



Writ Petition No.24132 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

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CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**Writ Petition No.24132 of 2022
and WMP Nos.23111 & 23112 of 2022**

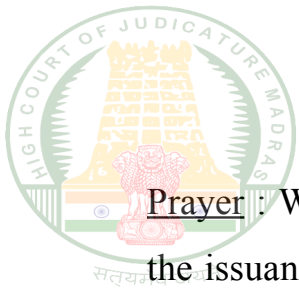
S.Padma

.... Petitioner

-Vs-

- 1.The Under Secretary to Govt. Of India
Ministry of Home Affairs
Freedom Fighters Divisoin
II Floor, NDCC-II Building
Jai Singh Road
New Delhi-110003.
- 2.The Govt.of TN rep.by Additional Secretary
Public (Political Pension) Department
Secretariat, St.George Fort
Chennai-9.
- 3.The District Collector of Chennai
Chennai 600 001.
- 4.The Tahsildar of Perambur
Perambur
Chennai-11.

... Respondents



Writ Petition No.24132 of 2022

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the record of the first respondent pertaining to the impugned order dated 01/08/2022 made in F.No. 52 / CC / 24 / 2021-FF / INA AND to pertaining to the order dated 06/08/2014 of the first respondent made in file No. 45 / 03 / 2014-FF (P) in the (Annexure-R2 1.5 Para) and quash the same and direct the first respondent to provide the central government freedom fighter dependent pension to the petitioner.

For Petitioner : Mr.V.Nandagopalan

For Respondents : Mr.R.Rajesh Vivekananthan
DSG - R1

Mr.T.Chandrasekaran
Special Government Pleader
for R2 to R4

ORDER

The Writ Petition has been filed by a Widow of a person who had served as a freedom fighter and who was a member of the Indian National Army and who had also suffered imprisonment for a period of six months. The fact that the husband of the petitioner was a member of the Indian National Army cannot be either denied or disputed, since the husband of the petitioner had applied for Swatantrata Sainik Samman Pension Scheme on 7.1.1982 with both the State and the Central Government.



2.The State Government had considered the services of the husband of the petitioner and by an order dated 03.07.1982 and by Pension Order No.11352 had granted pension to the husband of the petitioner herein. The husband of the petitioner however did not get any pension from the Central Government. At that point of time he was satisfied with getting pension from the State Government. A second application has been made by the husband of the petitioner on 03.9.1999. He had also obtained an All India Indian National Army Service Record on 30.11.1987. Reminders had been sent to the 1st respondent seeking pension from the Central Government. In this connection, he had also enclosed certificates from co-prisoners, K.Manickam, K.Pathinettan and also from P.Subramani and all of them confirmed that the husband of the petitioner was incarcerated in jail for a period of six months.

3.With respect to whether that incarceration for six months is sufficient or not, the Court will have to examine the Rules for grant of pension under the SSS Pension Scheme 1980. For grant of pension under the scheme, a freedom fighter is a person who had suffered minimum imprisonment for six months. However, it had also been provided for a former Indian National Army personnel, he will be eligible for pension if the imprisonment/detention suffered by him was outside



India and for six months. The actual period of such imprisonment for eligibility of pension had been reduced to three months for women and for SC/ST freedom fighters on and from 01.08.1980. Therefore the eligibility criteria was, for the husband of the petitioner to have suffered incarceration for a period of 6 months. Certificates had been obtained from three co-prisoners that he had actually suffered imprisonment for a period of 6 months. Those certificates had not been put to test or questioned either by the State Government or by the Central Government. The State Government had actually granted pension to the husband of the petitioner. The husband of the petitioner however unfortunately died on 23.08.2004. He had left behind his legal representatives and the petitioner is his widow.

4. Thereafter, the petitioner had applied for Central Government Pension as surviving spouse. The petitioner also claims that since the husband of the petitioner had made an application for grant of pension under the Swatantrata Sainik Samman Yojana (SSSY) as early as September 1999, she is also eligible for grant of such pension.



