

(2009) 03 MAD CK 0195

In the Madras High Court

Case No : Writ Petition No. 31203 of 2007 and M.P. No's. 1 and 2 of 2008

A.K. Gopal

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Tamil Nadu Freedom Fighters Pension Rules, 1966 — Rule 4, 5, 8

Citation : (2009) 03 MAD CK 0195

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : A. Karthika, for the Appellant; Malarvizhi Udhayakumar, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—Heard Ms. A. Karthika, learned Counsel for the Petitioner and Mrs. Malarvizhi Udhayakumar, learned Special Government Pleader for the Respondent.

2. This writ petition is directed against the order of the Respondent Government dated 25.4.2007, by which the Respondent has rejected the claim of the Petitioner for payment of freedom fighters pension payable under the State Government Scheme on the basis that there is no acceptable evidence and the Petitioner has only enclosed old documents.

3. It is the case of the Petitioner that he had participated in the freedom movement, especially Quit India Movement and had been imprisoned at Vellore Jail for a period of one month. After independence, the Government of India, under various schemes framed for the benefit of freedom fighters, has been sanctioning pension amount. The Petitioner having undergone rigorous imprisonment for a month, is eligible for freedom fighters pension under the State Government Scheme.

3(a). It is stated that the Petitioner applied to the Respondent for the grant of

State pension, which was received by the Respondent on 30.1.1982. Along with the said application, the Petitioner had also enclosed co-prisoner certificate obtained from Mr. P.S.K. Lakshmipathi Raju, Ex.M.L.A. apart from enclosing the certificates issued by the members of the High-level Committee for freedom fighters pension. The District Collector and the Tahsildar after conducting enquiry, directed the Petitioner to produce certificates from the High Level Committee nominated by the Government.

3(b). It is, thereafter, the Petitioner obtained certificates from Late Shri. Ma. Po. Sivagnanam, the Chairman, State Advisory Committee and Tmt. Manjupashini. liven after production of the said certificates, nothing happened except the enquiry which was conducted after 14.years viz., on 29.8.1996 by the Tihsildar, Tondiarpet. It is stated that the Tahsildar has forwarded a report to the Government in favour of granting pension to the Petitioner.

3(c). The Petitioner has earlier filed W.P. No. 2169 of 1997 against the State and Central Governments for payment of pension and this Court by order dated 11.12.1997, has directed the Government to consider the case of the Petitioner liberally within a period of six months. Thereafter, repeated representations were made and ultimately, the claim of the Petitioner came to be rejected. It was, against the said rejection order, the Petitioner filed writ petition in W.P. No. 10244 of 2000, which came to be disposed of by a Division Bench on 7.3.2001. In the said judgment of the Division Bench it was clearly held that in cases where old jail records are not available, the concerned individuals can produce co-prisoner's certificate from anyone of two persons nominated for the purpose and on that basis, the Government can proceed to consider the claim. Ultimately, the Division Bench has directed the Government to reconsider the case of the Petitioner and pass orders within a period of four weeks.

3(d). After the Division Bench judgment, the Petitioner has made representation and he has again approached this Court by filing W.P. No. 2229 of 2005, in which, by an order dated 5.2.2007, this Court, while eliciting various points to be considered for the purpose of granting pension to freedom fighters and also referring to various judgments, directed the Government to pass orders on merit in the following words:

6. The grievance of the Petitioner is that in spite of the direction of this Court in W.P. No. 10243 and 10244 of 2000 dated 7.3.2801, the Government has not considered his representation and no order is passed thereon till date. Since the representation is addressed only to the Chief Minister's Cell and as there is no proof that the same is forwarded to the Respondent, I direct the Petitioner to submit a detailed representation with copies of the required certificates to the Respondent herein by registered post with acknowledgment due along with copy of this order within two weeks from the date of receipt of copy of this order. The Respondent is directed to consider the same in the light of sanction of State Freedom Fighters Pension Scheme and pass orders taking note of the decisions of this Court reported in 1991 WLR 49 (G. Gabriel v. Government of India), 1994

WLR 137 (R. Thangavelu v. Government of India and Anr.) and the judgment of the Honourable Supreme Court, reported in Mukund Lal Bhandari and others Vs. Union of India and others, , within six weeks from the date of receipt of the representation with enclosures from the Petitioner.

