
(1996) 03 MAD CK 0067
In the Madras High Court
Case No : Writ Petition No. 11295 of 1986

Marakkal

APPELLANT

Vs

Government of India and others

RESPONDENT

Date of Decision : 28-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Mad 476

Hon'ble Judges : Jayarama Chouta, J

Bench : Single Bench

Advocate : B.S. Gnanadesikan, for the Appellant; S. Veeraraghavan, Additional Central Government Standing, V. Subbarayan, Additional Government Pleader, for the Respondent

Judgement

Jayarama Chouta, J.—Petitioner Marakkal, the wife of late S. Rengasamy, filed this writ petition to issue a writ of certiorarified Mandamus

or any other appropriate writ or order in the nature of writ by calling for the records from respondents 1 and 2, i.e. the Government of India

represented by its Secretary, Ministry of Home Affairs, New Delhi, and Government of Tamil Nadu represented by its Secretary, Public

Department, Madras respectively, in their proceedings No. 129/174/81-FFSZ dated 12-9-1985 and L.W. No. 8879/81-14-Public (pp. IV)

Department, D/- 23-4-1986 and quash the same and direct the first and second respondents to grant pension under the Swatantrata Sainik

Samman Pension Scheme, 1980 (Centre) and Freedom Fighters' Pension (State) Pension Scheme.

2. In support of the said writ petition, the petitioner has sworn to an affidavit in which she has stated that her husband, late S. Rengasamy was a

Freedom Fighter and he participated in the individual Sathyagraha in 1941 and also in Quit India Movement in 1942 against the British

Government and he was imprisoned and suffered imprisonment in various jails for more than 11 months. Her husband applied for the grant of

Swatantrata Sainik Samman Pension, which is to be granted by the first respondent and also to the second respondent for the grant of pension

payable by the State Government. The Schemes stipulate that if a person had undergone imprisonment for more than 6 months, the Central

Government will grant pension and if a person had undergone imprisonment, for 21 days, the State Government will grant the pension. Since her

husband had undergone imprisonment for more than 11 months, he is entitled to get the pension both from State Government and Central

Government.

3. The first respondent in his proceedings No. 129/174/81-FFSZ, D/-12-9-1985 rejected the application on the ground that her husband's case

does not come under the purview of Swatantrata Sainik Samman Pension Scheme, D/- 1-8-1980. As far as the second respondent is concerned,

the State Government by its letter No. 8979/84-14 Public (PP-IV) Department, D/- 28-4-1986, rejected the claim on the ground that he has not

proved by any acceptable documentary evidence. Challenging the said orders, the present writ petition has been filed by the petitioner.

4. On behalf of the first respondent, one Shri A. Banerjee, Deputy Secretary, Ministry of Home Affairs, Government of India, New Delhi, has

sworn to a counter-affidavit. In the said counter-affidavit, he has stated that the petitioner's late husband had applied for grant of Swatantrata

Sainik Samman Pension in 1981, claiming imprisonment suffering from 11-10-1942 to 7-7-1943, but his case was rejected on the ground that his

claimed jail suffering for at least 6 months could not be established either from official records or from collateral evidence. He has also stated that in

the pension application, late Rengasamy had not indicated the name of any dependent member of his family. The counter-affidavit further reads that

there was no material to show that the petitioner's late husband had actually undergone imprisonment at least for 6 months or released prematurely

on bail on furnishing surety bond or tendering apology. Since the petitioner's late husband claimed suffering could not be established either from

official records or from collateral evidence that he had actually suffered imprisonment at least for six months, it was not found possible to grant the said benefit to him. On these grounds, the first respondent asked this Court to dismiss the writ petition as devoid of merits.

5. Before considering the rival submissions of the learned Advocates for the parties, it will be better to refer to the orders passed by the Central as well as the State Governments. The order passed by the Central Government reads as follows:

No. 129/174/81-FFSZ--Government of India/Bharat Sarkar, Ministry of Home Affairs/Grih Mantralaya, New Delhi.

To

Shri S. Rengaswamy, Dasanur P.O.,

via Mettupalayam 641 301,

Coimbatore District (TN).

Sub: Grant of Swatantrata Sainik Samman Pension from Central Revenues Effective from 1-8-1980.

Sir,

I am directed to refer to your application/ letters D/- 25-10-1981 and regret to say that your case does not come under the purview of the

Swatantrata Sainik Samman Pension Scheme, 1981, and thus it is rejected for the following reasons:

1. As your jail suffering for at least six months has not been established either from official records or from collateral evidence.
2. The State Government after re-verification of your claimed suffering have not specifically recommended your case.

