
(2013) 02 MAD CK 0160

In the Madras High Court

Case No : Writ Petition No. 16334 of 2012 and M.P. No. 2 of 2013

Palammal

APPELLANT

Vs

Government of India and Another

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 3 LLN 274 : (2013) 4 MLJ 154 : (2013) 3 MLJ 503 : (2013) 3 SCT 418 : (2013) 3 SLJ 479

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : S. Sathiamurthi, for the Appellant; Haja Mohideen Gisthi, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The petitioner is a Widow whose husband by name Shri N. Palaiyan, was a Freedom Fighter. He joined Indian National Army shortly I.N.A., headed by Nethaji Subash Chandra Bose. Her husband was a Sepoy (No. 506222) in I.N.A., 1st Guerilla Regiment. He went to Singapore in the year 1937. In March, 1944, he joined Indian National Army. He was sent to Silaita Camp and then deputed for Military training to Benkok and Shophin Camps. After the military training, he was sent to Rangoon in Burma by Colnl SPL Gyani and joined the First Guerilla Regiment of Bose Bigade. While so, he was arrested by the British forces near Mandelay in May 1945 and was kept for about three months in Mingladon Camp and thereafter, he was taken to Central Jail at Rangoon. He was imprisoned at the Central jail, Rangoon from 15.8.1945 till the end of February 1946. Those who retreated from the war front were arrested and kept in Mingladon Camp for few months and thereafter, brought to Rangoon Central Jail. After the world war was over, the persons who were imprisoned, were released. Thereafter, he was repatriated to Madras via Calcutta through sea. His repatriation took place with the assistance of I.N.A. Relief Committee at

Rangoon. The petitioner is legally wedded wife to the Freedom Fighter Shri Palaiyan. He owned about one acre of land in T. Maravakadu Village in Pattukottai Taluk in Thanjavur District. There are six children to the petitioner through Shri Palaiyan.

2. Shri Palaiyan applied for Freedom Fighters Pension to the Tamilnadu Government in 1967. The District Collector, Thanjavur sent a report dated 31.12.1968 to the Chief Secretary to the Government, Public (General-P) Department of Tamil Nadu Government, recommending freedom fighters pension to Shri Palaiyan, on the ground that he was a member of I.N.A. He enclosed All India I.N.A. Committee Certificate along with his recommendation. Based on his recommendation, Tamil Nadu Government issued an order in F.I.P.O. No. 3311/69 dated 02.02.1969, sanctioning monthly pension of Rs. 50/- per month from 7.7.1967 onwards till his death. The pension was periodically increased by the Tamilnadu Government. He was in receipt of Freedom Fighters Pension from the Tamilnadu Government until his death on 5.10.1993.

3. Shri Palaiyan applied in 1980 to the Government of India, Ministry of Home Affairs, New Delhi for Freedom Fighters Pension, under its scheme. He enclosed two Co-prisoners Certificate from Shri V. Viswanathan and Shri S. Veerapan along with his application.

4. The Under Secretary to Government of India, Ministry of Home Affairs sent a letter dated 22.05.1980, seeking clarification from Shri Palaiyan as to his whereabouts during the months of June/July, 1945, since the co-prisoners certified that Sri Palaiyan was in Rangoon Central Jail from 15.8.1945 till February 1946. It is stated that only after furnishing the said details, his claim would be examined further.

5. Shri Palaiyan sent a reply dated 6.6.1980 to the letter dated 22.5.1980, referred to above, that he was arrested at Mangla Town and later taken to Rangoon Central Jail in August 1945. While so, the Under Secretary to the Government of India, Ministry of Home Affairs passed the impugned order dated 30.10.1980, rejecting the request of Shri Palaiyan for Freedom Fighters Pension. It was rejected on the ground that his reply dated 6.6.1980, is contradictory to earlier application. According to the impugned order, Shri Palaiyan changed his earlier stand and intimated in his reply dated 6.6.1980, that he was arrested in May 1945 and kept in various camps till he was detained in the Central Jail at Rangoon from August 1945. The impugned order also stated that he failed to indicate the Battalion of the First Guerilla Regiment in which he was posted and the area where it was located.

6. Thereafter, Shri Palaiyan made various representations to the Honourable Prime Minister and also to the Ministry of Home Affairs, including his representations dated 10.6.1989, 19.2.1991 and 14.07.1993. He breathed last on 5.10.1993, without getting Freedom Fighters Pension from the Central Government.