It is, thereafter, the Respondent has passed the impugned order dated 25.4.2007.

4. The learned Counsel for the Petitioner, by placing reliance on various judgments including that of the Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others, and the Division Bench of this Court in R. Thangavelu v. Government of India and Anr. 1994 W.L.R. 137 : 1994 1 L.W. 55 S.N. apart from G. Gabriel v. Government of India 1991 WLR 49, would contend that it is only under the Scheme of the Government, two certificates issued by Late Shri. Ma. Po. Sivagnanam, the Chairman, State Advisory Committee and Tmt. Manjupashini have been produced and in spite of the same, the impugned order came to be passed stating as if no new documents have been produced.

5. On the other hand, it is the case of the learned Special Government Pleader that even though it is true that in this case, the consideration should be liberal, there should be some papers for the Government to pass orders in favour of the Petitioner under the Freedom Fighters Scheme since the payment is made under the Scheme for the benefit of freedom fighters.

6. A reference to the documents filed by the Petitioner in the typed set of papers show that Late Shri. Ma. Po. Sivagnanam, the Chairman, State Advisory Committee, who is undoubtedly a freedom fighter and he has been nominated by the Government for the purpose of certifying the claims of such freedom fighters has issued the certificate which is in the following terms:

In addition to that, in the certificate issued by the Honorary General Secretary of Bala Mandir Ms. Manjubhashini, it is also clearly stated that the Petitioner was involved in Quit India Movement in August, 1942 in the following words:

I certify that Thiru A.K. Gopal, residing at No. 16, Pidariar Koil Street, Madras-79, took part in "QUIT INDIA MOVEMENT" held in August, 1942.

In the above said certificates in clear terms it is stated that between 1.11.1942 and 30.11.1942 the Petitioner was imprisoned for having participated in the Quit India Movement.

7. In addition to that, the Petitioner has also enclosed a certificate from the Tamil Nadu Congress Committee (I) Freedom Fighters Cell dated 14.2.1994, wherein it is stated that the Petitioner participated in the Quit India Movement and arrested and imprisoned. Further, the All India Freedom Fighters' Organisation, Tamil Nadu State Committee has also issued a certificate dated 1.12.1988 to that effect. In spite of these documents which have been produced by the Petitioner, who is now stated to have crossed the age of 88 years, the Respondent has chosen to reject the claim of the Petitioner on the ground that no acceptable documents are produced.

8. In *R. Thangavelu v. Government of India and Anr.* 1994 WLR 137 : 1994 1 L.W. 55 S.N., the Division Bench consisting of D. Raju and AR. Lakshmanan, JJ. (as Their Lordships then were) had an occasion to consider the grant of pension under the Freedom Fighters' Pension Rules, 1966. The Division Bench has traced the origin of the pension for Freedom Fighters Pension Scheme in the State of Tamil Nadu which has been issued by way of various Government Orders from time to time and made a thorough study about the same, which is as follows:

13. Pension Scheme to freedom fighters provided by the Government of Tamil Nadu are as under. The Government of Tamil Nadu from time to time commencing from 28.9.1966 passed various Government orders conferring that benefit on the freedom fighters. The first Government Order in the series is G.O. No. 2064, Public (General C) Department, dated 28.9.1966. The freedom fighters who were sentenced to imprisonment or were held under detention for not less than three months or who were killed in action or were awarded capital punishment or died due to firing or lathi charge on account of participation in the National Movement, the last campaign of which was launched between 1942 and 1944, will be eligible for the benefit conferred on them under the said scheme. The Government, accordingly, have sanctioned the benefits under the said scheme with effect from 1.10.1966 for the grant of pension to freedom fighters. Rules relating to the scheme were also framed. Under the said scheme, the pension payable to each freedom fighter shall be Rs. 50 per mensem. The Rules framed by the Government were called as Madras Freedom Fighters Pension Rules, which came into force from 1.10.1966. An "eligible freedom fighter" has been defined to say, "a freedom fighter whose income does not exceed Rs. 100 per mensem". A pension of Rs. 50 per mensem shall also be payable to destitute freedom fighter. A pension as stated in Rule 5, shall also be payable to the wife/husband and minor children of a freedom fighter who is now dead, provided that the total grant payable in cases where there are two or more applicants claiming relationship with a deceased freedom fighter shall be limited to Rs. 50 per mensem. The pension shall be payable till death if the grantee is the freedom fighter himself or herself, and if the grantee is the wife of a freedom fighter, the pension shall be payable till her death or re-marriage. If the grantee, however, is a minor son, or a minor daughter, the pension shall cease on the son's attaining the age of 18 or on the daughter's marriage or attaining the age of 21, whichever is earlier. The application for pension must be accompanied by certificates obtained from the Jail Department as proof for having been sentenced to imprisonment or held under detention for not less than three months. The procedure in regard to the consideration of application after the receipt of the same from a freedom fighter for the grant of pension has also been considered by the Government and necessary rules have been framed for that purpose.

14. The next Government Order in the series is dated 10.11.1966 issued by the Government of Tamil Nadu in Memo. No. FFP/6841/66-3, Public (General C) Department. A reference to the letter dated 25.5.1961 received from the

Government of India has also been made and the suggestion made by the Government of India has also been incorporated therein. As per the suggestion, an Ex. INA personnel who participated in the INA movement will also be treated on par with freedom fighters who participated in the national movement, which led to the country's independence. The suggestion given by the Union of India was accepted by the Government of Tamil Nadu and the Government of Tamil Nadu, therefore, decided to extend certain concessions to the Ex. INA personnel in the State of Tamil Nadu treating them on par with the freedom fighters such as preference in the matter of employment in Government service, educational concessions, etc. subject to the following conditions:

(i) An Ex. INA person who applies for the grant of pension shall produce a certificate from the All India INA enquiry and relief committee, New Delhi, to the effect that he served in the INA.

(ii) An Ex. INA person who satisfied the other conditions laid down in the G.O. Third read above except those relating to imprisonment, detention, etc. and production of certificate from the Jail Department will be considered eligible for the grant of pension.

15. The next Government Order in the series in G.O. Ms. No. 951, Public (Political Pension I) Department, dated 18.5.1981. In the said Government Order the Government have reduced the minimum period of imprisonment/detention/remand specified in Rule 4(i) of the Tamil Nadu Freedom Fighters Pension Rules, 1966, from one month to three weeks. In G.O. Ms. No. 817, Public (Political Pension II) Department, dated 1.4.1980, the Government have already reduced the minimum period of imprisonment/detention/remand from three months to one month, which was further reduced to three weeks in this Government Order. Accordingly, necessary amendments to the Rules were also directed to be made.

16. It appears that the freedom fighters have been frequently representing to the Government that the period of last campaign mentioned under the State scheme, may be extended from 1944 to 1947 as in the case of Central Government Freedom Fighters Pension Scheme, taking into account the various incidents such as the nation-wide hartal and agitations conducted against the arrest of Jawaharlal Nehru on the Kashmir Border in 1946, the hartal at Harvey Mills, Madurai agitation by the Army and Air Force men against the Britishers as also in support of the Bombay Naval Mutiny 1946, etc. It appears, they represented to Government that pension may also be sanctioned to those freedom fighters who went underground or whose property was confiscated or attached or who were dismissed or removed from service on account of their participation in the freedom movement. The Government, in consultation with the State Advisory Committee constituted for screening Central Freedom Fighters Pension applications, directed that the following categories of freedom fighters also be made eligible for grant of pension under the Tamil Nadu Freedom Fighters' Pension Rules:

(i) Freedom fighters who suffered imprisonment or were kept in remand/detention for not less than three weeks or who were killed in action or were awarded capital punishment or have become permanently incapacitated due to firing or lathi charge on account of their participation in the various incidents including those who were imprisoned in what was known as the Madurai conspiracy case, that took place in connection with the Freedom Movements during 1945-47.

