



W.A.(MD)No.486 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.486 of 2019

Malarmani

..Appellant

vs.

1.The Secretary to Government of India,
Ministry of Home affairs / Grih Manthralaya,
1st Floor, Loak Nayak Bhavan,
Khan Market, New Delhi - 3.

2.The Additional Secretary to Government,
Public (Political Pension 1) Department,
St.George Fort, Chennai.

3.The District Collector,
Thanjavur District.

4.The Thasildhar,
Pattukottai Taluk,
Thanjavur District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the orders dated 07.12.2018 in W.P.(MD)No.20206 of 2018 and allow the appeal.



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For Appellant : Mr.K.P.Narayanakumar

For Respondents : Mr.P.Subbiah for R1

Mr.D.Sachikumar
Additional Government Pleader
for R2 to R4

JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN, J.**)

The appellant filed the writ petition in W.P.(MD)No.20206 of 2018 before this Court for issuance of writ of certiorarified mandamus to quash the impugned order of the first respondent in F.No.52/CC/8/2017-FF/INA dated 10.08.2018 and consequently to direct the first respondent to grant freedom fighters pension under Swatantra Sainik Semman Pension Scheme by considering her application dated 20.01.2016.

2. The case of the appellant is as follows.

2.1. The appellant's husband by name Manickam served as a Civilian Sepoy in Indian National Army and he actively participated in the freedom struggle activities to quit the English people from our land. During the freedom struggle period, he served in Unit No.7 Guerilla and his Registration Number was T.L.No.56741. When he served as a Sepoy



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in Indian National Army, a case was registered against him in connection with the freedom struggle and he was sentenced with imprisonment from 21.03.1944 to 22.08.1945 at Bidadari. After independence, knowing about the freedom fighters pension from other freedom fighters, he made an application to the State Government for pension. In pursuance thereof, he was getting pension from 10.10.1970 till his death i.e., 31.01.2010. After his demise, the appellant made an application to the third respondent for freedom fighters pension as a surviving dependent, which was duly considered and now, the appellant is getting pension from the State government.

2.2. Even during the life time of the appellant's husband, he took several steps to obtain Central Government pension for freedom fighters, but his claim was not considered. In the meanwhile, he died on 31.01.2010. Therefore, the appellant is entitled to get freedom fighters pension under the Central Government Scheme. The appellant made an application on 20.01.2016 to the second respondent for pension under the Central Government Scheme. She furnished all the required documents sought for by the second respondent to the fourth respondent on



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22.08.2016 itself. Since there was no subsequent development on her application, she approached this Court by filing a writ petition in W.P. (MD)No.1351 of 2017 seeking a direction to the respondents therein to grant freedom fighters pension under Swatantra Sainik Semman Pension Scheme. This Court also passed an order directing the respondents therein to consider the representation to be submitted by the appellant by affording an opportunity of hearing to her and thereafter, decide the issue on merits and in accordance with law in light of the orders passed by this Court in the case of A.Pitchai vs. The District Collector and others in W.P.(MD)No.7758 of 2015 dated 03.06.2015.

2.3. Subsequently, the appellant made a representation along with documents and the order passed by this Court. However, the same was not considered immediately. After receipt of the contempt notice on 10.08.2018, the first respondent rejected the appellant's claim mainly on two grounds, that the appellant is a second wife of the deceased Manickam and that she did not produce Jail Certificate of her husband to prove the imprisonment. Challenging the said order, the appellant filed the subject writ petition in W.P.(MD)No.20206 of 2018. However, the



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learned Single Judge without considering the earlier decision of this Court, simply dismissed the writ petition. Therefore, this writ appeal.

