

(2002) 12 MAD CK 0085

In the Madras High Court

Case No : Writ Petition No. 13588 of 1999 and WMP No's. 19541 and 19542 of 1999

D. Jayalakshmi

APPELLANT

Vs

The Govt. of Tamil Nadu

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 LW 256

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : R. Gandhi, S.C. for R.G. Narendiran, for the Appellant; V. Velumani, AGP, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The writ petitioner has prayed for the issue of a writ of certiorarified mandamus calling for the records relating to the

Pension sanction order of the first respondent in No. 13361, dated 28.7.1999 and quash the same in so far as the first respondent has not granted

pension payable to the petitioner's husband from 21.7.1992 to 4.4.1999 and family pension payable to the petitioner from 5.4.1999 to 27.7.1999

is concerned and to direct the respondents to sanction arrears of freedom fighter pension payable to the petitioner's husband from 21.7.1992 to

4.4.1999 and Family Pension payable to the petitioner from 5.4.1999 to 27.7.1999.

2. Heard Mr. R. Gandhi, learned Senior Counsel for Mr. R.G. Narendhiran, for the petitioner and Ms. V. Velumani learned Additional

Government Pleader appearing for the respondents. The writ petitioner being a

senior citizen the writ petition was directed to be listed for final disposal.

3. According to the petitioner, late T.M. Dhanapal, her husband was a freedom fighter who took part in the Quit India Movement during 1942-43.

It is stated that the petitioner's husband was suspended from service and subsequently underwent imprisonment during Quit India Movement. The

deceased held a number of honorary posts during his life time and served the Society. The deceased applied for payment of State Freedom

Fighter's Pension in prescribed form on 21.7.1992 enclosing required certificates to prove that he has suffered for the cause of freedom. The

Revenue Divisional Officer, Saidapet verified the claims of the deceased and submitted a report. The District Collector in turn forwarded the

papers recommending for sanction of state freedom fighters pension.

4. On the earlier occasion the sanction was refused and the petitioner's husband challenged the said rejection in W.P.No:14876 of 1998. By order

dated 12.2.1999, this court quashed the said rejection while holding that the certificates produced by the deceased are genuine, that the deceased

has made out a case and ultimately set aside the proceedings of rejection and remitted the matter to the first respondent to reconsider the

petitioner's case in the light of the observations set out in the order dated 12.2.1999.

5. Thereafter, it is stated that the deceased submitted additional representation enclosing a copy of the order passed in the writ petition to the first

respondent and requested to sanction pension. However, no order has been passed till 4.4.1999, on which date the said Dhanapal passed away

leaving behind the petitioner. The petitioner made representations while enclosing a copy of the legal heir certificate and other required particulars

and requested for earlier sanction. The petitioner has been corresponding with the first respondent.

6. By order dated 28.7.1999, the first respondent sanctioned payment of pension at the rate of Rs.1500/= to the petitioner from the date of very

sanction and this enabled the petitioner to get the family pension prospectively only. Being aggrieved by the implied rejection of arrears of pension

to the deceased and arrears of family pension from the date of death of Dhanapal on 4.4.199 till 28.7.1999, the present writ petition has been

filed.

7. The points that arise for consideration are:

(i) Whether the deceased Dhanapal is entitled for payment of pension from the date of application?

(ii) Whether the deceased is entitled to arrears of pension till his death?

(iii) Whether arrears of family pension is payable to the late Dhanapal and family pension since the date of death of Dhanapal till 28.7.1999?

8. Mr. R. Gandhi, learned senior counsel in his usual style contended that the deceased is entitled for payment of pension from the date of his

application and there is no justification to deny him the pension despite the earlier order passed by this court. The delay in sanction of pension to

the freedom fighter has resulted in deprivation of a valuable right which the late Dhanapal would have received, but for the inordinate delay in not

sanctioning the pension. The learned senior counsel relied upon the pronouncement of the Supreme Court as well as this court contending that the

deceased was entitled to payment of pension from the date of application and there is no reason at all to deny the same and on the death of the

deceased the petitioner is entitled to all arrears.

9. The very fact that the family pension for the dependent of the freedom fighter has been sanction would show that the Government has ultimately

accepted the claim of the deceased Dhanapal, a freedom fighter, though belatedly. In the earlier writ petition K.GOVINDARAJAN,J., held that

the deceased was a freedom fighter and ;the rejection of pension is bad and remitted the matter back to the first respondent. Despite that there has

been further delay. This is not a case of granting freedom fighter pension on the basis of benefit of doubt. But, this is a case where clear documents

and certificate of high dignitaries have been produced which entail the deceased Dhanapal for payment of pension during his life time and it is not a

doubtful case. This is not a case where the respondents have granted the benefit under the policy not because it was a clear case. This is not a case

of grant based on benefit of doubt. The distinction has been indicated by the Apex Court in Government of India Vs. K.V. Swaminathan, reported

in 1997 1 SCC 190. The Apex court had occasion to consider the case where the freedom fighter not being satisfied with the relief and claiming

pension from the date of his application moved the court. In that context, the

Apex Court held thus:-

2. Not feeling satisfied with the relief, the respondent filed writ petition claiming the pension from the date of his application. In the impugned

order, the High Court has directed to pay the pension from the date of the application. The controversy is no longer res integra. This Court had

considered the entire controversy in *Union of India v. M.R. Chelliah Thevar* (CA No. 7762 of 1996) decided on 30-4-1996 and held thus:

Heard counsel for both sides. On behalf of the Union of India strong reliance was placed on the decision of the Division Bench of this Court dated

24-4-1995. On the other hand, learned counsel for the respondent placed reliance on an earlier judgment of this Court in *Mukund Lal Bhandari v.*

*Union of India*¹, as well as the decision in *Amarnath Malhotra v. Union of India* dated 19-10-1996. The distinction, however, is that in the case

relied on by the Union of India, the respondents were granted the benefit under the policy not because it was a clear case of the respondents being

freedom fighters but because benefit of doubt was given and hence the pension was restricted from the date of the order and not the date of

application. In the two cases relied on by the respondents, there was no question of the benefit having been founded on a finding of fact which did

not clearly establish that the petitioners were freedom fighters but on the liberal ground of giving them the benefit of doubt and restricting it from the

date of order. We are, therefore, of the opinion that there is a distinction between the decision relied on by the learned Additional Solicitor General

on behalf of the Union of India and two decisions relied on by the respondent. In the instant case, since the benefit of doubt was given and the

status of freedom fighter was recognised on that basis, the case would be covered by the first-mentioned decision dated 24-4-1995 (*Union of*

India v. Ganesh Chandra Dolai).

10. In the light of the said pronouncement it follows that the deceased Dhanapal being undoubtedly a freedom fighter and his case is not a grant

under the policy or a benefit of doubt being given, it follows that the deceased Dhanapal is entitled to arrears of pension from the date of his

application. The denial and delay in sanction is arbitrary.

11. In a later pronouncement in *Gurdial Singh Vs. Union of India and Others*, , the Apex Court while holding that the object of grant of pension is

to mitigate the sufferings of the freedom fighters and their families and after taking note of the fact that the petitioner in that case had to fight the litigation for 23 long years, and ultimately he was found to be entitled to pension but on the facts of the case, directed payment of pension not from the date of application, but from the time of filing of the writ petition besides awarded 12% interest per annum. In that context, it has been held thus:-

7. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. 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.... The case of the appellant has been disposed of by ignoring the mandate of law and the Scheme. The impugned order also appears to have been passed with a biased and closed mind, completely ignoring the verdict of this Court in Mukund Lal Bhandari case¹. We further feel that after granting the pension to the appellant, the respondents were not justified in rejecting his claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High Court has completely ignored its earlier judgments in Mohan Singh v. Union of India² decided on 1-6-1995 and CWP No. 14442 of 1995 decided on 11-12-1995.

9. We are satisfied that the order of the respondent authorities impugned before the High Court (Annexure P-14) dated 1-11-2000 is liable to be set aside and the appellant entitled to the grant of relief of pension. However, keeping in view the lapse of time and peculiar circumstances of the

case, we are not inclined to grant him the pension with effect from 12-3-1973 as claimed and feel that the ends of justice would be met if the

appellant is granted pension with effect from March 1996 when he was forced to file Writ Petition No. 12350 of 1996.

12. In *Mukund Lal Bhandari and others Vs. Union of India and others* reported in 1993 Supp.(3) SCC 2, the Apex Court directed that pension

should be paid to the applicant from the date on which the original application is received whether the application is filed with or without requisite

evidence. But sanction would however be subject to requisite proof in respect of the claim.

13. In the present case, the deceased Dhanapal who applied on 21.7.1992 for grant of Freedom Fighter Pension has to fight a litigation as well

and ultimately after his death only his widow, the petitioner has been granted family pension by proceedings dated 28.7.1999. Though the original

application was filed on 29.7.1992, the respondent rejected the same on 5.8.1998 at the first instance. The deceased Dhanapal passed away

without getting the benefit under the Scheme obviously for no fault of his. However, taking into consideration of the fact that the late Dhanapal was

entitled to payment of pension which right has accrued to his family, this court while following the above three pronouncements of the Apex Court,

referred above, quash the impugned order declining to sanction pension from the date of application, direct that arrears of pension shall be paid to

the petitioner herein for the period commencing from 1.1.1993 and till 1.4.1999, on which date Dhanapal died, and pay arrears of family pension

to the petitioner from 1.4.1999 onwards uptill date of disbursement family pension pursuant to the order dated 28.7.1999. All the arrears shall be

paid to the petitioner herein within four months from the date of communication of this order. The respondents shall continue to pay family pension

to petitioner during her life time.

14. The Writ Petition is allowed in the above terms. Consequently, connected WMPs are closed. No costs.