7. After the death of her husband, the Tamilnadu Government granted family pension to the petitioner, as the Widow of the Freedom Fighter, from 6.10.1983 onwards till her life time. She is in receipt of family pension from the Tamilnadu Government. The Golden Jubilee Independence Day Celebration Committee gave a Certificate dated 21.10.1997, recalling the sacrifice made by late Shri Palaiyan.

8. The petitioner made various representations to the first respondent and various authorities including her representations dated 4.6.2006, 6.7.2008, 10.8.2009, 12.6.2010 and 1.11.2011. While so, the President's Secretariat (Public Section), Rashtrapathi Bhavan, New Delhi, sent a letter dated 20.8.2009 that her representation was forwarded to the first respondent, for proper action and to intimate the same to the Rashtrapathi Bhavan. However, nothing was heard from the first respondent.

9. In these circumstances, the petitioner has filed the present writ petition, seeking to quash the impugned order dated 30.10.1980 of the first respondent, refusing to pay Freedom Fighters Pension for her husband and to direct the respondents to sanction the Swathantratha Sainik Samman I.N.A. Pension with effect from 6.6.1980, with interest at 9% p.a. till the payment is made.

10. The respondents filed counter affidavit refuting the allegations. Preliminary submissions as well as the submissions on merit are made in the counter affidavit.

i) In the preliminary submissions, it is stated that Swathantratha Sainik Samman Pension Scheme, 1980 shortly Central Scheme, provides for pension to the freedom fighters. A person is eligible for pension under the Central Scheme if he has undergone six months imprisonment in the freedom struggle. Participation in I.N.A. and in the Indian Independence League, is treated as participation in the National Liberation Movement. As per the Scheme, the claimant shall produce Certificate about imprisonment from the concerned Jail Authority, District Magistrate or the State Government. If the official records for imprisonment are not available, secondary evidence in the form of two Co-prisoner Certificates who were with the claimant in the same jail, could be considered. In the case of persons belonging to I.N.A. category, a Certificate from one co-prisoner is sufficient. Further, as per the Scheme, verification and recommendation of the State Government is mandatory.

ii) On merits, it is submitted that just because the claimant is given pension under the State scheme, he cannot get pension under the Central Scheme. For getting pension under the Central Scheme, one should satisfy the eligibility criteria under the Central Scheme, as stated above. It was also stated that after the defeat of Japan in the second world war, Allied Forces took over the camps where I.N.A. personnel were stationed and after segregation, I.N.A. personnel of Military category were taken prisoners by the Allied Forces while the civilian members of I.N.A. were not imprisoned, in general, since the civilian members in I.N.A. did not take oath of allegiance to the British Crown, as in the case of

military personnel. The counter also states that Shri Palaiyan did not make any representation against the rejection of his case, during his life time. However, it was also stated that the respondents could consider the request of the petitioner, if the petitioner sends her application in the prescribed proforma along with the prescribed documentary evidence through the State Government, along with verification and recommendatory report from the State Government, as required under the Central Scheme.

iii) The counter statement also relied on the judgment of the Apex Court in State of Maharashtra and Others Vs. Raghunath Gajanan Waingankar, the judgment of the Apex Court in State of Orissa v. Choudhuri Nayak (Dead By Lr.) & Others Civil Appeal No. 6818 of 2010, with Civil Appeal No. 6819 of 2010, UOI v. Choudhuri Nayak (dead by LR. and Others). The counter statement also relied on a judgment of Kerala High Court in (UOI v. V. Sarasanna and Others) W.A. No. 2494 of 2005, judgment of the Rajasthan High Court in Surati Prakash v. UOI (S.B. Civil W.P. No. 2981/1998), Madras High Court order dated 30.11.2000 in W.P. No. 7707 of 2000 (C. Santhanam v. State of T.N. and Others).