3. The case of the respondents is as follows.

3.1. The appellant who claims herself as the second wife of the deceased Manickam is not entitled to freedom fighters pension under the Central Government Scheme as a dependent of the deceased Manickam for several reasons. As per the Scheme, the approval of freedom fighters pension to the dependent is permissible only when the freedom fighter was provided with pension under the Scheme. Whereas, in this case, the deceased Manickam made a representation for pension as early as in the year 1974 under the Freedom Fighters Pension Scheme, 1972. The name of the Scheme was subsequently changed as Swatantra Sainik Semman Pension Scheme, 1980. The deceased Manickam was directed to furnish Imprisonment Certificate or Equivalent Certificate to prove his sufferings in jail as a freedom fighter. He was also directed to get the assistance of the District / State Level Committee for furnishing the requisite information. However, he did not produce the requisite particulars and he never made any further attempt to proceed with the application during



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his life time. Further, in his application, wife's name is mentioned as Lakshmi, who is his first wife. After his demise, the appellant herein, filed a writ petition in W.P.(MD)No.1351 of 2017, in which, the respondents therein were directed to consider her application in accordance with law.

3.2. On consideration of the appellant's application, the first respondent found that the basic requirement of primary evidence is not available and she has not also produced the Co-prisoner Certificate in the prescribed format and therefore, she is not entitled to get pension under Swatantra Sainik Semman Pension Scheme, 1980. Hence, the first respondent passed an order of rejection. The learned Single Judge after considering all the facts, dismissed the writ petition and the same warrants no interference by this Court.

4.1. The learned counsel for the appellant would submit that the deceased Manickam got divorced with his first wife under the customary practice. Therefore, the appellant alone is the legally wedded wife of the deceased Manickam. The competent Court recognized the appellant as



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the legally wedded wife of the deceased Manickam. The deceased Manickam, even during his life time received pension under the State Government Scheme. After demise, only the appellant applied for pension under the State Government Scheme. The State Government also recognized her as a legally wedded wife and granted pension to her as a dependant of the deceased Manickam. However, the first respondent failed to consider all those facts and simply rejected her application for pension under the Central Government Scheme.

4.2. The learned counsel for the appellant would further submit that even on an earlier writ petition, this Court after considering all the facts, directed the respondents therein to consider the application to be filed by the appellant and pass orders on merits and in accordance with law. Even after such direction, the first respondent failed to consider the case of the appellant and dismissed the application. Therefore, the appellant once again approached this Court by way of writ petition in W.P.(MD)No.20206 of 2018. However, the learned Single Judge failed to consider the directions given in the earlier writ petition and dismissed the subject writ petition. The deceased Manickam during his life time



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had applied for pension under the Central Government Scheme by enclosing all the required documents. However, unfortunately, though he was eligible to get the said pension, he could not receive the same during his life time. Therefore, the appellant as a legally wedded wife as well as the dependant of the deceased Manickam, is now fighting for pension under the Central Government Scheme. Even though, she has produced all the requisite documents and particulars before the Authorities, the first respondent without considering all the facts simply rejected her application without any valid reason. The learned Single Judge failed to consider the facts of the case and dismissed the writ petition, which warrants interference by this Court. The appeal is hence liable to be allowed.

5. The learned counsel appearing for the first respondent would submit that as per the Swatantra Sainik Semman Pension Scheme, approval of freedom fighters pension to the dependant is permissible only when the freedom fighter was provided with pension under the Scheme. But, in this case, the deceased Manickam made an application for freedom fighters pension in the year 1974. On receipt of the



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application, he was directed to furnish Imprisonment Certificate or Equivalent Certificate to prove that he had suffered imprisonment in jail as freedom fighter. He was also directed to get the assistance of District / State Level Committee for furnishing the requisite information. During his life time, he failed to produce the requisite documents. More particularly, in the application filed by the deceased Manickam, the name of the appellant was not mentioned anywhere, only the name of his first wife by name Lakshmi was mentioned. The deceased Manickam did not produce the requisite documents and the Co-prisoner Certificate in prescribed format and subsequently, the appellant also has not submitted the said Certificate in the format as prescribed in the Scheme. The deceased did not receive pension under the Central Government Scheme during his life time. Hence, the appellant is not entitled to the pension under Central Government Scheme, even assuming that she is the legally wedded wife of the deceased Manickam. Therefore, the learned Single Judge elaborately discussed all the points and thereafter dismissed the writ petition. There are no merits in the appeal and the appeal is liable to be dismissed.



