



W.A.(MD)No.467 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2024

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**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.467 of 2023
and
C.M.P.(MD)No.4840 of 2022**

1.The Union of India,
represented by its Under Secretary (INA),
Ministry of Home Affairs,
Freedom Fighter Revenue Division (F.F.R),
2nd Floor, NDCC, 2nd Building,
Jai Singh Road, New Delhi – 110 001.

2.The Union of India,
represented by its Under Secretary (Policy),
Ministry of Home Affairs,
Freedom Fighter Revenue Division (F.F.R),
2nd Floor, NDCC, 2nd Building,
Jai Singh Road, New Delhi – 110 001.

3.The Union of India,
represented by its Senior Accounts Officer,
Pay and Accounts Officer,
(Pension and Miscellaneous),
Ministry of Home Affairs,
No.2/10, Jam Nagar House, New Delhi.

... Appellants

VS



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1.M.Sornam

2.The Central Pension Accounting Officer,
The Central Pension Account Office,
The Government of India,
Trikoort H Complex,
Bhikaji Cama Palace (Behind Hotel),
Hyatt Regency, New Delhi – 100 066.

3.The Accountant General
(Accountant and Entitlement and Pension),
The Office of the Accountant General,
No.36, Anna Salai,
Thenampet, Chennai – 600 018.

4.The State of Tamil Nadu represented by its
Deputy Secretary,
Public (Political Pension -III) Department,
St.George Fort, Secretariat,
Chennai – 600 009.

5.The District Collector,
The office of the District Collector,
Thanjavur District -613 006.

6.The Treasury Officer,
The Treasury Office,
Thanjavur District.

7.The Branch Manager,
Canara Bank, Anna Nagar Branch,
Thanjavur District – 613 006.

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 21.01.2022 passed in W.P(MD)No.7215 of 2021.



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For Appellants : Mr.K.Govindarajan
Deputy Solicitor General of India
For R1 :Mr.R.Suresh Kumar
For R4 to R6 :Mr.A.Kannan
Additional Government Pleader

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This intra Court appeal is directed against the order, dated 21.01.2022 made in W.P.(MD)No.7215 of 2021, whereby, the order rejecting family pension under Swatrantra Sainik Samman scheme was quashed and the appellants were directed to process the application of the Writ Petitioner and grant pension with arrears.

2.It is the case of the Writ Petitioner that her husband served in the Indian National Army with Registration No.92062 in the rank of Civilian/Sepoy and he had served at the Head Quarters Azad Hind Workers League (Burma), Rangoon and actively participated in the Indian Freedom struggle through Azad Hind Street Workers League Head Quarters (Burma), which was let by late Nethaji Subhas Chandrabose. Her husband while retreating with the members of Indian National Army Myikyina Front in



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Burma at Pegu, Burma, was arrested and kept under detention in Pegu Detention Camp from May 1945 to end of July 1945 and thereafter, transferred to Rangoon Central jail and incarcerated from August 1945 to April 1946.

3.One of the co-prisoners, S.Raju, who was also a member of Indian National Army and suffered imprisonment from August 1945 to December 1945, had issued a co-prisoner certificate certifying the detention of the petitioner's husband. In fact, her husband was recognised by the Government of Tamil Nadu for getting State Freedom Fighters Pension and by order in No.9597, dated 16.02.1981, the benefits were extended. Her husband, during his life time, had sent several representations seeking benefits under Swatrantra Sainik Samman Pension, but unfortunately, he died on 09.07.1991.

4.As the benefits under the State Family Freedom Fighters Pension scheme was extended to the Writ Petitioner by the District Collector, Tanjore, the Writ Petitioner had applied for Swatrantra Sainik Samman Pension scheme in April 2004 to the fourth respondent. As she was informed that the application should be in a prescribed format through the



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fifth respondent, District Collector, the same was submitted and it was also recommended by the District Collector and based on which, she applied to the fourth respondent in July 2004. Pursuant to which, her application was forwarded to the first appellant on 17.10.2005, but however, the same came to be rejected on 21.08.2006 on the ground that she has not submitted the valid Non Availability of Records Certificate (NARC), here in after referred as NARC from the State Government in the prescribed format, as the claim is based on secondary evidence and further, the prisoner, who had issued the co-prisoner certificate, was not in jail for one year and also since the co-prisoner was not along with the petitioner's husband for the entire duration, which creates a doubt about the genuineness.

5.The learned Judge after taking note of the issue that has been settled by the judgments of the Hon'ble Supreme Court in respect of the certificate issued by the co-prisoner and after recording a deep anguish in respect of the way they treat the Freedom Fighter and widows of the valiant warriors, who had fought for the freedom of this country, had set aside the order of rejection and had directed the appellants to extend the benefits under Swatrantra Sainik Samman Pension scheme. Challenging the order of the Writ Court, the appellants are before this Court.