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5.The learned Deputy Solicitor General for the 1st respondent based his arguments on the fact that the State Government had rejected the claim of the petitioner herein to be eligible to be granted pension after the death of her husband. In this connection, in the order of the 1st respondent dated 01.08.2022 the extract of the order of the State Government had been extracted, which was as follows:

“5.Whereas in compliance of the aforesaid order dated 21.04.2022 of the Hon'ble High Court of Madras, the matter has been recommended in the light of State Govt.letter dated 20.05.2022, which was not recommended the case of the petitioner:

“i. The Hon'ble High Court of Madras had issued directions for a set of batch cases including the W.P.No.28380 of 2021 filed by Tmt.S.Padma W/o.(late) Sivasamy- the matter was placed before the District Level Screening committee held on 16.04.2022 wherein the Committee has stated that the petitioner had not produced primary evidence as per the Central Scheme but she submitted only the State pension order therefore the State Level Committee Members had recommended the petitioner's request for sanction of Central pension to the petitioner. Based on the State Level Committee's recommendation the District Collector of Chennai District has also recommended the case.

ii.In this regard it is submitted that the petitioner had not produced any concrete evidences to support her claim as per the Swatantrata Sainik Samman Pension Scheme therefore the State



Government is not in a position to recommend her request”.

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6.The Under Secretary to the Government of India in the impugned order had only extracted the letter of the State Government dated 20.05.2022 and noted that the State Government had not recommended the case of the petitioner. But there has been no independent application of mind by the 1st respondent. There is a duty cast on the respondents particularly when a grievance is raised that having fought for the freedom of the country, the family of a the freedom fighter had been high and dry and had been denied recognition. The case of such a person should be viewed with much more consideration. The right to live with dignity is not only a right afforded only during the lifetime of a person but also at death and also after death for the surviving heirs to be recognised to live with dignity. The legal heirs cannot be left high and dry and be ignored and rejected as unwanted citizens of this country particularly when they are legal heirs of a freedom fighter.

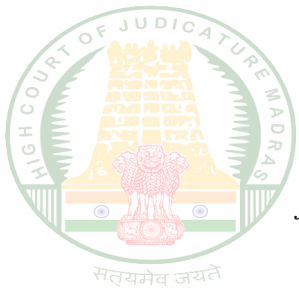
7.The order of the 1st respondent, is a replica of the order of the 3rd respondent.



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8. In the counter affidavit filed by the Collector of Chennai, it had been stated as follows:

“9)As regards the averments of the petitioner set out in paras 1 to 7 of the affidavit, it is respectfully submitted that the Petitioner herself admits that her husband was in receipt of State Freedom Fighters' Pension only vide pension order No.11352 and that he was not sanctioned the Central Freedom Fighters' Pension till his death. In the mean time, the Petitioner's husband had made second SSS application to the Respondent on 03.09.1999. The petitioner claims that her husband had submitted C0-Prisoner's Certificate from Tvl.K.Parthiban and K.Manickam on 22.07.1991 and 26.12.1981 respectively. Besides this he had also obtained and submitted a certificate obtained from S.Rajagopalan Ex Officer in charge under the Indian Independence League, Headquarters thingangyun. But the said pension was not sanctioned till his death. Consequent on the death of her husband, the Petitioner is sanctioned only State Freedom Fighters' pension extended to the spouse of the deceased petitioner. As regards Central Freedom Fighters' Department Pension, it is pertinent to point out that the Petitioner's Dependent Pension, it is pertinent to point out that the Petitioner's husband was not sanctioned Central Government Freedom Fighters' Pension for which this Respondent cannot do anything. It would be appropriate to point out that in the Guidelines for Disbursement of Central Samman Pensions to be



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followed by Authorised Public Sector Banks issued in No.45/03/2014-FF(P) by the Ministry of Home Affairs FFR Division in para 1.5 it is stated as follows:

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.**

Hence, as per the aforesaid guidelines, the Petitioner is not entitled for the Central Government Freedom Fighters' Pension extended to the spouse of the petitioner.

.....

11)As regards, the averments of the Petitioner set out in para 8 of the affidavit, it is respectfully submitted that based on the representation dated 31.08.2021, the 1st respondent, namely Under secretary to Government, Ministry of Home Affairs, Freedom Fighters Division, Government of India has considered the representation and then when had passed an order vide proceedings P.No.52/cc/24/2021-FF/INA dated: 01/08/2022 duly rejecting the claim of the Petitioner as stated in para and supra.”

9.In para 11 extracted above, the Collector of Chennai has placed reliance on the order of the Under Secretary to the Government of India which is impugned in this writ petition 01.08.2022. This is despicable as the 3rd



respondent has relied on the order impugned in this writ petition.

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10.It is thus seen that the respondents have been bouncing the petitioner from one office to the other. The 1st respondent had rejected the claim on the ground that the 3rd respondent had refused to grant pension. The 3rd respondent had rejected grant of pension on the ground that the 1st respondent had refused to grant pension. Neither of them have placed on record their independent application of mind examining whether the petitioner is eligible for grant of pension or not. Each one of them placed reliance on the order of the other to justify rejection of the grant of pension.

