
(2010) 10 MAD CK 0422
In the Madras High Court
Case No : Writ Petition No. 3201 of 2010

P. Balakrishnan

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Tamil Nadu Payment of Pensions to Tamil Scholars and Miscellaneous Provisions Act, 1983 — Section 4

Citation : (2010) 10 MAD CK 0422

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : G. Nagarajan, for the Appellant; T. Chandrasekaran, Spl. G.P. HR and CE for R1 and P. Seshadri, for R2, for the Respondent

Final Decision : Allowed

Judgement

N. Kirubakaran, J.—The Petitioner has challenged the order of rejection passed by the second Respondent by which the Petitioner's claim for monthly pension as per Tamil Nadu Payment of Pension to Tamil Scholars and Miscellaneous Provisions Act 1984 was rejected on the ground that the Petitioner did not produce imprisonment certificate.

2. The case of the Petitioner is that he participated in the movement relating to the merger of Tamil areas of the former Travancore State with Tamil Nadu on 11.8.1954. The Petitioner contends that he was arrested at Kuzhithurai and kept in Thuckalay jail for 184 days. Therefore, under the provisions of Tamil Nadu Payment of Pension to Tamil Scholars and Miscellaneous Provisions Act 1984, the Petitioner applied for monthly pension on 29.6.2001 to the second Respondent. The second Respondent forwarded the application to the third Respondent to conduct an enquiry about the Petitioner's contribution in the said movement. The third Respondent conducted an enquiry and the Petitioner furnished all the documents to prove his participation in the said movement.

3. It is stated that the third Respondent after thorough enquiry sent a report

dated 15.2.2005 to the second Respondent. As no action was taken, the Petitioner sent a representation to the Chief Minister and the same was forwarded to the second Respondent on 10.10.2008. After that the second Respondent informed the Petitioner by a letter dated 24.2.2009 stating that he addressed to the third Respondent to get a report. As no further reply was received from the second Respondent, the Petitioner applied under Rights to information Act to the second Respondent on 6.1.2009 requesting the details about the action taken on the basis of the report of the third Respondent. The second Respondent by reply dated 4.2.2009 informed the Petitioner that the report of the third Respondent had been placed before the High Level Committee on 7.5.2007, which rejected the claim of the Petitioner on the ground that he did not produce the imprisonment certificate to the third Respondent. The letter dated 4.2.2009 issued by the second Respondent herein is impugned before this Court.

4. Mr.C. Rajakumar, learned Counsel for the Petitioner submits that the Petitioner applied for monthly pension for participation in the movement relating to the merger of Tamil areas of the former Travancore State with Tamil Nadu and underwent imprisonment and also produced certificate obtained from the merger movement association and an Ex-member of parliament and other documents to prove his participation in the movement. Therefore the rejection on the ground of non-production of imprisonment certificates erroneous. He relied upon a judgment of this Court in C. Natarajan and Ors. v. The Government of Tamil Nadu and others reported in 1999 MLJ 728, wherein it has been held that there is no justification in rejecting the claim of the Petitioners therein on the ground of non-production of imprisonment certificate. Therefore he seeks for setting aside the order and further direction to the Respondent to grant pension.

5. On the other hand, Mr. D. Sasikumar, learned Government Advocate submitted that the claim of the Petitioner was considered and after thorough enquiry by the third Respondent and considering the said report, the impugned order was passed. As no imprisonment certificate was produced by the Petitioner his claim was rightly rejected by the second Respondent.

6. It is seen from the records, an ex-member of parliament representing Nagercoil Constituency issued certificate dated 21.2.2001, certifying that the Petitioner was a political sufferer of the merger movement and that he participated in the merger agitation and that he was arrested and kept in jail.

7. Mr.P. Palaiyan @ Palraj, son of Ponniah, who was granted monthly pension under the Act from 14.4.1987onwards by the Respondents, issued a certificate certifying that the Petitioner participated in the merger movement and was imprisoned along with the said Mr. P. Palaiyan @ Palraj. Similarly one Mr. A. Nesaiyan gave certificate to the Petitioner to the same effect and the said Nesaiyan has been getting pension under the Act.

8. The certificate dated 13.7.2001 issued by the Superintendent of Prison, Sub-

Jail, Kuzhithalai states that the details regarding the prisoners kept during 1954-1956 are not available as they were not handed over by the Revenue Department and that the administration was given the prison authority only in 1983. The aforesaid certificate issued by the Superintendent of Prison would show that even the authorities do not have the details regarding the prisoners during the year 1954-1956 and therefore it is highly improbable to expect an individual to get documents relating to the imprisonment during the year 1954 to 1956.

9. In similar circumstances, the writ petitions filed by persons hailing from Kanyakumari District, who sought for pension under the Act, were allowed by this Court. In *C. Natarajan and Ors. v. The Government of Tamil Nadu and others*, His Lordship Mr. Justice P. Sadasivam, as he then was took note of similarly placed persons, who fought for merger of Travancore Tamil areas in Tamil Nadu was granted pension based on the certificates issued by the former member of legislature and parliament and directed the authority to verify the claim of the Petitioners therein and pass orders.