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6.The learned Deputy Solicitor General of India appearing for the appellants though had raised several arguments in support of the Writ Appeal filed against the order passed by the Writ Court in granting the benefits under the Swatantra Sainik Samman Pension scheme, after it was pointed out that the Writ Court has passed the orders only by placing reliance on the orders of the Division Bench of this Court, wherein the rejection order was set aside on the ground that the co-prisoner, who had not been in imprisonment for less than one year, is not eligible to give the certificate by observing that hyper-technical approach cannot be adopted in respect of the grant of benefits to freedom fighters, who are the torch-bearers of this nation and extended the benefits of the scheme and also based on the decision of the Hon'ble Supreme Court, particularly, in respect of providing benefits covered under the scheme to the freedom fighters, has confined his argument that as the Writ Petitioner had only submitted the documents, which are only the secondary evidence, in such cases, the Non Availability of Records Certificate (NARC) shall be issued by the State Government only after due verification from all sources and the Non Availability of Records Certificate (NARC) is treated valid only, when it is furnished by the State Government by including the portion, as stipulated in

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the scheme. The learned Deputy Solicitor General further submitted that if the State Government re-submit the proposal by including the Non Availability of Records Certificate (NARC) in the prescribed format, the application of the Writ Petitioner seeking pension under Swatrantra Sainik Samman Pension scheme will be immediately processed.

7.The learned Additional Government Pleader appearing for the respondents 4 to 6 submitted that they will forward the Non Availability of Records Certificate (NARC) in the prescribed format immediately to enable the Writ Petitioner to avail the benefits of the scheme.

8.The learned Counsel for the first respondent submitted that her husband, who was the freedom fighter and ex-service man, was not able to get the fruits of the scheme during his life time and even though the application of the first respondent has been forwarded by the State Government as early as on 17.10.2005, still she is not able to get the benefits of the scheme, in spite of the direction issued by the Writ Court.

9.Heard the learned Counsels and perused the materials available on record.

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10.The first respondent/Writ Petitioner, a widow of the freedom fighter, who had served in the Indian National Army, had applied for family pension under Swatrantra Sainik Samman Pension scheme extended by the Union of India. The first respondent's husband, E.Muthiah, who was a Sepoy in the Indian National Army and served under the late Nethaji Subash Chandrabose and who was arrested and taken into custody, while retreating in the Indian National Army from Myikyina Front in Burma at Pegu, Burma and kept under detention in Pegu Detention Camp from May 1945 to the end of July 1945 and thereafter, shifted to Rangoon Central jail from August 1945 to till April 1946, had been granted with the benefits of pension under the State Government scheme.

11.Even though the first respondent's husband had been submitting representations for availing the benefits of the freedom fighters pension under the Swatrantra Sainik Samman Pension scheme, without availing any such benefits, he unfortunately died on 09.07.1991. Thereafter, the first respondent, who got the family pension benefits under the State Government scheme, had submitted application for grant of pension under Swatrantra Sainik Samman Pension scheme through the State Government.

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Even though the application of the first respondent was recommended and forwarded to the appellants, the application came to be rejected on 21.08.2006 stating that the application is not supported with valid Non Availability of Records Certificate (NARC) and the co-prisoner certificate issued by Sri.S.Raju is not acceptable, as he was not in imprisonment for a minimum period of one year.

12.The learned Judge rejected the reasons adduced in the order impugned in the Writ Petition on the ground that when the co-prisoner had validly given the certificate for the period in which, he had been co-prisoned along with the husband of the Writ Petitioner and beyond which period, the co-prisoner will not be aware of the further incarceration. The learned Judge also rejected the second reason in respect of non production of Non Availability of Records Certificate (NARC) from the State Government, as it is an issue between the Central Government and the State Government and even if a little interest could have been taken to understand the plight of the widow of the freedom fighter, the clarification could have been directly obtained from the State Government. The learned Judge after relying the decisions of the Hon'ble Supreme Court and the Division Bench of this Court, in respect to the way the application of the freedom fighter for

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granting benefits of the scheme to be considered and also the issue regarding the issuance of certificate by the co-prisoner, who had been in imprisonment for less than one year, had set aside the order of rejection. The decisions relied on by the learned Judge is extracted hereunder:

18.In Gurdial Singh Vs Union of India and others, reported in (2001) 8 SCC 8, the Hon'ble Supreme Court had observed as follows:

“7..... Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of “beyond reasonable doubt”. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

8. We have noticed with disgust that the respondent authorities have adopted a hypertechnical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the Scheme intended to give the benefit to the sufferers in the freedom movement.....”

19.In State of Tamil Nadu and another vs A.Manickam Pillai, reported in (2010) 2 SCC 669 while examining a similar case, the Hon'ble Supreme Court, while rejecting an appeal by the State of Tamil Nadu against an order of a Division Bench of this Court, which had recognised the respondent therein as a Freedom Fighter, had observed as follows:

“This appeal is an example and a reflection of the way we treat our freedom fighters in as much that while we applaud



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their contributions to the fight for freedom, deny them a pension, which, even if granted, amounts to a pittance and while many who apply are under financial distress, all without exception, wear it as a badge of honour and as a certificate of recognition of their efforts in the struggle for independence.”