11.The learned Deputy Solicitor General for the 1st respondent had forwarded a string of judgements to justify denial of extension of pension to the petitioner/widow of the freedom fighter. The judgements relied on are :

(1) *W.P.No.27687 of 2012 dated 19.06.2018 in Issac Scam .Vs. the Union Government & 5 Ors.*

In this order, the pension to the son of the freedom fighter was rejected since, the pension had already been rejected for the father of the writ petitioner



and therefore, the learned Single Judge had opined that sanction cannot be granted for pension afresh. That fact is certainly distinguishable.

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(2) Director, Ministry of Home Affairs .Vs. Kalarani reported in (2019)

(2)CWC 157.

Again, the claim of an unmarried daughter was rejected on the ground that the Central Government had not granted pension to the freedom fighter and further, it was also seen that the State Government had not recommended the case. It was under those circumstances that the pension was refused to an unmarried daughter. In the instant case, the freedom fighter had been granted pension by the State Government.

(3) Union of India .Vs. V.Nagamalai reported in 2019 SCC Online Mad 32212.

A Division Bench of this Court had examined an order allowing WP.(MD).No.18758 of 2013, by an order dated 14.02.2017. In that case, the original writ petitioner was a member of the Indian National Army and freedom fighter. His application had been submitted in the year 1986 for grant of financial assistance. He had been granted State pension by proceedings dated



04.9.2004. However, he claimed that had also applied to the Central Government to grant for pension under the Swathantrata Sainik Samman Pension. The case of the writ petitioner was recommended by the District Collector at Trichy. The Division Bench had examined the fact that the original claimant had died in the year 2006 and the writ petition came to be filed in the year 2013. The Division Bench had noted the delay in filing of the writ petition. It was also noted that the State Government had granted pension only as a special case by relaxing the relevant clause.

In the instant case, the husband of the petitioner was not granted pension as a special case. He had been granted pension after examining the records produced, namely, the certificates by the co-prisoners. Therefore, the reasoning given by the Division Bench would not apply to the facts of this case.

(4) *Union of India .Vs. Krihsna Modi & Another reported in (2022) 5scc 731.*

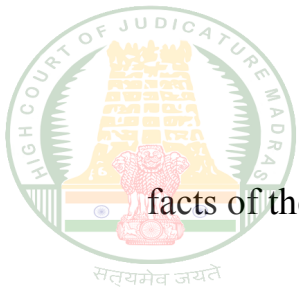
In this matter the Hon'ble Supreme Court had stressed the necessity to satisfy the stipulated requirements and clarified the factors which should be considered and the materials which should be relied on. It had been observed that



merely because the State Government had granted pension, it would not entitle claim under the scheme of the Central Government unless he fulfils the conditions of the Central Government Scheme. It had also been stated that the benefit of this scheme should not be granted without proper authentication. The judgement only places a caution on the courts to examine the entire records before coming to a decision whether the writ petitioner is entitled for grant of pension.

(5) WP.No.12630 of 2021 dated 21.04.2022, M.Kalammai .Vs. The Collector of Chennai & Ors.

A learned Single Judge had rejected grant of pension since an Embassy Certificate dated 29.06.1964 relating to the husband of the writ petitioner showed that the husband of the writ petitioner was aged 25 years as on 20.8.1964. It was therefore opined by the learned Single Judge that the husband of the petitioner should have been aged only 5 or 6 years in 1945. Therefore holding that a fraudulent certificate had been produced before the Court, the learned Single Judge had rejected the claim for Pension. In the instant case, there is no allegation of fraud raised as against the writ petitioner or on the certificates produced. The facts of the case relied on are certainly distinguishable from the

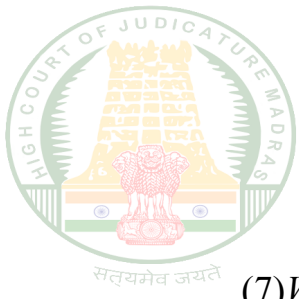


facts of the instant case.

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(6) *W.A.(MD).No.1233 of 2021 dated 16.6.2021, N.Deivanai .Vs. the Union of India & Ors.*

In the Writ Appeal, the Division Bench had examined the case of the appellant's husband who had submitted an application on 12.04.1972 to the Central Government for sanction of Indian National Army Freedom Fighters Pension. It was found that the application was without relevant documents and annexures and therefore the application had been returned and the husband of the appellant was informed of this fact by a communication. Thereafter the papers were not resubmitted by the husband of the petitioner and the issue was allowed to lapse. On 05.12.2009, nearly 37 years after the initial application, and after the death of the husband of the appellant, a fresh application had been filed. The Division Bench had held that since the original application had lapsed, revival of an application after 37 years would not be legally permissible and therefore had rejected the grant of pension. Again the facts are distinguishable and it is not the case of the respondents here that the petitioner had come to Court with delay.



