
(2009) 03 MAD CK 0160

In the Madras High Court

Case No : Writ Petition No. 9740 of 2008 and M.P. No's. 1 and 2 of 2008

G. Kalyanasundaram

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-03-2009

Acts Referred:

Citation : (2009) 03 MAD CK 0160

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : G. Thangavel, for the Appellant; Malarvizhi Udhayakumar, Special Government Pleader for R. 1 and Devadass, CGC for R. 2, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—An octogenarian, a freedom fighter, whose request for pension, under the "Swantantrata Sainik Samman Pension Scheme 1980", has been rejected by the Central Government, is before this Court with this writ petition, challenging the same.

2.The Government of India, during the silver jubilee year of independence, introduced a pension scheme known as "Swantantrata Sainik Samman Pension Scheme 1980" for freedom fighters w.e.f 15.08.1972. A freedom fighter who claims jail sufferings for six months or more, is eligible for grant of the said pension on production of the following evidence:

Imprisonment Suffering:

(a) Primary evidence:- Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case official records of the relevant period are not available, the secondary evidence in the form of 2 co-prisoner certificate (CPC) from Central Freedom

Fighter Pensioners who have proven jail suffering for a minimum of one year and who were with the applicant in the same jail, could be considered provided the Statement Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidence from official recorded in support of the claimed sufferings were not available. In case the certifier happens to be a sitting or Ex MP/MLA, only one certificate in place of the two is required. IN the case of persons belonging to INA category, only one CPC is required.

3. The petitioner claims that he served in the Indian National Army during the freedom struggle between the year 1943 and 1945. He was arrested by English Force in Singapore and he was imprisoned in the "Biddari Detention Camp" for the period from 15th August 1945 to the end of February 1946. One Mr. Kuppusamy, a similar freedom fighter and a member of Indian National Army was also imprisoned in the same prison along with the petitioner between 15th August 1945 to 20th April 1946. Indisputably, the petitioner was granted freedom fighter pension by the Government of Tamil Nadu accepting the claim made by the petitioner in the year 1989 onwards. While so, seeking pension under the above Central Government scheme, the petitioner made an application. The District Collector, Thiruvarur District, submitted a report to the State Government along with the report of the District level Screening Committee recommending for pension to the petitioner under the central Scheme. The said reports conclude that the petitioner is a freedom fighter and he was imprisoned for more than six months during the freedom struggle. Based on the said report of the District Collector dated 03.10.2005, in letter No. Na.Ka.24397/2005 H.3, the Government of Tamil Nadu recommended to the Government of India to consider the request of the petitioner for sanction of "Swantantrata Sainik Samman Pension". The petitioner had also submitted an affidavit of the co-prisoner, Mr. Kuppusamy, wherein Mr. Kuppusamy had stated that the petitioner was imprisoned along with him during the freedom struggle between 15th August 1945 and the end of February 1946. One Mr. Rethinasamy, yet another co-prisoner with the petitioner, has also sworn an affidavit.

4. On considering the recommendation of the State Government and the above documents, the first respondent by his proceedings in F. No. 29/41/2005-FF (INA) Government of India/Bharat Sarkar Ministry of Home Affairs dated 07.02.2006 rejected the claim of the petitioner. The petitioner challenges the same in this writ petition.

5. A perusal of the impugned order would go to show that the claim of the petitioner was rejected since the Certifier namely, Mr. Kuppusamy had undergone imprisonment only for seven months and so, his certificate cannot be considered as according to the Scheme, such Certifier should have undergone imprisonment for a period of one year or more.

6. The learned Counsel for the petitioner would submit that the said stand taken by the first respondent is against the very object of the scheme. According to

him, the claim of a freedom fighter cannot be rejected on such a technical ground instead, the certificate issued by the co-prisoner in the instant case should have been accepted by the first respondent. He would further submit that when the State Government has granted freedom fighters pension holding that the petitioner is a freedom fighter, it is not at all fair on the part of the respondents to reject the claim of the petitioner.

7. A detailed counter has been filed by the respondents 1 and 2, wherein, inter alia, reiterating the stand that the petitioner's case was rejected because the Certifier does not satisfy the requirement of the Scheme namely, minimum imprisonment of one year during freedom struggle.

8. I have considered the rival submissions.

9. In *Gurdial Singh Vs. Union of India and Others*, , the Hon"ble Supreme Court while dealing with an identical situation, in respect of a claim of the freedom fighter under the Scheme in paragraph Nos. 6 & 7 has held as follows:

The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. Millions of masses of the country had participated in the freedom struggle without any expectation of grant of any Scheme at the relevant time. Moreover, in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Therefore, in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It is also to be kept in mind that the claimants under the Scheme are supposed to be such persons who had given the best part of their life for the country.

