
(2014) 02 MAD CK 0221

In the Madras High Court

Case No : Writ Petition No. 15316 of 2013 and M.P. No. 1 of 2013

N. Subramaniam

APPELLANT

Vs

The Government of Tamilnadu

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Citation : (2014) 02 MAD CK 0221

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : A. Nagarathinam, for the Appellant; S.P. Prabakaran Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandrababu, J.—The challenge made in this writ petition is against the order of the first respondent in rejecting the petitioner's request for grant of Freedom Fighters Pension. The case of the petitioner is as follows:

He is a freedom fighter. He had joined the Indian Independence League in 1944 in the Dallah Branch, Rangoon, Burma and served under the Chairman Mr. V.A. Rangasamy. He participated in various struggles relating to freedom movement during the year 1944-45. He was arrested by the British Force and was tried by Allied Marshal Court and imprisoned in the Rangoon Central Jail for a period of more than six months from the month of May 1945 to November 1945. The petitioner is entitled to Freedom Fighters Pension under State Freedom Fighters Pension Scheme. He made an application for grant of pension on 25.04.1998 in the prescribed format by enclosing a certificate dated 25.04.1998 issued by his co-prisoner M. Subramani. An Identity Certificate issued by one Sevathiyan also was enclosed. One P.K. Servai, the State President of Tamilnadu I.N.A. Forum issued a Personal Knowledge Certificate dated 15.02.1999 to the petitioner stating that he had been a member of I.I.L. and participated in the freedom struggle. The General Secretary of All India I.N.A. Committee also issued a certificate on 17.01.2004, stating that he was a political sufferer and a member

of Indian National Army. He made once again a representation dated 16.11.2011 to the second respondent seeking for grant of pension. The second respondent through letter dated 16.11.2011 informed the first respondent that the Chennai District Review Committee recommended the petitioner's case for grant of pension as early as on 05.10.2005 itself. Again, the petitioner approached the second respondent and gave representation on 28.02.2012. The petitioner filed a writ petition in W.P. No. 33973 of 2012 seeking for grant of pension. On 19.12.2012, this Court directed the first respondent to consider the claim of the petitioner in the light of the recommendation already made by the second respondent and pass appropriate orders. The first respondent thereafter sent a letter dated 21.01.2013 directing the second respondent to furnish the original documents. The second respondent in turn asked the Tahsildar of Kottai-Tondiarpet Taluk to verify the above documents with the original documents. Accordingly, the Tahsildar verified the said documents and certified the same by a letter dated 27.02.2013. On receipt of the same, the first respondent passed the impugned order rejecting the claim of the petitioner on the ground of non furnishing of new and acceptable documents.

2. The second respondent filed a counter affidavit wherein it is stated as follows:

The petitioner has applied for state Freedom Fighters Pension on 19.04.2005. The District Collector, Chennai has recommended to the Government for sanction of State Freedom Fighters Pension on 05.10.2005. The Government rejected the request on 31.01.2006, on the ground that the Personal Knowledge Certificate issued by the Secretary, Tamilnadu INA Forum is not issued on document support and that the genuineness of the certificate issued by the Secretary, All India I.N.A. Committee could not be verified. After the order passed in W.P. No. 33973 of 2012, the Government sought attested copies of certificates submitted by the petitioner. The records were sent to the Government on 04.03.2013. The Government has rejected the claim of the petitioner on 16.04.2013, on the ground that the records furnished are not in consonance with the rules and no new materials are filed. The plea of the petitioner that his hut was completely burnt out due to fire accident on 18.11.1986 is admitted and the Tahsildar has issued a Certificate to that effect.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials placed before this Court.

4. The petitioner was a Freedom Fighter. Such status of the petitioner is not disputed. It is his case that he has participated in various struggles relating to freedom movement during the year 1944-45 and joined the Indian Independence League and I.N.A. and had undergone jail sufferings for more than six months. In support of his claim, the petitioner has enclosed the copies of the certificate issued by All India I.N.A. Committee, Tamilnadu I.N.A. Committee, Certificates from the Co-prisoners viz., K.E. Sabastin and M. Subramani. It is admitted by the respondents that the petitioner's hut got destroyed in the fire accident that took

place on 18.11.1986. Therefore, the petitioner cannot be expected to have the original documents. Moreover, the District Collector, Chennai has already made recommendation to the first respondent Government for sanction of State Freedom Fighters Pension as early as on 05.10.2005, which is also admitted in the counter affidavit. When the petitioner approached this Court on earlier occasion, seeking for grant of pension, this Court by an order dated 19.12.2012, directed the respondents to consider the case of the petitioner in the light of the recommendation already made by the District Collector. When that being the order passed by this Court, the first respondent has chosen to reject the request of the petitioner. The reasons stated for such rejection are available at paragraph No. 3 of the impugned order and they are dealt with hereunder.