Yours faithfully.

Sd/-

(T. D. Dua)

For Under Secretary to the

Government of India.

The order passed by the State Government reads as follows:

Government of Tamil Nadu Letter No. 8979/84-14, Public (PP IV) Department, Fort, St. George, Madras-9.

Dated : 28-4-1986.

From

Smt. Sheela Balakrishnan, IAS,
Joint Secretary to Government.

To

Thiru S. Rangasamy,
S/o Sivanappa Gowder,
Dasanur P.O. (Via) Mahadeva-
puram, Coimbatore District
Sir,

Sub: Pension -- Freedom Fighters" Pension (State) -- Coimbatore District --
Request of Thiru. S. Rangasamy -- Regarding.

Ref: 1. From the Collector of Coimbatore, Letter No. 1176/83 (sic),
D/-7-11-1983.

2. Your application D/- 26-1-1984.

3. From the Superintendent, Central Jail, Bellary, Lr. No. JC3/391-C/1945/84, D/-
8-8-1984.

I am directed to state that the Government regret their inability to comply with
your request for the grant of State Freedom Fighters" Pension on

the ground that your claim of imprisonment for the cause of the nation's
freedom struggle has not been corroborated by any acceptable
documentary evidence.

Yours faithfully,

Sd/-

For Joint Secretary to
Government.

6. I may mention here that on behalf of the State, the learned Additional
Government Pleader (Writ) Produced before the Court, a letter which
reads as follows :

R.O. W.P. No. 11295, 86, dated 10-11-95

Sir,

Sub: W.P. No. 11295/86 High Court, Madras -- Filed by Tmt: Marakkal -- Prayer

of the Writ Petitioner -- Complied with -- Infructuous -- Reg.

Ref: Government Lr. No. 23782/PP-IV.

2/94-3 dated 9-3-1995.

In the above letter the Government have informed that Tmt. Marakkal, Wife of Late S. Rangasamy was sanctioned State Freedom Fighters"

Pension in F.F.P.O. No. 12965, Public (PP. IV) Department D/- 9-8-1987 and hence the prayer of the Writ Petitioner has been conceded and

the writ petition has become infructuous. I request you to direct the office to post the above writ petition for dismissal as infructuous.

Sd/-

Addl. Govt. Pleader

A copy of the said letter has been served on the learned Advocate appearing on behalf of the petitioner also and the learned Advocate has fairly

submitted that as far as the prayer against the State Government is concerned, the said relief had been complied with by the State Government and

hence the petitioner is not pressing the said prayer in view of the said compliance.

7. The main grounds of attack on behalf of the petitioner by the learned Advocate were that the first respondent was not justified in refusing the

prayer of the petitioner to grant the pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (Centre). He pointed out that there

were sufficient materials produced by late Rengasamy, husband of the petitioner, before the first respondent to show that he was imprisoned for

nearly 10 months and suffered the said imprisonment in Alipuram Camp Jail, now called Bellary Central Prison. He has also pointed out that it is

not in dispute that one K. Ramani suffered imprisonment during the relevant time in the said prison along with the husband of the petitioner. As

could be seen from the letter issued by the said Ramani, he has stated that the petitioner's husband was along with him in the jail for a period of

more than six months. He has further submitted that when the petitioner applied for the extract of the convict register from the Alipuram Jail, which

is now called as Bellary Jail, he was informed that the entire register pertaining to the month of October, 1942 is completely in torn condition and

the names and other identification could not be taken from the said register. The further contention of the learned Advocate for the petitioner was

that several persons have got pension on the guise of the recommendation and the certificate issued by said K. Ramani and the said Ramani himself

has written a letter to the husband of the petitioner on 10-5-1985, stating why he alone should be singled out for not taking this certificate into

consideration. He has further pointed out that there is no stipulation or rule that there should be official entry or extract produced so far as the

pensions are granted only on the certificate issued by the co-prisoner. In the present case, a certificate issued by the co-prisoner has been

produced by the petitioner's husband and it has not been considered on irrelevant grounds by the first respondent. On these grounds, the learned

Advocate submitted that the writ petition is entitled to be allowed.