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6. Heard both sides and perused the records available before this Court.

7. Admittedly, the deceased Manickam, claiming to be a freedom fighter made an application before the competent authority in the year 1974 for pension under the Central Government Scheme. Though he received a communication of the first respondent dated 22.08.1974, asking him to furnish certain documents and particulars as required under the Scheme, he failed to do so during his life time. He died on 31.01.2010. Therefore, admittedly, from 22.08.1974 till 31.01.2010 i.e, for more than 35 years, even after the receipt of the communication from the first respondent for submission of requisite documents, he did not produce the requisite documents.

8. After the demise of the so called freedom fighter deceased Manickam, the appellant made a representation in the year 2016 for pension under the Central Government Scheme stating that she is a legally wedded wife of the deceased Manickam. The appellant has also produced the decree passed by the Civil Court subsequent to the death of



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Manickam in O.S.No.86 of 2016 on 21.07.2010. However, since the deceased Manickam did not produce any documents as sought for by the first respondent during his lifetime, no pension was granted to him under the said Scheme. Therefore, even assuming that the appellant is his wife, she is not entitled to get pension under the Central Government Scheme automatically.

9. The learned Single Judge also referred to the guidelines regarding the payment of pension to the freedom fighters in paragraph nos.11 and 12 of the orders passed in the subject writ petition and the same is extracted hereunder.

"11.Later when several complaints regarding the discrepancies and fraudulent claim of freedom fighter pension, spurted guidelines for disbursing was issued by Ministry of Home Affairs, wherein it is stated in paragraph No.1.5 as below:

"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".

12.In case of transferring, the said freedom fighter pension after the death of the freedom fighter, the following guidelines have been issued to the



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Department:

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“5.Sanctioning the 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 spouses or daughter shall not be admissible”.

10. Furthermore, the Co-prisoner Certificate furnished by the appellant is not based on any records. There is no record to show that the person who issued the Certificate as well as claimers were Civilian Sepoys in Indian National Army and they were imprisoned in Bidadari, Singapore during the prescribed period. The enrolment number of the deceased Manickam in the prison was also not mentioned for the authorities to verify the same. Therefore, a perusal of the entire materials show that, admittedly, during his lifetime, the deceased Manickam did not produce the requisite documents and particulars and he did not also comply with the norms prescribed under the Central Government Scheme. There is no genuineness in the documents attached to the subsequent application of the appellant and those materials are highly



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doubtful. She produced unauthorized documents and she has also not produced enrolment number for the purpose of verification.

11. Except for the fact that the appellant is receiving pension under the State Government Scheme, no other genuine material has been produced before the Writ Court to meet out the requirement under the Central Government Scheme. The appellant receiving pension under the State Government Scheme does not automatically entitle her to receive pension under the Central Government scheme. The norms prescribed by the State Government and the Central Government vary and in the instant case, the appellant has not satisfied the norms of the Central Government Scheme. The learned Single Judge also elaborately considered the affidavit filed by the appellant, the counter filed by the respondents, submissions made by both the counsel on record and the materials placed before the Court and dismissed the writ petition. In the present appeal, this Court while scrutinizing the entire materials placed before the writ Court and also the orders of the writ Court, does not find any special circumstances to allow the appeal. We find no merits in the appeal and therefore, the appeal is liable to be dismissed.



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12. Accordingly, the Writ Appeal is dismissed. No costs.

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(P.V., J.) (K.K.R.K.,J.)
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NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

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To

- 1.The Secretary to Government of India,
Ministry of Home affairs / Grih Manthralaya,
1st Floor, Loak Nayak Bhavan,
Khan Market, New Delhi - 3.
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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

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