5. The certificate issued by one P.K. Servai, who is the General Secretary of I.N.A., was not accepted by stating that the same was not issued based on basic documents. I wonder as to how the first respondent has come to such conclusion especially, when the genuineness of the Certificate issued by the said P.K. Servai was not at all doubted. Once the genuineness of the certificate is not in doubt, then the contents of the certificate has to be taken as true, in the absence of any contradictory material available before the first respondent.

6. The other reason stated is that the certificate issued by one S.S. Yadav, the General Secretary of India, I.N.A. Committee is not acceptable, even though the said person has admitted to have issued certificate, because the said person was not in a position to inform as to under what basis the certificate was issued to the petitioner. Here again, the approach of the first respondent is unacceptable. It is not in dispute that the said certificate was issued by the said S.S. Yadav. In fact, the very same person admitted that he only issued the said certificate. Therefore, the genuineness of the certificate is admitted. The said person was not in a position to inform the first respondent with regard to the basis for issuing such certificate, only because, the connected records were destroyed for want of space in his office. This fact is also admitted in the impugned order. Therefore, such being the reason assigned by the said person, I wonder as to how the first respondent has chosen to reject the said certificate.

7. Further, in so far as the certificates issued by the two co-prisoners are concerned, the same were rejected simply by stating that they were not issued in accordance with the Pension Rules. I wonder as to how the first respondent has come to such conclusion, when it is not in dispute that those two persons issued the certificates in favour of the petitioner are co-prisoners. Whether it is in the required format or not, the fact remains that the persons issued the same were the co-prisoners with the petitioner during the relevant point of time and the said fact is disclosed in their certificates. When that being the factual position, I find that the rejection order passed by the first respondent is totally unsustainable. Mere technical objections should not stand in the way of disbursing pension to the freedom fighters. Moreover, this Court has already directed the first respondent to consider the claim of the petitioner based on the

recommendation already made by the second respondent/District Collector. It appears that the said recommendation was made as early as in the year 2005. In spite of the same, the first respondent has chosen to reject the claim of the petitioner, which is totally unfair. It appears that the first respondent has chosen to search for reasons to reject the request of the petitioner rather than finding a reason to grant. It is nothing but a pedantic approach when the authorities are expected to have a pragmatic one while considering these type of cases.

8. At this juncture, it is useful to refer to the decision of the Hon''ble Division Bench of this Court reported in *R. Thangavelu Vs. The Government of India and Another*, , which reads as follows:

We are unable to accept the contention of the first respondent for the following reasons. The impugned order of the first respondent is in printed form. It only states that the documentary evidence sent by the petitioner along with his application does not prove his claim of suffering. We have held that the Government should adopt a pragmatic approach instead of being hyper technical in directing the applicants to produce the documentary evidence like imprisonment/detention certificate from the Jail Authorities or from the State Government. It is common knowledge that on account of the long passage of time, the freedom fighters may not be in a position to produce the certificates asked for. The Scheme itself provides for acceptance of co-prisoner''s certificate and INA Board''s recommendation. Therefore, when once a certificate from a co-prisoner or INA Board is produced, it will not be necessary, in our view, to insist on jail records/court records/Government records. In such cases, it will be but fair that the concerned Government should act on the co-prisoner''s certificate.

9. Further, the Hon''ble Supreme Court in a decision reported in *Gurdial Singh Vs. Union of India and Others*, , has observed that the Authorities concerned are required to adopt a rational and not a technical approach in appreciating the scheme for the benefit of freedom fighters pension. Paragraphs 6 and 7 of the above decision are extracted hereunder:

6. 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. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that 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. Keeping in mind the object of the Scheme, the authorities concerned are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country. This Court in *Mukund Lal Bhandari case*, 1993 Supp (3) SCC 2 observed: (SCC pp. 7-8, para 9)

The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the Scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now.

The Court categorically mentioned that the pension under the Scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

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 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.

The petitioner is now aged about 87 years. Even at this age, the petitioner, who fought for the freedom, has to struggle to get his pension. Authorities should

realize that it is not a charity that is being extended by the Government to these type of persons by granting pension. On the other hand, it is the bound duty of the Government to confer such honour on them without loss of time. Thus, I find every justification to allow this writ petition, thereby directing the first respondent to grant pension to the petitioner, based on the documents already furnished by him. Accordingly, the writ petition is allowed and the impugned order is set aside and the first respondent is directed to issue the Freedom Fighters Pension to the petitioner from the date of his application within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.