8. On behalf of the first respondent, Mr. S. Veeraraghavan, learned Additional Central Government Standing Counsel, contended that late

Rengasamy has not produced any material to show that he had undergone imprisonment as a Freedom Fighter for more than six months. He

pointed out that the first respondent was justified in refusing the said prayer as late Rengasamy has failed to produce sufficient materials to have the

benefit of the said scheme. His second submission was that there is no material to show that the petitioner is the legally wedded wife of late

Rengasamy so as to have the benefit. Unless she establishes her relationship with the late Rengasamy as his wife, she is not entitled for the relief,

which she has claimed. These are the only two contentions put forward by the learned Advocate on behalf of the first respondent.

9. Now let me examine the rival contentions. At the outset I will mention here that the State Government has complied with the request of the

petitioner. The State Government has granted the said prayer to the petitioner treating her as the wife of late Rengasamy. This will be one of the

circumstances to consider the prayer of the petitioner even before the Central Government.

10. According to the affidavit filed by the petitioner, she has signed herself as the wife of late Rengasamy and she has stated that her husband was

arrested on 12-5-1941 at Madras and on the same day sentenced to undergo imprisonment for one month and was released on 11-6-1941,

Again he was charge-sheeted for an offence u/s 34(6)(c) and (k) read with Section 38(5) of the then Defence of India Rules in Calendar Case No.

5/42 on the file of the Additional First Class Magistrate, Coimbatore, and he was sentenced to undergo 10 months rigorous imprisonment and he

was lodged in Central Prison, Coimbatore, on 12-10-1942. The extract of the Convict Register in respect of late Rengasamy issued by the fourth

respondent will show the relevant particulars. The date of release, according to the said entry, is 11-8-1943. Within a short period of three days,

on 15-10-1942, he was transferred to the then Alipuram Camp Jail, Bellary, and the said fact of Transfer was entered in the register maintained at

the Coimbatore Central Prison and he had undergone imprisonment till 11-8-1943, the complete period of ten months, and after that period he has

been released from the jail.

11. Even in the counter-affidavit filed by the first respondent, it was admitted that late Rengasamy has actually undergone imprisonment from 11-

10-1942 to 7-7-1943 in Alipuram Camp Jail, Bellary, and in support of his claim, he had produced co-prisoner's certificate dt. 20-2-81 from one

Shri K. Ramani, M.L.A., who had certified that Shri Rengasamy was a co-prisoner in Coimbatore Central Jail and Alipuram Camp Jail, Bellary

from Sept., 1942 to April 1943, i.e.. about 9 months. However, the said counter-affidavit says that in the certificate issued by K. Ramani in

respect of another co-prisoner, dt. 23-2-1943, the said Ramani had testified that Shri Rengasamy was with him at Alipuram Camp Jail, Bellary,

from January, 1943 to April, 1943 i.e. for a period of four months. In the said certificate, he did not mention that Shri Rengasamy was with him at

Coimbatore Central Jail. Since there was no clear and clinching material to show that said Rengasamy was in jail for more than six months, his

prayer was turned down. Further, the said counter-affidavit says that Shri Ramani's certificate is also not acceptable as he had not produced any

documentary evidence either from the jail or from Court about his own imprisonment for the certified period to tally their co-prisoner ship. In

another place in the said counter-affidavit, it has been mentioned that in cases where jail or Court records are not available to prove the applicant's

claimed imprisonment, then co-prisoner's certificates are accepted as evidence, who had actually undergone imprisonment along with the

applicants and possess evidence from official records such as jail certificate or Court judgment for the certified period to tally their co-prisoner

ship.

12. As far as the second objection of the learned Advocate for the first respondent is concerned, now the State Government has granted pension

to the petitioner treating her as the wife of late Rengasamy. Further, even in the counter-affidavit, Rengasamy has been referred as the late husband

of the petitioner and hence there is no force in the contention of the learned Advocate for the first respondent that the petitioner has not shown her

relationship with late Rengasamy. Just because in his application filed by the late Rengasamy he had not indicated any dependent member of his

family it cannot be possible for me to hold that the petitioner is not the wife of late Rengasamy and this contention has to be rejected.

13. Having regard to the facts narrated above and also the fact that the State Government has granted pension to the petitioner, I am of the opinion

that the first respondent was not justified in refusing the prayer of the petitioner. Hence, for the reasons stated above, I allow this writ petition and

quash the order dt. 12-9-1985 passed by the first respondent in proceedings No. 129/ 174-FFSZ and direct the first respondent to grant pension

to the petitioner under the Swatantrata Sainik Samman Pension Scheme, 1980 (Centre). Three months' time from today has been granted to

comply with the said direction. There will be no order as to costs.

14. Petition allowed.