20.*In **Mukund Lal Bhandari and others vs Union of India and others**, reported in **AIR 1993 SC 2127**, the Hon'ble Supreme Court had observed as follows:*

“7.As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependants and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any



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past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit.”

21. In ***Union of India vs K.Duraisamy and others***, reported in **(2018) 8 MLJ 223: 2018 SCC Online Mad 2992**, a Division Bench of this Court had observed as follows:

“6.As noticed above, the Scheme for the grant of pension to the freedom fighters from central revenues was introduced by the Government of India to honour the Freedom Fighters. In fact, the pension is not only to lead the life of freedom fighters but also to the families, as even if they are not alive, it has to be extended to the family members of martyrs. The benefit of the Scheme is extended to all Freedom Fighters as a token of SAMMAN to them.

7. It is pertinent to state that though in the absence of the primary evidence, secondary evidence could be placed on record to seek the relief, one of the reasons for rejection is non-production of the primary evidence, which is wholly unjustified. Further, the State Government had recommended the claim of the writ petitioner/first respondent. Hence, the question production of a valid “Non-Availability of Records Certificate (NARC)” does not arise at all. Despite the fact that the writ petitioner/first respondent has produced the certificate as required by the Scheme, the appellant had not considered the grant of freedom fighters pension to the writ petitioner/first respondent in its proper perspective. In such circumstances, the learned Single Judge, by placing reliance on a catena of decisions of the Apex Court, had directed the appellant to grant freedom fighters pension to the petitioner under the Scheme within a period of eight weeks from the date of receipt of a copy of this order.

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 before the writ court. The



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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 red-tapism, quoting some rules.”

13. The claim of the 1st respondent who had been fighting for the benefits of the scheme for nearly more than two decades, could have been dealt with and considered in a reasonable and better way particularly when the claims are made by the freedom fighters and their widows, without all their sacrifices and unimaginable struggle, we would not have been enjoying all our freedom and the present day life. It is only because of the their struggle, the authorities who are considering the applications are adorning such positions today and the freedom fighters and the family members definitely command a better respect and compassion at least when their rights in granting pension is considered, that too which is extended by the Government in recognizing their sacrifices to our Mother Country.



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14. When the 1st respondent has already been extended with the benefits of the Freedom fighters under State scheme and more particularly the co-prisoner certificate has been given by the persons who have been already recognized and registered under the Swatrantra Sainik Samman Pension scheme by the appellants themselves, the order of the appellants in rejecting the application of the 1st respondent by disbelieving the certificate is unreasonable and unjustified.

15. Be that as it may, the learned Deputy Solicitor General appearing for the appellants submitted that now they are prepared to consider the application for granting pension, as directed by the Writ Court, provided if the Non Availability of Records Certificate (NARC), in the prescribed format, as has been stated in para 3 in the order of rejection, is submitted by the State Government. Para 3 of the rejection order is extracted hereunder:

3. Where records of the relevant period are not available, a Non-Availability of records Certificate (NARC) from the concerned authority is a mandatory pre-requisite for secondary evidence. The NARC should not be general or vague, but should conform to the instructions issued by the Government of India, Ministry of Home Affairs. The instructions, inter alia, require the State Government to issue NARC only after due verification from all sources. The NARC



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is treated a valid only when it is furnished by the State Government in the following manner:

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All concerned authorities of the State Government, who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.

16.In view of the submission made by the learned Deputy Solicitor General that if fresh Non Availability of Records Certificate (NARC) by incorporating the above format is submitted by the State Government, immediately, the application submitted by the first respondent seeking family pension under the Swatantra Sainik Samman Pension will be considered for extending the benefits, as directed by the Writ Court. The learned Additional Government Pleader submitted that they are also ready to immediately send Non Availability of Records Certificate (NARC) in the prescribed format, as suggested by the appellants.

17.In view of the above submissions, we are inclined to dispose of the Writ Appeal with the above directions:

(i)The State Government shall submit a fresh Non Availability of Records Certificate (NARC) by incorporating



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the format, as indicated in para 3 of the rejection order, within a period of two weeks from the date of receipt of a copy of this order.

(ii) On such submission of Non Availability of Records Certificate (NARC), the appellants shall immediately process the application of the first respondent for grant of benefits under the Swatrantra Sainik Samman Pension scheme and pass appropriate orders by extending the benefits within a period of three weeks from the date of receipt of the NARC from the State Government.

18. With the above modifications and directions, the order passed by the Writ Court is confirmed in all other aspects and the Writ Appeal stands disposed of accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
03.07.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No

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To

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1.The Accountant General
(Accountant and Entitlement and Pension),
The Office of the Accountant General,
No.36, Anna Salai,
Thenampet, Chennai – 600 018.

2.The Deputy Secretary,
The State of Tamil Nadu,
Public (Political Pension -III) Department,
St.George Fort, Secretariat,
Chennai – 600 009.

3.The District Collector,
The office of the District Collector,
Thanjavur District -613 006.

4.The Treasury Officer,
The Treasury Office,
Thanjavur District.



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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Judgment made in
W.A(MD)No.467 of 2023

03.07.2024