(ii) Members of Army and Air Force who agitated against the Britishers as also in support of Bombay Naval Mutiny, 1946, and suffered imprisonment for three weeks or lost their jobs.

(iii) Freedom Fighters who went underground or whose property was confiscated/attached or who were removed/dismissed from service on account of their participation in the Freedom Movement, provided that such claims are supported by Court or other official documentary evidence. The above direction was given by the Government of Tamil Nadu in G.O. Ms. No. 910, Public (Political Pension II) Department, dated 7.6.1982. It is also mentioned in that Government Order that the same will take effect from 15.5.1982. The persons whose annual income does not exceed Rs. 5,000 may apply to the Chief Secretary, Public (Political Pension) Department, Madras-600009, with a copy to the Collector of the District concerns. The last date fixed for receipt of applications is 15.9.1982.

17. The next Government order in the series is G.O. Ms. No. 581, Public (Political Pension II) Department, dated 11.4.1983, by which the Government directed that the existing annual income ceiling of Rs. 5,000 prescribed under Rule 4(ii) of the Tamil Nadu Freedom Fighters Pension Rules, 1966, as amended, be removed in tow with effect from 11.3.1983, from which date the pension shall be payable to those who become eligible on account of this concession. The freedom fighters including ex. INA personnel and their dependents, who become eligible consequent on the removal of the income ceiling, were also permitted to apply direct to the Chief Secretary, Public (Political Pension) Department, Madras-600009, in the form already prescribed under the Rules, with a copy marked to the Collector of the District concerned on or before 15.7.1983.

18. G.O. Ms. No. 740, Public (Political Pension II) Department; dated 4.5.1988 refers to the several representations received from the widows of freedom fighters who have migrated to other States in India to live with their children consequent on the demise of their husbands, that they are unable to receive the pension in view of the provisions, viz. that if the pensioner resides outside Tamil Nadu for more than three calendar months he/she is not eligible for the receipt of pension. The Government of Tamil Nadu considered their request and have decided to amend Rule 8 of the Tamil Nadu Freedom Fighters' Pension Rules providing for the payment of pension to persons who have migrated to other States also subject to certain conditions. Certain conditions which have been imposed for eligibility to receive pension under this category have also been more fully explained in paragraphs 2 to 4 of the said Government Order.

19. The next Government Order in the series is G.O. Ms. No. 2015, Public (Political Pension II) Department, dated 16.11.1988, wherein the Government of Tamil Nadu have directed that the applications for the grant of State Freedom Fighters' Pension may be received from persons who are aged 70 and above as on 15.10.1988 and who produce co-prisoner's certificate from any one of the persons mentioned in the annexure to that Government Order. Considering the claim of several aged and genuine freedom fighters who apply for the grant of State Freedom Fighters Pension in spite of the fact that the last date was over, the Government have decided to extend the last date and to accept the co-prisoner's certificate ex-Legislatures and freedom fighters, whose integrity and morality is beyond question, at least to persons who are sufficiently aged, as a gesture in connection with the 40th Anniversary of India's Independence. The names of persons who are authorised to issue the co-prisoner's certificate have been mentioned in the annexure to that Government Order, which is reproduced hereunder:

(i) Dr. MP. Sivagnanam, Madras District -Former Chairman, Legislative Council, State Advisory Committee.

(ii) Thiru O.V. Alagesan, Chengalpattu District - Former Union Minister.

(iii) Thiru C. Subramaniam, Madras District -Former Union Minister for Finance.

(iv) Thiru R. Govindaswami, Madras District -Retired Joint Director of Rural Development.

