



W.P.(MD)No.3795 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2024

WEB COPY

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

W.P.(MD)No.3795 of 2019

and

W.M.P.(MD)No.14725 of 2019

S.Ganapathy Ammal

: Petitioner

Vs.

1.The Deputy Secretary to Government,
Ministry of Home Affairs,
Freedom Fighter's Division,
Lok Nayak Bahvan, 1st Floor,
New Delhi – 110 003.

2.The Secretary to the Government of Tamil Nadu,
Public (Political Pension) Department,
Fort St. George,
Chennai – 600 009.

3.The District Collector,
Madurai Collectorate,
Madurai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 27.11.2013 vide F.No. 52/CC/TN-48/2011-FF (SZ) of the first respondent and quash the



W.P.(MD)No.3795 of 2019

same as illegal, unconstitutional, unfair, unjust, not proper and against the Swatantrata Sainik Samman Pension Scheme 1980 and consequently directing the first respondent to pay the monthly Freedom Fighters Pension under Swatantrata Sainik Samman Pension Scheme 1980 to the petitioner from the date of the petitioner's request dated 24.07.1992.

For Petitioner : Mr.S.Krishnamoorthy

For Respondent No.1 : Mrs.S.Ragaventhree

Standing Counsel

For Respondents 2 & 3 : Mr.A.Kannan

Additional Government Pleader

ORDER

This Writ Petition is filed seeking to quash the impugned order dated 27.11.2013, vide F.No.52/CC/TN-48/2011-FF (SZ) of the first respondent and to consequently direct the first respondent to pay the monthly Freedom Fighters Pension under Swatantrata Sainik Samman Pension Scheme, 1980 to the petitioner from the date of the petitioner's request dated 24.07.1992.

2. The petitioner's husband late Sudalaimuthu was a freedom fighter. During the British regime, he participated in various freedom events and had undergone imprisonment. He was also imprisoned in the Madurai conspiracy case. Recognizing him as a freedom fighter, the Government of Tamil Nadu sanctioned



W.P.(MD)No.3795 of 2019

Freedom Fighter's Pension to him and after his demise, the petitioner is receiving the same. During the petitioner's husband's life time, he applied for pension under the Swatantrata Sainik Samman Pension Scheme to the Central Government. But the same was rejected stating that Madurai Conspiracy case was not considered as a freedom movement. However, later the Government recognized the Madurai Conspiracy case as a part of the freedom movement and thus, persons who underwent imprisonment in relation to the Madurai Conspiracy case were granted Freedom Fighter's Pension. Thereafter, the Deputy Secretary to Government of Tamil Nadu, addressed a letter dated 15.04.1975 to the Secretary to Government of India that Madurai Conspiracy case was recognized as a part of the freedom movement and therefore, recommended the petitioner's application for Central government Pension.

3. As the petitioner's husband died in 1978, the petitioner pursued the claim of her husband for grant of pension under the Swatantrata Sainik Samman Pension Scheme. The petitioner was persistently applying for grant of Central Government Pension as a widow of the freedom fighter along with the necessary certificates, but despite her sincere efforts, her applications were rejected on one ground or the other. The petitioner made an application on 28.08.2009, but the same was rejected by the Tahsildar, Madurai by citing stereo-typed reasons stating that she had not produced the

3/17



W.P.(MD)No.3795 of 2019

requisite documents. The petitioner as a genuinely eligible person for Central Government Freedom Fighter's pension, filed a writ petition in W.P.(MD)No.5175 of 2011, for a Writ of Certiorarified Mandamus to set aside the proceedings of the Government of India dated 06.11.1985, and for a consequential direction to consider the petitioner's application dated 28.08.2009.

4. On 29.03.2012, this Hon'ble Court allowed the said writ petition with a direction to the District Collector, Madurai to conduct an enquiry in the matter and submit a report to the second respondent therein. A further direction was given to the second respondent to consider the application of the petitioner on merits and pass orders as expeditiously as possible. The petitioner submitted a representation to the first respondent through the third respondent. The said application was rejected by the first respondent vide the impugned order dated 27.11.2013. Aggrieved by the impugned order, the petitioner has filed the instant writ petition for the aforesaid prayer.

5. The third respondent filed a counter affidavit stating that after the demise of the petitioner's husband, the petitioner was granted family pension vide order dated 14.12.1984. The petitioner was also granted free house site patta in S.No.189/8, Vadapalanji Village, Madurai South Taluk, Madurai District vide order dated 10.08.1998. The petitioner's husband applied for Central



W.P.(MD)No.3795 of 2019

Government Freedom Fighter's Pension and the same was rejected on 27.01.1975, on the ground that the Madurai Conspiracy case was not recognized by the Government of Tamil Nadu for grant of Freedom Fighter's Pension. Thereafter, the Government of Tamil Nadu recognized the Madurai Conspiracy case as a freedom struggle and forwarded the petitioner's husband's case to the Government of India for grant of pension under the Swatantrata Sainik Samman Pension Scheme vide letter dated 15.04.1975. The 3rd respondent stated that the criteria for Central Government pension was different from that of the State Government. It was further stated that the competent authority to take a final decision on the petitioner's application was only the Central Government and therefore, the third respondent had no role to play in it.