10. Paragraph 19 of the judgment is usefully extracted as follows:

19. In the risk of repetition, I once again come to Clause (V of Sub-section (4) of Section 4 of the Act. It enables the applicant either to place the documents of imprisonment or prove the sufferings by way of placing acceptable evidence. As observed earlier, in the absence of any details either in the Act or in the Rules the Government cannot expect the applicants to keep the imprisonment certificate for 30 to 40 years anticipating such legislation will be brought by the Government. I am satisfied that in the light of elaborate procedure in the Act and Rules, it is open to the applicants to place relevant records or the Collector or the Enquiry Officer can very well enquire the jail records, such as convict register and furnish the extractor the applicant as well as to the sanctioning authority. It is also clear from the said Rules, if the enquiry officer or the Collector is satisfied, based on various sources and makes a commendation, the same will have to be considered by the Government. After all it is the Government which brought the legislation to help the person who involved in the growth of Tamil language or Tamil culture. It is also the state Government who recommended the persons, who had fought for the merger of the Tamil areas in Kanyakumari District and Chengottah Taluk of Tirunelveli District merged with the State of Tamil Nadu and granted pension to various persons, based not only on the imprisonment certificate but merely on the basis of certificate from the former members of legislature and Parliament as evidenced in G.O. Ms. No. 72, Tamil Development Culture Department, dated 3.3.1988. I am satisfied that the Respondents have not taken into consideration the relevant facts and materials. Instead of rejecting the request of the Petitioners in the first six cases on the ground of non-production of imprisonment certificate, it is incumbent on the part of the Respondents to verify the claim of the Petitioners with reference to the materials available or produced or placed by them before the Respondents. As stated

earlier Rule 4(4) enables the Collector or the enquiry officer to verify the jail records and issue extract from the convict register to the applicants free of cost. While so, the Respondents should themselves verify with the jail authorities. Even assuming that those records are not available, in the absence of any specific provision in the Act and Rules, as pointed out, the co-prisoner certificate issued by public men of reputation and who have undergone the imprisonment during the said movement should have been given due credit and weight. The only reason given by the first Respondent in rejecting the application of the Petitioners without going into the merits of their claim cannot be sustained. I also accepted that it cannot be said that there is no material before the Respondents to hold that the claim of the Petitioners are false or that they had not undergone imprisonment or had not taken part in the movement. It is also brought to my notice that number of persons from the Kanyakumari District for taking part in the merger movement have been granted pension and the Government is not justified in rejecting the claim of these imprisonment certificate. I have already stated that the learned Counsel for the Petitioners has placed the relevant Government Orders sanctioning pension to others merely on the basis of certificates issued by former member of the legislature and Parliament.

11. As stated above, the Petitioner's participations proved by the certificate issued by an Ex-member of parliament dated 21.2.2001 and the certificate issued by co-prisoners namely Mr. P. Palaiyan @ Palraj and Mr. A. Nesaiyan, who were granted pension under the Act by proceedings of the first Respondent in 0849/86 dated 17.10.1988. Therefore the Respondents cannot ignore the certificates issued by Mr. P. Palaiyan @ Palraj and one Mr. A. Nesaiyan, who were granted pension after enquiry by the Respondents.

12. The certificate issued by the jail authorities would show that there are no documents available regarding particulars of the prisoners during 1954-56. The Respondents herein cannot reject the certificate issued by the merger movement association and the certificates issued by a veteran politician and a member of parliament of Nagercoil Constituency and two other co-prisoners. The certificate issued by the jail authorities would show that there are no document relating to the year of 1954-56. Therefore no purpose would be served for remitting the matter for reconsideration regarding the claim of the Petitioner.

13. In view of that, this Court finds that the rejection of the Petitioner's claim on the ground that he did not produce imprisonment certificate is not sustainable. It is pertinent to note that this Court already held that rejection of pension for non-production of co-prisoner's certificate is wrong. Moreover insistence of production of imprisonment certificate is highly impossible. On the other hand abundant evidence by way of documents are produced by the Petitioner. Therefore the Petitioner's claim should not have been rejected. The Petitioner is aged about 81 years, who hails from Kanyakumari District, which was merged from Travancore Tamil areas to State of Tamil Nadu and when the similarly placed persons were granted pension under the Act there is no occasion for the

Respondents to deny the same to the Petitioner, who proved his claim by documents.

14. Therefore this Court while setting aside the order further directs the Respondents to sanction monthly pension to the Petitioner as per the Tamil Nadu Payment of Pension to Tamil Scholars and Miscellaneous Provisions Act 1984 within 10 weeks from the date of the receipt of a copy of this order.

15. With the above, the writ petition is allowed. No costs. Consequently the connected M.P. No. 1 of 2010 is closed.