Writ Petition No.24132 of 2022

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(7) *W.A.No.100210 of 2022 dated 7.7.2023, The State of Karnataka & Ors
.Vs. Savantrewwa.*

A Division Bench of the High of Karnataka had interfered with grant of pension since, a direction had been given to all the Deputy Commissioners to verify the cases of Freedom Fighters Pension and to submit a report along with list of documents. On verification, it was found that the husband of the appellant therein had submitted documents which necessitated cancellation of the pension of the Freedom Fighters Pension granted to the husband. Notices had been issued and enquiry has also conducted. The husband of the petitioner did not produce any material to substantiate that he was actually a freedom fighter. In view of that particular fact, the pension was cancelled by an order dated 01.6.2000. A writ petition was filed against that particular cancellation and later a writ appeal was filed. It is clear that in that particular case the initial order granting pension was obtained by producing documents which could not pass the scrutiny of the authorities. Again the facts are distinguishable from the facts in the case on hand.



(8) *Union of India .Vs. A.Alagam Perumal Kone & Ors (2021) 4 SCC 535.*

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The Hon'ble Supreme Court had examined a case where required documents had not been produced and therefore it was held that when documents had not been produced, pension could not be granted. The Hon'ble Supreme Court had also placed a caution on the Courts while taking a decision to grant pension or otherwise by stating that unless the required documents are produced, the Court cannot direct grant of pension. It is also seen that in this particular case, the 1st respondent before the Hon'ble Supreme Court had not disclosed that an earlier application filed by him had been rejected and suppressing that particular rejection had applied again and thereafter filed a writ petition. Also stating that there has been suppression of material fact, the Hon'ble Supreme Court had rejected the grant of pension. In the instant case, it is not the case of the respondents that the petitioner had suppressed any material fact.

12.The learned Deputy Solicitor General further argued that in the impugned order dated 01.8.2022, the Under Secretary to the Government of India/1st respondent had stated that the petitioner did not meet the eligibility criteria under the SSSY Scheme. It was also stated that the petitioner had not produced supporting documents to show that her husband had applied for the



SSSY Scheme Pension to the Ministry. It had been stated that primary and secondary evidence as required had not been provided by the petitioner. It was therefore stated that the petitioner was found not eligible for grant of freedom fighter pension under SSSY Scheme. Pointing out that particular reasoning the learned Deputy Solicitor General for the 1st respondent argued that the fault lay on the writ petitioner for not having produced the required documents and therefore, justified the rejection of pension by the 1st respondent.

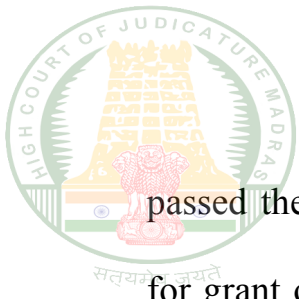
13.I carefully considered the arguments advanced.

14.A reappraisal of the facts as stated in the affidavit filed in support of the writ petition, would indicate that the writ petitioner, S.Padma, widow of late K.Sivasamy, who was a member of the Indian National Army, had stated that her husband had obtained the State Freedom Fighters Pension on 03.7.1982 vide a pension order No.11352. She had very clearly stated that he had never obtained pension for freedom fighters from the Central Government. There has been a honest disclosure of that particular fact by the writ petitioner. It had also been stated that her husband had made an application seeking pension under the SSSY scheme to the 1st respondent on 03.9.1999. He had enclosed the All India

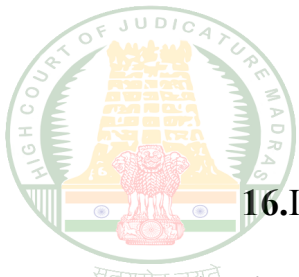


Indian National Army Certificate on 30.11.1987. Thereafter, the writ petitioner had stated about the certificates issued by the co-prisoners K.Manickam, K.Pathinettan and S.Rajagopalan. They had all affirmed that the husband of the petitioner had participated in the freedom struggle and had also suffered incarceration. It had also been stated that the President of the Indian Freedom Fighters Association had also acknowledged the participation of the husband of the petitioner in the freedom struggle and that he had also undergone imprisonment at Central jail in Rangoon, Burma. These are the only facts stated by the writ petitioner. She had stated that her husband obtained pension from the State Government. She had very clearly disclosed that her husband had not obtained pension from the Central Government and then she had asserted the right of her husband to be recognized by placing reliance on the certificates of former INA prisoners who had also affirmed that the husband of the petitioner had suffered incarceration. There had been no suppression of any fact. There has been disclosure of the fact that her husband had not received pension under the Central Scheme.