6. The first respondent filed a detailed counter in support of the impugned order. The main contention of the first respondent was that the NARC furnished by the petitioner was not in the prescribed format and therefore, the same was not accepted. The first respondent further stated that the CPC [Co-prisoner Certificate] was not supported with proof of jail sufferings for one year and therefore, the same was not considered. The respondent further contended that the co-prisoners namely KTK Thangamani and Shri Thiru Mayandi Bharathi did not undergo imprisonment for atleast one year and hence they were not treated as eligible certifiers. The first respondent therefore submitted that the petitioner's application for

5/17



W.P.(MD)No.3795 of 2019

grant of Swatantrata Sainik Samman Pension was rightly rejected and so there were no merits in the writ petition.

WEB COPY

7. Learned Counsel for the petitioner relying on several judgments of this Court submitted that all the objections raised by the 1st respondent for rejecting the petitioner's application were untenable. Learned Counsel further submitted that the petitioner's husband was granted pension by the State Government and therefore, there was absolutely no justification for the first respondent to reject the petitioner's claim for Swatantrata Sainik Samman Pension. The learned Counsel for the petitioner further submitted that the petitioner was 80 years old and the rejection of the petitioner's claim on hyper-technical grounds was against the very spirit of the Pension Scheme. The learned Counsel for the petitioner therefore submitted that the impugned order deserved to be set aside.

8. The Learned standing Counsel for the 1st respondent submitted that NARC along with the Co-prisoner's Certificate issued by K.Sankaraiah, who was an Ex-MLA and the recommendation of the State Government for grant of pension under the SSS Scheme were necessary for grant of Swatantrata Sainik Samman Pension to the petitioner. Learned Standing Counsel for the first respondent further submitted that it was only in pursuance of the order of this Court dated 13.11.2024, that NARC was issued by the District

6/17



W.P.(MD)No.3795 of 2019

Collector in the prescribed format on 06.12.2024. She further submitted that the Certificate of the District Collector would be forwarded to the first respondent through the Additional Secretary to Government, Public [Political Pension] Department, Secretariat, Chennai.

9. The Counsel further submitted that the objection that remained was that the Co-prisoner Certificate issued by Ex-MLA did not speak of the sufferings undergone by the Co-prisoner and the period of imprisonment undergone by the Co-prisoner was also less than a year. The learned Counsel further submitted that though the NARC was as per requirement, the Co-prisoner certificate was against the provision of the Scheme and so the petitioners claim cannot be entertained. The learned Standing Counsel relied on the judgments cited in the counter affidavit in support of her contentions.

10. I have heard the learned Counsel on either side and perused the materials available on record.

11. It is seen that out of the two objections raised by the first respondent, the first objection as regards the NARC is concerned, is now addressed by the third respondent and even the learned Standing Counsel for the first respondent admits that the NARC certificate now issued is in conformity with the format



W.P.(MD)No.3795 of 2019

prescribed under the SSS Pension scheme. The other objection as regards the period of imprisonment and proof of sufferings is concerned, in my view, the same are not only hyper-technical but also against the settled law in this regard.

12. In the present case, the petitioner's husband was imprisoned in December 1946 and released in August 1947 in connection with his participation in the Madurai Conspiracy case. Initially, the respondents objected to the petitioner's claim on the ground that Madurai Conspiracy did not form part of the freedom struggle and therefore, the petitioner's claim for pension could not be entertained. Subsequently, the Central Government approved the Madurai Conspiracy case as part of the freedom struggle. The petitioner earlier approached this Court in W.P.(MD)No.5175 of 2011, challenging the rejection of her application dated 28.08.2009 for grant of pension under SSS Scheme by the first respondent vide order dated 06.11.1985. This Court on consideration of the entire facts and circumstances of the case, passed a detailed order directing the petitioner to produce the co-prisoner certificate along with the District Collector's recommendation, and further directed the District Collector, Madurai to conduct an enquiry and submit a report to the second respondent so as to enable the second respondent to forward the papers to the first respondent. The first respondent was also, directed to consider the application and pass final orders on merits.



13. This is the second round of litigation and in spite of the petitioner's persistent efforts, the first respondent has been finding ways and means for depriving the freedom fighter's pension to the petitioner. As stated above, there is no dispute as to the NARC certificate inasmuch as the first respondent's Standing Counsel admits that the said certificate is in proper format and it only needs to be forwarded to the first respondent through the Additional Secretary to Government of Tamil Nadu.