(v) Thiru S. Lakshmikanthan Bharathi, Madras District - retired Assistant Development Commissioner, Rural Development Department.

(vi) Thiru M. S. Selvarajan, Thirunelveli District, Ex. M.L.A.

(vii) Thiru Thookumedai Rajagopal, Madras District (belongs to Tirunelveli formerly) Journalist.

(viii) Thiru M.S. Viswanathan alias Savi, Madras District, Editor, Savi.

(ix) Thiru K. Subramaniam, Madras (belongs to Coimbatore) Freedom Fighter, former Member, State Advisory Committee, (x) Thiru L. Krishnaswami Bharathi, Madras (belongs to Tirunelveli) freedom fighter.

(xi) Tmt. K. Manjubashini, Madras District -Social Worker.

(xii) Thiru A.N. Sivaraman, Madras District -formerly Editor, Dinamani.

(xiii) Thiru C. Rajavelu, Madras District Retired Director of Translations, formerly Member, State Advisory Committee.

(xiv) Thiru T.R. Ramamirtha Thondaman, Thanjavur District - Ex. M.L.A.

(xv) Thiru T.S. Avinasilingam Chettiar, Coim-batore District - Ex. Education Minister of Tamil Nadu.

20. In partial modification of the orders issued in G.O. Ms. No. 2015, Public (Political Pension II) Department, dated 16.11.1988, the Government directed in Letter No. 53920/90-1, Public (Political Pension II) Department, dated 28.8.1990, that the applications for the grant of State Freedom Fighters Pension may be received for consideration from persons who are aged 70 and above as on 15.10.1988 and who produce co-prisoner's certificate from any two of the persons mentioned in the annexure G.O. Ms. No. 2015, Public (Political Pension II) Department, dated 16.11.1988. However, it is mentioned that the general certificates issued by these certifiers will not be taken as valid evidence for fresh sanction of State Freedom Fighters Pension.

21. The last Government Order in the series is G.O. Ms. No. 877, Public (Political Pension II) Department, dated 9.8.1992 wherein the Government, in recognition of the sacrifices made and the patriotic fervour of those who fought for the freedom of the nation have announced among others, many concessions. Accordingly, the Government directed that the quantum of pension now granted to the freedom fighter pensioners including ex. ENA personnel and their dependents be increased as follows with effect from 1.8.1992.

(i) The pension of Rs. 400 per mensem (Rupees four hundred only) now being drawn by the State Freedom Fighters alone be raised to Rs. 1,000 (Rupees one thousand only) per month.

(ii) The Freedom Fighters who are drawing Swadantrata Sainik Samman Pension of Rs. 750 per month (Rupees seven hundred and fifty only) from the Central Revenue will be paid a sum of Rs. 250 (Rupees two hundred and fifty only) from the State funds.

(iii) The State pension of Rs. 100 per mensem (Rupees one hundred only) now being drawn by Freedom Fighters who are in receipt of Central Freedom Fighters' Pension of Rs. 750 be raised to Rs. 250 per mensem (Rupees two hundred and fifty only).

(iv) The pension of Rs. 400 per mensem (Rupees four hundred only) now being drawn by the wives/husbands/minor children of deceased State Freedom Fighters Pensioners be raised to Rs. 500 per mensem (Rupees five hundred only)

(Emphasis supplied)

9. In fact the Division Bench has also taken note of the judgment in G. Gabriel v. Government of India 1991 W.L.R. 49 : 1991 1 L.W. 279 rendered by J. Kanakaraj, J. (as he then was) and by referring to significant comments made by the learned Judge on the necessity of granting pension to freedom fighters at their door steps, the Division Bench has quashed the same, which is as follows:

The rules for the grant of Central Government pension and the mode of proof are set out in the Freedom Fighters Pension Scheme, 1972. In a subsequent Press Note this requirement was slightly modified. I am at a loss to know why the Respondents are denying the claim of the Petitioner on purely technical grounds.