11. Heard both sides.

12. The learned counsel for the petitioner vehemently contended that the first respondent shall not adopt a technical approach in the matter of grant of pension to the freedom fighters and he relied on heavily the judgment of the Apex Court in Gurdial Singh Vs. Union of India and Others, and another judgment of the Apex Court in Mukund Lal Bhandari and others Vs. Union of India and others, He has also relied on the judgment of this Court in, R. Murugamalai v. Union of India W.P. No. 17403 of 2009. He submitted that the I.N.A. personnel suffered imprisonment in foreign countries and not in our main land and none of them would produce Jail Certificate from the Authorities concerned and they could only rely on the Co-prisoner Certificate. In this case, it was argued that the Co-prisoner Certificates were not disputed. If Co-prisoners Certificates were not disputed, the only action for the Central Government is to pay pension under the Central Scheme and nothing more is required. It is a serious humiliation to the freedom fighters to seek clarification as to their whereabouts before imprisonment and also as to the deployed area by I.N.A. during the second world war period. It was submitted that there was no contradiction in the reply dated 6.6.1980 of Shri Palaiyan to the letter dated 22.5.1980 of the first respondent. When the first respondent sought about the whereabouts of Shri Palaiyan before his imprisonment in Rangoon Central jail in August 1945, he came out with a reply that he was detained in various camps before he was taken to Central Jail at Rangoon. According to the learned counsel for the petitioner, the first respondent declined Freedom Fighters Pension stating that this is a contradiction. He also took serious objection for supporting the British imperialist regime that they could not have done any harm to the civilian personnel of the Indian National Army and the British imprisoned only military Personnel in I.N.A. This is also another insult to the freedom fighters, according to the learned counsel for

the petitioner.

13. On the other hand, the learned counsel for the Central Government vehemently contended that the payment of Freedom Fighters Pension cannot be based on sympathetic considerations and unless the claimant satisfies the conditions that are laid down under the Central scheme, no pension shall be paid. The decision of the Central Government in rejecting the claim of the husband of the petitioner, cannot be found fault and this Court, can not act as an appellate authority over the decision of the Central Government. He relied on the judgment of the Apex Court in *State of Maharashtra and Others v. Raghunath Gajanan Waingankar* (supra) and also the judgment of the Apex Court in *State of Orissa v. Choudhuri Nayak (Dead by LR) and Others*, Civil Appeal No. 6818 of 2010, with Civil Appeal No. 6819 of 2010, *UOI v. Choudhuri Nayak (dead by LR and Others)*. He further submitted that the Central Scheme is different from the State Scheme and a person who is in receipt of pension under the State scheme cannot automatically get pension under the Central Scheme. He relied on the judgment of Kerala High Court in *UOI v. V. Sarasanna and Others* W.A. No. 2494 of 2005, judgment of the Rajasthan High Court in *Surati Prakash v. UOI* (S.B. Civil W.P. No. 2981 of 1998), Madras High Court order dated 30.11.2000 in *C. Santhanam v. State of T.N. and Others* W.P. No. 7707 of 2000).

14. I have considered the submissions on either side.

15. Learned Special Government Pleader of Tamil Nadu Government produced the file relating to sanction of Freedom Fighters Pension by the Tamilnadu Government, when this Court directed to produce the file. He produced the file relating to F.F.P.O. No. 3311 of 1969 of Public General-P (1969) Department. The file contains report of the Tahsildar, Pattukottai that Shri Palaiyan is member of I.N.A. The report also states that All India I.N.A. Committee certifies that he was a member of I.N.A. Recommendation of the District Collector, Thanjavur dated 31.12.1968 is also available in the file. The District Collector recommended for sanction of Freedom Fighters Pension on the ground that he was a member of I.N.A. Thereafter, the Government sanctioned Freedom Fighters Pension by an order dated 12.2.1969.

16. It is true that just because a person is in receipt of pension under a State Scheme he cannot as a matter of right claim pension under the Central Scheme.

17. But in this case, the fact that the Tamilnadu Government granted pension taking into account the service of Shri Palaiyan in I.N.A., cannot be lost sight of. The file produced by the learned Special Government Pleader itself states, "grant of pension to freedom fighter/Ex. I.N.A."

18. It is not in dispute that Shri Palaiyan made application to the first respondent for pension under the Central Scheme, during 1980. The first respondent sent a reply dated 22.5.1980 seeking clarification. The letter dated 22.5.1980 seeking clarification is extracted fully hereunder as the same assumes much importance.

I am directed to refer to your application on the above subject and to say that you two coprisoners Shri V. Vishwanathan and S. Veerappan have certified coprisonership with you at Rangoon Central Jail from 15.8.1945 to February 1946 by the British during the months of April/May, 1945, you may please clarify/intimate your whereabouts during the months of June/July, 1945. The Battalion of the 1st Guerilla Regiment in which you were posted and the deployment of Batallion may also please be intimated to this Ministry so that your case may be examined further.