15.In the counter affidavit of the 3rd respondent, which had been extracted above, it had been stated by the Collector of Chennai that the 1st respondent had



passed the impugned order on 01.08.2022 rejecting the claim of the petitioner for grant of pension. To repeat, the reliance placed by the Collector of Chennai on an order which is challenged in this writ petition is despicable. In the impugned order dated 01.08.2022, the Under Secretary to the Government had primarily placed reliance on the order of the 3rd respondent the State Government for rejection of grant of pension. Thereafter, it had been further stated that the petitioner had not provided supporting documents to show that her husband had applied for SSSY pension to the Ministry. It would have been more appreciable if the 1st respondent had examined the records to find out whether the husband had actually applied for such pension before coming to a conclusion that the burden is on the petitioner herein to show that the husband had actually applied for pension. There is no statement made in the order dated 01.08.2022 that the husband had not at all applied for pension. On the other hand, the burden is cast on the writ petitioner to prove that her husband had actually applied for pension. This shifting of burden cannot be appreciated, particularly when an examination of the records available with the 1st respondent would have revealed whether the husband had actually applied or not applied.



16.It is also shifting the burden on a widow who was aged about 82 years at the time of filing of the writ petition when the order of the 1st respondent had been passed. It only shows that the 1st respondent is not interested in recognising the efforts taken by those who had served the Indian National Army under the leadership of Nethaji Subash Chandra Bose.

17.This is all the more condemnable and despicable since the Government, both at the State level and the Central level are today celebrating the anniversary of Nethaji Subash Chandra Bose. Officials, including the Collector of Chennai garland statues. They go around speaking about all the good that he did. They praise the personnel of the Indian National Army who served under him. They however reject pleas of such personnel to be recognised. It is not becoming of either the State Government or the Central Government to take this particular stand. They should have examined the records in the first instance and should have come to an independent conclusion whether the petitioner was or was not entitled for grant of pension. The State Government had let down the petitioner. The Central Government followed suit and has also let down the petitioner. They have both joined hands in rejecting the claim of the petitioner herein.



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18.The impugned order dated 01.08.2022, is set aside by this Court. The counter affidavit of the Collector of Chennai is rejected by this Court, Both the 1st and 3rd respondents must realise that they are holding their posts today in this free democratic country only because of the efforts taken and the sacrifices made by the freedom fighters. Today the Collector of Chennai is able to sit in an armchair in an air conditioned room only because of the efforts taken by the husband of the petitioner among hundreds and thousands of others. The counter filed by the Collector of Chennai can hardly be appreciated by this Court.

19.The impugned order dated 01.08.2022 is quashed. The matter is remitted back to the Central Government for fresh reconsideration. It is hoped that the 1st respondent would search their records before coming to a conclusion that the husband of the petitioner had never applied for pension. It is just not right to shift this particular burden on the writ petitioner and claim that the writ petitioner should produce those documents when the documents could even be available with the 1st respondent. The projection of a suspicious attitude as against the writ petitioner herein is not warranted particularly since in the affidavit there had been complete disclosure of all materials facts.



Writ Petition No.24132 of 2022

20.The impugned order is set aside. The matter is once again remanded back to the 1st respondent for fresh consideration of the entire issue. The District Collector, Chennai may continue to enjoy his/her privilege, and may continue to conduct a Darbar in his/her office in an air-conditioned room and continue to have scant regard and respect for former freedom fighters. The Court is not impressed by the counter filed by the District Collector, Chennai. Let this aspect go on record. The writ petition stands allowed. The matter is remanded back for fresh consideration. The 1st respondent is directed to re-examine the entire issue within a period of **eight weeks** from the date of receipt of copy of this order.

21.The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed

23.01.2025

Index : Yes/No
NCS : Yes/No
KP



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To

- 1.The Under Secretary to Govt. Of India
Ministry of Home Affairs
Freedom Fighters Divisoins
II Floor, NDCC-II Building
Jai Singh Road
New Delhi-110003.
- 2.The Govt.of TN rep.by Additional Secretary
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