Schemes are introduced by the Government not for the purpose of adding feathers to their cap. Such claims are not for the sake of adding to the record of achievement. These schemes are essential to benefit the freedom fighters who had suffered for the cause of freedom. To say that the Petitioner has no statutory right and the grant of pension is gratuitous is most uncharitable. The proof of the pudding is in its eating. This is certainly not a case where the Respondents can take an inflexible attitude and try to interpret the rules too strictly. The razor edge interpretation is certainly not called for in a case like this. It is really surprising to see as to why the State of Tamil Nadu should be so anxious to prevent the Petitioner from getting the pension.

Neither the counter affidavits nor the replies of the Respondents give any specific reason as to why the certificates produced by Petitioner should not be accepted. The certifiers are admittedly persons who are receiving pension from the Central Government. Necessity of the certifiers being a sitting legislator or a past legislator has been dispensed with under the present guidelines. I am, therefore, clearly satisfied that the Petitioner is entitled for the grant of pension by the Central Government under the Swadantrata Sainik Samman Pension Scheme, 1980.

I have already pointed out that in cases like this one must look into the overall aspect of the claim and not dissect the requirements of law in such a manner so as to deny the claim of the Petitioner. It is not as if the Petitioner is not a freedom fighter at all. What he lacks according to the Respondents is proof as required by the guidelines prescribed by the Government. I, therefore, set aside the order of the 1st Respondent dated 6.11.1989 and direct the 1st Respondent to grant pension under the above said scheme from the date of the Petitioner's second application, viz. from 27.5.1979. However, I am not inclined to grant interest at the rate of 18% as claimed in the writ petition. The payment of arrears to some extent will alleviate the sufferings of the Petitioner. The arrears of pension shall be paid by the 1st Respondent on or before 30.4.1991. Further, pension will be paid every month in accordance with the scheme.

After referring to various judgments on the issue, the Division Bench has explained the laudable object of the scheme in the following words:

36. It is clear from the scheme referred to above that the Government wanted to grant pension to the freedom fighters who had suffered imprisonment for liberating our nation from the yokes of foreign rule. The object of the scheme appears to be that the persons who suffered imprisonment during the freedom struggle should not be left to suffer in their old age. This pension is granted to freedom fighters and that class of persons are slowly becoming extinct. Having regard to the above laudable object and purpose behind the scheme it is but necessary that the appropriate Government should adopt a liberal approach in the matter of grant of pension to the real freedom fighters. When we say this, it does not mean that when a person makes a claim under the scheme for pension, he should be granted the same as a matter of course. No doubt, the applicant

should satisfy the conditions stipulated in the scheme.

10. Therefore, what is required for the Government for the purpose of deciding the eligibility of a person to receive pension is not to make a rowing enquiry about each and every minute details but to find out prima facie as to whether the person had participated in the freedom movement. In fact, originally the eligibility was that the person should have undergone a minimum two years imprisonment which has subsequently been liberalised by the Government by various Government Orders making it clear that even if it is for three weeks" time in a genuine case, the grant of pension has to be made adopting liberal approach. In such view of the matter, the reason adduced by the Respondent in the impugned order cannot be sustained.

11. It is not known as to what sort of new documents the Petitioner who is aged 88 years can produce except those issued by the eminent persons who have fought for the freedom of the country along with the Petitioner in or about 1942 and who have been nominated for that purpose. Therefore, the finding of the Respondent in the impugned order that no new documents have been produced has no meaning. As held by the Division Bench, the mere technicality should not stand in the way of rendering substantial justice, especially in this case as it is not gratuitous and it is an obligation on the part of the Government to make such payment on prima facie conclusion that the person is eligible under the Scheme.

12. In view of the same, the impugned order is set aside with direction to the Respondent to pass orders granting eligible pension to the Petitioner from the date of his original application viz., 27.1.1982 in accordance with the Government Orders of the Government of Tamil Nadu within a period of four weeks from the date of receipt of copy of this order. The writ petition is ordered accordingly. No costs. Connected miscellaneous petitions are closed.