. It appears this facet of the order dismissing the SLP in **Khajani Devi's** case, was not brought to the notice of the Calcutta High Court in **Sonali Hatua Giri's** case. "*

21. The Division Bench of the Delhi High Court had very clearly held that if the intention was to honour those who had laid down their lives or suffered for the cause of the country, whether in uniform or



otherwise, the expression 'eligible dependent' would include a *'divorced daughter'*. The reasoning of the Division Bench has to be applied to the facts in this case.

22. The respondents have never, in the first instance refused to grant and extend the dependent family pension. There was an other issue, namely whether the petitioner was actually in financial trouble or not. The Revenue Inspector was directed to cause an enquiry and very unfortunately, he returned back stating that the petitioner was not available. The jurisdictional Thasildar had however filed a report. He had very clearly stated that the petitioner's medical condition is pathetic and that she is suffering with 70% to 90% of blockage in heart and is also quite aged and requires support. She requires that support not because of her individual capacity but in recognition of the sacrifices made by both parents. Her father suffered incarceration for more than 6 months. Her mother was suffered incarceration for a month. They both suffered incarceration for the cause of this country and while fighting against the British to obtain freedom in this country. There could be no better eligible person than the petitioner herein. The impugned proceeding is therefore set aside and struck off.



C.V.KARTHIKEYAN, J.,

vsg

23. A direction is given to the respondents to release the dependents family pension in accordance with the rules and regulations from the date of the filing of this Writ Petition, namely, 29.03.2023, till this date and continue to pay till her lifetime.

24. With the above said direction, this Writ Petition stands allowed. Consequently, connected Miscellaneous Petition stands closed. No order as to costs.

09.12.2024

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

To

The Government of Tamil Nadu
Represented by its Secretary
Public (Political Pension-I) Department
Secretariat, Chennai – 600 009

W.P.No. 10344 of 2023
And



WEB COPY



W.M.P.No. 10314 of 2023