14. The standing counsel submitted that certificate of sufferings produced by the petitioner stated that the Co-prisoner underwent imprisonment for less than 1 year and so he was ineligible to issue the certificate. The Division Bench of this Court in the case of ***Union of India Rep. by the Under Secretary to Government of India, Ministry of Home Affairs, (Freedom Fighters Division) Vs. K.Duraisamy*** reported in ***2018 SCC Online Mad 2992***, has categorically held as follows:

"8.The sheet-anchor of the rejection order is that the Co-Prisoners are not eligible to issue the certificates, since they have undergone the imprisonment for less than one year. When the genuineness or otherwise of the said certificates are not doubted by the appellant, he is not right in rejecting the request of the Freedom Fighter on flimsy grounds, as assigned in the order impugned



W.P.(MD)No.3795 of 2019

before the writ court. The object of the certificate is for the purpose of affirming the imprisonment undergone by the applicant and the hyper-technical approach of the appellant in rejecting the claim of the Freedom Fighter cannot be appreciated. On the other hand, the appellant should undertake a survey, in collaboration with the State Governments, to find out the living Freedom Fighters, who were the torch-bearers of this nation, and extend the fruits of the Scheme, on its own, at this doorsteps. It is painful to see that the authorities are making those selfless nationalists to undergo rigorous process of redtapism, quoting some rules."

15. Admittedly, in the present case, the co-prisoner, the certifier of the petitioner's husband's imprisonment, certified that the petitioner's husband was imprisoned along with him from December 1946 up to August 1947. As the petitioner's husband and the Co-prisoner were released on account of independence the insistence on one year imprisonment in this case, is not only illogical but also absurd.

17.This Court in ***Karuppiah Vs. The Secretary to Government Public (Political Pension) Department, Secretariat, Chennai*** reported in ***2017 (1) TLNJ 646 (Civil)*** observed that in the absence of the jail certificate, the certificate of



W.P.(MD)No.3795 of 2019

the co-prisoner was acceptable to prove the jail sufferings. The only rider that was put by this Court was that the genuineness of such certificate should not be in dispute. In the case on hand, the objection to the certificate is not that it is not genuine but that the certifier did not undergo imprisonment for at least one year. On the facts of the case and in the light of the aforesaid judgments, I overrule the said objection.

18. I deem it appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of ***State of Orissa Vs. Choudhuri Nayak (D) Thr. L.Rs. Reported in (2010) 8 SCC 796***, at this juncture. The Hon'ble Supreme Court considered the object of Freedom Fighter's Pension Scheme and indicated the approach to be adopted by the authorities in considering the applications for pension under the Scheme. The relevant portion of the judgment reads as follows:

*"8.This Court in **Mukund Lal Bhandari v. Union of India 1993 Supp (3) SCC 2 : AIR 1993 SC 2127, Gurdial Singh v. Union of India (2001) 8 SCC 8 and State of M.P. v. Devkinandan Maheshwari (2003) 3 SCC 183** considered the object of the Freedom Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme. We may summarize them as under:*

(i)The object of the scheme was to honour, and where necessary, to mitigate the



sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii)The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore, they cannot be expected to maintain and produce perfect records or documents about their participation in the freedom struggle.

(iii)Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications are by old persons with no proper records.

(iv)The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to



those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the scheme. The above principles were spelled out to ensure that no genuine freedom fighter was denied pension under the scheme."

19. In the light of the aforesaid discussions, I am of the view that the following directions should be issued to the respondents:

i) The report of the District Collector, Madurai dated 06.12.2024, a copy of which is marked to the Additional Secretary to Government shall be forwarded to the first respondent within a period of two [2] weeks from the date of receipt of a copy of this order.

ii) The first respondent on receipt of the said report and recommendation shall grant the Freedom Fighter's pension to the petitioner who is now aged about 89 years within a period of four [4] weeks thereafter.

iii) The first respondent is directed to grant pension and arrears of pension to the petitioner from the date of the petitioner's application i.e. from 1992.



W.P.(MD)No.3795 of 2019

20. The petitioner has been agitating the issue for several decades now. The 1st respondent has done all within its power to deprive the petitioner of SSS pension of her husband. It is only because of the petitioner's perseverance that she has been able to successfully procure all the necessary documents for grant of SSS pension. She is at the fag end of her life and so I expect that the 1st respondent would be gracious enough to grant her pension at least now.

21. With the aforesaid directions, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

09.12.2024

Index :Yes / No

Internet : Yes / No

NCC : Yes/No

MR



WEB COPY



W.P.(MD)No.3795 of 2019

To

- 1.The Deputy Secretary to Government,
Ministry of Home Affairs,
Freedom Fighter's Division,
Lok Nayak Bahvan, 1st Floor,
New Delhi – 110 003.

- 2.The Secretary to the Government of Tamil Nadu,
Public (Political Pension) Department,
Fort St. George,
Chennai – 600 009.

- 3.The District Collector,
Madurai Collectorate,
Madurai.



WEB COPY



W.P.(MD)No.3795 of 2019

N.MALA, J.

MR

W.P.(MD)No.3795 of 2019



WEB COPY



W.P.(MD)No.3795 of 2019

09.12.2024