

(2002) 02 MAD CK 0059
In the Madras High Court
Case No : Writ Petition No. 6688 of 2000

P. Subramanian

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Citation : (2002) WritLR 646

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : A. Murugan, for the Appellant; M. Mahalingam, G.A., for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—Petitioner has filed this writ petition praying to issue a writ of mandamus directing the respondent to sanction Freedom

Fighter's pension to the petitioner from the date of his application accepting the proof of his age based on the new Family card, his horoscope and

the extract of who is who publication issued by the Government.

2. In the affidavit filed in support of the writ petition, petitioner would submit that he had applied for Freedom Fighter's Pension on the ground that

he had undergone imprisonment in the Vellore Central Jail for a period of 6 months from 15.7.1940 to 20.12.1940 for participation in the

Freedom Struggle during the year 1940 ; that Co-prisoner G.Pakkiri a Freedom Fighter who is receiving State Freedom Fighter's Pension based

on the orders of the Government in G.O.Ms.No. 2111 Public dated 24.6.1968 has issued a certificate to the effect; that the Screening Committee,

Nagapattinam District scrutinised his application together with the co-prisoner's

certificate did not recommend his case to the Government for sanction of Freedom Fighter's Pension on the ground that he is already drawing old age pension; that the Committee also obtained a written statement to the effect that he did not want Freedom Fighter's Pension and submitted the papers to Government; that there is no prohibition in the scheme for granting pension to such of the Freedom Fighters who are drawing old age pension; that the old age pension is only Rs.150/- p.m.

3. The petitioner would further submit that State Freedom Fighter's Pension is being sanctioned to such of the Freedom Fighters who had undergone imprisonment for participation in the Freedom struggle for a minimum period of three weeks; that once the Freedom Fighter's Pension is sanctioned, the grant of old age pension would be stopped; that however, the Government did not accept the recommendation of the Collector and wanted the petitioner to produce certificate relating to his educational qualification, as there was discrepancy in his age in the copies of family cards furnished by him; that the petitioner has studied in an un-recognised school up to II Standard; that he could not therefore produce the certificate relating to his educational qualification; that there is no age rules for grant of pension to Freedom Fighters; that the Government have issued guidelines in letter No.12273/96-20 Pub.(PP II) Dept., dated 13.1.1997 for the functioning of the District level Screening Committee; that one of the guidelines is that he should have completed 18 years of age at the time of conviction; that with reference took his letter dated 27.10.1998 addressed to the Government, the Government in their letter dated 24.11.1998 have informed him that in his letter dated 2.4.1998 the Collector has stated that his request for the grant of Freedom Fighter's Pension was considered by the screening committee on 30.3.1998 and when the records furnished by him were noticed that during 1940 when he had undergone imprisonment, he was only 10 years old, that he did not apply for grant of Freedom Fighter's Pension previously and that his request for grant of pension was recommended to Government for rejection.

4. The petitioner would further submit that however, the Government gave one more chance in their letter dated 10.9.1998 asking him to prove that he was 18 years old at the time of imprisonment by furnishing certificate

from the school in which he studied; that in the absence of confirmation that he had completed 18 years of age at the time of imprisonment, his request for the grant of Freedom Fighter's Pension could not be accepted by the Government; that his request for the grant of Freedom Fighter's Pension was not accepted by the Government due to discrepancies in the age; that pension is granted mainly on the jail sufferings undergone by the Freedom Fighters and the other things are only subsidiary; that since he has furnished his horoscope wherein his date of birth has been indicated as 15.6.1916; that in 1940 he was more than 20 years old and satisfy the guidelines prescribed by the Government; that a detailed notice dated 1.3.1999 was also issued to the Government to reconsider his case and to accept the age furnished in the family card; that the Government in their letter dated 20.6.1999 have informed that the Government have examined the notice and have rejected the claim; that the entries in extract of "Who is Who" publication strengthens the case of the petitioner in regard to the age qualification; that the fact remains that he had completed more than 18 years when he took part in the Freedom struggle. ON such overmen's, he has come forward to file the above writ petition praying to issue a writ of mandamus as stated therein.

