
(1999) 02 MAD CK 0131
In the Madras High Court
Case No : Writ Petition No. 263 of 1999

K. Marayammal	Vs	APPELLANT
The Government of India		RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Citation : (1999) 02 MAD CK 0131

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : T. Muruga Manickkam, for the Appellant; T.K. Sampath, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J.—The petitioner's husband applied for grant of pension on the ground that he is a freedom fighter. The State Government, by an order dated 10.3.1967, granted pension to her husband. Her husband died on 17.4.1976. So, the petitioner applied for continuation of payment of pension and by order dated 4.10.1976, the Government of Tamil Nadu accorded sanction for the continued payment of freedom fighter's pension to the petitioner. The Government of India re-introduced the freedom fighter's pension scheme under the name and style of "Swatantrata Sainik Pension Scheme, 1984" under which, the pension was payable to the freedom fighter. The petitioner made out an application to the respondent on 23.7.1981 enclosing necessary documents and no reply was received. The Government of Tamil Nadu also, by a letter dated 18.5.1982, recommended to the respondent that the freedom fighter's pension be granted to the petitioner. Since no order was passed, the petitioner filed a writ petition in W.P. No. 11565 of 1995 seeking to issue a writ of mandamus directing the respondent to pass orders on her application dated 23.7.1981 and grant her freedom fighter's pension payable under the said scheme. A Division Bench of this Court directed the respondent to consider the claim of the petitioner. Subsequently, the petitioner sent a detailed representation dated 2.4.1998 to the

respondent enclosing all the necessary testimonials. By order dated 12.10.1998, respondent rejected the petitioner's application holding, her claim that her husband was arrested and detained by British authorities in Ipon and Kulalampur camps from September 1945 to February 1946, was only an afterthought. Aggrieved against the same, the petitioner has filed the above writ petition.

2. The respondent was given time to file counter and the learned counsel appearing for the respondent produced counter before the Court, but it is not in the form of counter as prescribed and all the pages are not signed. So, it cannot be taken as a counter duly filed by the respondent. The learned counsel, on the basis of the said document, argued.

3. According to the learned counsel appearing for the respondent, the petitioner has not produced any document in support of her claim and so she is not entitled for any pension. It is his further submission that even according to the petitioner, her husband was in jail only for five months and not for six months, which is minimum requirement for getting pension.

4. Even the petitioner's husband as early as 21.9.1973, made an application to the respondent seeking pension on the ground that he joined INA in 1943 and was in jail for seven months. In column 9 of the said application, it is stated the he was arrested at IPOH jail for one month, two months in Singapore jail and four months in Kurlang. Thereafter, the petitioner "herself made an application producing all the necessary documents along with the same. The petitioner also produced an affidavit from K. Ramalingam who claims that he is a co-prisoner with the petitioner's husband. In the said affidavit, it is specifically stated that the petitioner and the said Ramalingam were in jail for a period from 1st September 1945 to end of February 1946. But unfortunately, in the impugned order, the respondent proceeded on the basis that the claim that the petitioner's husband was in jail from September 1945 to February 1946 is an after thought. This conclusion was arrived at without even appreciating the supporting affidavit filed by the petitioner. Even if the petitioner came forward with such a plea for the first time, the respondent should not take it as if it is a false one. The respondent should have considered the said fact on merits and on the basis of the documents. But the conclusion of the respondent that the petitioner has come forward with such a plea for the first time, cannot be correct in view of column 9 of the application filed by the husband of the petitioner, in which, it is specifically stated about the period of imprisonment by the husband.

5. The learned counsel appearing for the petitioner relying on the judgment reported in R. Thangavelu Vs. The Government of India and Another, has submitted that the certificate from a co-prisoner should be taken into consideration, if the Government is satisfied about the genuineness of the same, and the Government should not insist on jail records or court records or Government records. While considering the same, the Division Bench of this Court in the said decision, held as follows:

"38. Production of documentary evidence:-As regards the production of documentary evidence like imprisonment/detention certificate from the concerned Jail Authorities/ District Magistrates/or the State Governments, the Government should adopt a pragmatic approach instead of being hyper-technical. It is common knowledge that on account of long passage of time, the freedom fighters may not be in a position to produce the aforesaid, certificates. In fact, the Government is also aware of the difficulties in insisting on the production of such certificates. It is, therefore, the scheme itself provided for acceptance of co-prisoner's certificates and INA Board's recommendation. Therefore, once a certificate from a co-prisoner of INA Board is produced and if the Government is satisfied about the genuineness or the same, it will not be necessary to insist on jail records/Court records or Government records. In such cases, it will be but fair that the concerned Government should act on the co-prisoner's certificate if it is genuine and found to be reliable."

6. While considering the relevancy of receiving freedom fighters pension from the State Government, the Division Bench in the said decision, has also held as follows:

"43. Materials to be taken into account before passing orders:-

The Government should also take into account the book published by them under the title "who is who" containing the name of freedom fighters and act upon the same. Equally, when once the Central Government grants the pension after satisfying themselves about 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 claims summarily that he is not a freedom fighter at all. Further, when once Tamara Patra has been granted recognising the valuable service rendered during freedom struggle, the concerned Government should automatically grant pension without any further enquiry or proof."

7. On the basis of the above, the learned counsel appearing for the petitioner has submitted that the respondent has not taken into consideration has all these aspects and simply rejected the claim on the ground that the fact, that the petitioner's husband has been receiving pension, cannot be taken as automatic for grant of pension by the Central Government. In view of the above decision of the Division Bench and in view of the fact that the respondent has not taken into consideration the Co-prisoner's affidavit, I am of the opinion that the order of the respondent cannot be sustained and it is set aside and the matter is remitted back to the respondent for re-consideration of the matter on merits and in

accordance with law. The respondent is directed to pass orders within three months from the date of receipt of a copy of the order. With the above observations, the writ petition is allowed. No costs.