The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. The case of the claimants under the 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.

10. Following the said judgment, a learned single Judge of this Court in *K. Appanraj v. The Secretary to Government of India and Ors.* 2004 W L.R 606 has held as follows:

7.The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate

the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. 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.

11. Applying the principles laid down by the Hon'ble Supreme Court and followed by this Court in the above judgments, if the facts of the present case are analysed, I am of the view that the rejection of the claim of the petitioner is not at all correct. As observed by the Hon'ble Supreme Court, if the object of the Scheme providing grant of pension to the freedom fighters is kept in mind, certainly it would emerge that demanding a certificate from a co-prisoner who has completed at least one year of imprisonment would not be rational at all. At this length of time, it would be impossible for the petitioner to search for some other co-prisoner who would have completed one year of imprisonment. Demanding such a certificate, which is impossible, cannot be countenanced at all. Admittedly, Mr. Kuppusamy, the Certifier has been granted pension under the Scheme by the Government of India accepting his claim that he was imprisoned during freedom struggle. When that be so, hardly, I find any reason to disbelieve the statement of such a respectable freedom fighter, who fought for the freedom of this great nation. Treating a freedom fighter who is now an octogenarian in a different manner directing him to run from pillar to post for a certificate from a co-prisoner who was imprisoned for more than one year would be only belittling the great services rendered for the freedom of this country. Granting pension to a freedom fighter is the privilege of the Government to honour the freedom fighter and such honour should be extended voluntarily without relying on unnecessary technicalities.

12. Indisputedly, accepting the claim of the petitioner, the State Government has granted freedom fighters pension to the petitioner vide pension order dated 17.11.1989. A Division Bench of this Court in *R. Thangavelu v. The Government of India*, rep. by its Secretary, Ministry of Home Affairs and Anr. 1994 W L.W 137 after considering various Schemes of the Central and State Government, has formulated guidelines to be considered while granting pension. Such guide lines are thus:

The Government should also take into account the book published by them under the title "Who is Who" containing the names of freedom fighters and act upon the same. Equally, when once the Central Government grants the pension after satisfying themselves about the fulfillment of the conditions stipulated in the Scheme, it will not be fair for the State Government to reject the claim of the State Pension. Similarly, if the State Government grants pension to a freedom fighter, the same should be accepted by the Central Government and no further proof should be insisted upon. In other words, once either the State Government or the Central Government grants pension to a particular freedom fighter, he must automatically get the other pension either under the State or under the Central Government scheme without any further enquiry, on the claimants satisfying the guidelines, and the Government cannot reject the claim summarily that he is not a freedom fighter at all. Further, when once Tamara Patra has been granted recognising the valuable services rendered during freedom struggle, the concerned Government should automatically grant pension without any further enquiry or proof.

13. Following the above judgment, the Hon"ble Mr. Justice P.Sathasivam, (as he then was) in W.P. No. 36113 of 2003 by order dated 29.12.2003, while allowing the writ petition, directing the Central Government to grant pension under the Central Scheme has observed as follows:

7. Among the conditions, it is relevant to note that if the State Government grants pension to a freedom fighter, the same should be accepted by the Central Government and no further proof should be insisted upon. The said decision of the Division Bench has become final. As a matter of fact, based on the Division Bench decision, several orders have been passed by this Court directing both Central and State Governments to pass orders in accordance with the guidelines prescribed above. The said decision is directly applicable to the case of the petitioner.

14. As I have already stated, the petitioner was granted freedom fighters pension by the State Government as early as in the year 1989 itself. When that be so, as held by the Division Bench of this Court and later on followed in many judgments of this Court, the respondent is bound to pay pension to the petitioner under the Scheme without insisting for any other certificate from a co-prisoner who was imprisoned for more than one year or more as the certificate issued by Mr. Kuppusamy would be suffice.

15. Admittedly, the Scheme has been given effect from 15.08.1972. Though the claim was made by the petitioner on 12.12.1994, he is not able to get the pension so far due reliance on technicalities by the Central Government. The Hon"ble Supreme Court in Gurdial Singh v. Union of India (cited supra) while directing the Central Government to grant pension has held that it should be from the date of filing of the writ petition and not from the date coming into force of the Scheme. Further, the Hon"ble Supreme Court has directed payment of interest @ 12% p.a. Following the same, in my considered opinion, in the case

on hand, the petitioner would be entitled for pension from the date of his application namely on 12.12.1994 with interest @ 12% p.a.

16. In the result, the writ petition is allowed and the respondents are directed to pay "Swantantrata Sainik Samman Pension" under the "Swantantrata Sainik Samman Pension Scheme 1980" to the petitioner with effect from 12.12.1994. with interest @ 12% p.a. No costs. Consequently, connected miscellaneous petitions are closed.