5. During arguments the learned counsel appearing on behalf of the petitioner besides reiterating the pleadings by the petitioner in the affidavit filed in support of the writ petition would submit that the respondent has not disputed the fact that the petitioner is a Freedom Fighter and he has undergone imprisonment in the year 1940 for a period of 6 months that the minimum period of imprisonment for granting Freedom Fighter's Pension is three weeks; that the petitioner has undergone imprisonment for a period of 6 months from 15.7.1940 to 20.12.1940 for participation in the Freedom Struggle during the year 1940; that he is entitled to receive Freedom Fighter's Pension.

6. On the other the learned counsel appearing on behalf of the respondent would submit that the petitioner has not proved his age to the effect that he had completed 18 years at the time of imprisonment, failure to produce the proof of age the petitioner is not entitled to receive Freedom Fighter's Pension.

7. While such being the condition, relying on the following judgments reported in

(1) Gurdial Singh Vs. Union of India and Others,

(2) I.V.K.MALAICHAMY (deceased) AND ANOTHER vs. THE GOVERNMENT OF INDIA & OTHERS 2001 W LR 549,

this court has arrived at decision so far as the issue concerned with the grant of Tamilnadu Scholar Pensions in favour of the petitioner is

concerned, the relevant portion from the judgment cited first supra is as follows:

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 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.

The relevant portion from the judgment cited second supra is as follows:-

Taking note of the spirit and substance of the certificate issued by the co-prisoner Sri P.Kakkan particularly when there is no averment in the

counter affidavit filed by respondents 1 and 2 disbelieving the certificate as a whole, I am obliged to quash both the proceedings, namely,

No.13/O/Mu/37917/89 dated 23.7.1990 by the third respondent and No.129/97/84/FF(S.2) dated 25.2.1984 by the first respondent with a

direction to give the benefits of the scheme to the petitioner, who are legal heirs of V.K.Malaichamy (deceased) freedom fighter, within three

months from the date of receipt of a copy of this order.

8. In consideration of the pleadings by parties, having regard to the materials available on record and upon hearing the learned counsel for both,

what comes to be known is that the respondent has not disputed the fact that the petitioner is a Freedom Fighter since it comes to be revealed that

he had undergone imprisonment in the year 1940 for a period of 6 months that the minimum period of imprisonment for granting Freedom

Fightgter's Pension is three weeks; that the petitioner has undergone imprisonment for a period of 6 months from 15.7.1940 to 20.12.1940 for

participation in the Freedom Struggle during the year 1940.

9. The only controversy is the age, though age could not be a bar for a freedom fighter to court arrest, still it has been concluded by the respondent

that since one should have the age of 18 at the time that he was imprisoned, they say that the case of the petitioner could not be considered for the

grant of the freedom fighter's pension.

10. The petitioner would come forward to argue that according to his horoscope his age at the time of arrest was 20 and therefore, in

consideration of the same he could be considered for the said pension, which is sufficient proof for such conclusions to be arrived at in the

affirmative for the grant of the freedom fighter's pension within the standard of proof that is required as per the judgments cited supra and since

already convincing reasons have been assigned for having been imprisoned on the part of the petitioner, this controversy raised on his age cannot

be held to be a hindrance for grant of such pension and the respondent could very well consider the application of the petitioner accepting the

proof of his age based on the new family card and his horoscope which are sufficient proofs for his age within the standard prescribed by the Apex

Court in the above judgments and hence the following order:

In result,

(i) the above writ petition succeeds and the same is allowed.

V. Kanagaraj, J.

ii) The respondent is directed to sanction freedom fighter's pension to the petitioner from the date of his application accepting the proof of his age

based on the new family card and his horoscope and the extract, "who is who" publication issued by the Government.

- iii) The respondent is further directed to comply with this direction within 30 days from the date of receipt of this order.
- iv) However, in the circumstances of the case, there shall be no order as to costs.