19. The aforesaid letter does not dispute the Certificate of Co-prisoners. Then, it is a different matter. As per the Co-prisoner Certificate, Shri Palaiyan was in Central Jail, Rangoon from 15.8.1945 till February 1946. In my view, having accepted those certificates, the first respondent ought to have sanctioned pension under the Central Scheme. On the other hand, in the aforesaid letter dated 22.5.1980, Shri Palaiyan was asked to clarify as to his whereabouts during June/July 1945. I am not able to understand as to how the same is relevant for the sanction of pension under the Scheme. As per the scheme, a certificate from one co-prisoner is sufficient for sanction of pension under the central Scheme in the case of member of I.N.A. While in the case of others, two Certificates are required from Co-prisoners. The central scheme contemplates some documentary evidence for imprisonment from the jail authorities or the concerned State Government. However, the I.N.A. Members are not imprisoned in the main land of our country. They were imprisoned only in foreign countries. The same is not disputed by the first respondent. Hence, the primary evidence cannot be produced by any I.N.A. Member. Only they could produce co-prisoner certificate. It is not stated in the letter dated 22.5.1980, for one reason or other, the first respondent was not accepting the Certificate of the co-prisoner. On the other hand, it is stated that the whereabouts of Shri Palaiyan during the months of June/July 1945 shall be intimated. Further, the said letter dated 22.5.1980 requires Shri Palaiyan to give as to place of deployment by I.N.A. I am not able to understand as to how the same is relevant for the sanction of pension under the Central Scheme. The Central Scheme does not contemplate providing of such particulars by I.N.A. Members. When the I.N.A. Members fought British army taking up arms, it is doubtful as to whether the member of the Guerilla Regiment would be given any written order about deployment.

20. Shri Palaiyan gave a reply dated 6.6.1980 to the letter dated 22.5.1980 of the first respondent. He explained that during June/July 1945, he was under the custody of the British Army. He was taken to custody in May 1945 to a camp. He mentioned the place. He stated that he was detained at various camps before he was taken to the Central Prison at Rangoon in August 1945.

21. The aforesaid answer of Shri Palaiyan in his letter dated 6.6.1980 in reply to the letter dated 22.5.1980, is rejected in the impugned order dated 30.10.1980, by the first respondent on the ground that he took a different stand in his letter dated 6.6.1980 from that of his earlier application seeking pension. The

impugned order describes the same as serious contradictions.

22. The impugned order dated 30.10.2008, is also extracted hereunder to appreciate the reason for rejecting the claim for pension,

I am directed to refer to your letter dated 6.6.80 on the above subject and to say that in your civilian proforma and History Sheet you have claimed that you were in the Bose Brigade/Ist Guerilla Regt and that you were arrested at Mangala town in 1945 and released in 1946. In your letter dated 6.6.1980, you changed your earlier stand and intimated that you were arrested in April/May 1945 in Poppa Hills area and kept in various detention camps and ultimately detained in the Rangoon Central Jail from August 1945 to the end of February 1946, you have not indicated the Battalion of the 1st Guerrilla Regiment in which you were posted and the area where it was located. Instead, you have made certain serious contradictions. In view of the discrepancies, it is regretted that your case has been rejected.

23. I am not able to understand in describing the reply given by Shri Palaiyan in his letter dated 06.06.1980 that he was under the detention of the British Army even during June/July 1945 before he was taken to Central Prison at Rangoon, as a contradictory statement. Further, the impugned order states that Shri Palaiyan did not indicate the Battalion of the 1st Guerilla Regiment in which he was posted and the area where it was located.

24. In my view, the impugned order is clearly in violation of the Central Scheme. The spirit of the Scheme is not to have such a technical approach by the first respondent in dealing with the grant of pension under the Scheme to a Freedom Fighter.

25. At this juncture, it is relevant to extract paragraph No. 6 of the Apex Court judgment in *Gurdial Singh v. Union of India and Others* (supra).

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.

26. It is also relevant to extract paragraph No. 9 of the Apex Judgment in *Mukund Lal Bhandari v. Union of India and Others* (supra).

9. As far as the standard of proof is concerned, the Supreme Court at paragraph 9 went on to add that 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 had 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.

If the yardstick as contemplated in those two judgments are applied, in my view, the impugned order is liable to be quashed.

27. On the other hand, the respondents have relied on the judgment of the Apex Court in two cases in *State of Maharashtra and Others v. Raghunath Gajanan Waingankar* (supra), and in *State of Orissa v. Choudhuri Nayak (Dead by LR) and Others* Civil Appeal No. 6818 of 2010, with *UOI v. Choudhuri Nayak (dead by LR and Others)*. Civil Appeal No. 6819 of 2010 In my view, those judgments cannot have any application to the facts of the present case.

28. The facts of the case in *State of Maharashtra and Others v. Raghunath Gajanan Waingankar* (supra) are that the respondent therein claimed himself to be a freedom fighter and sought pension from the State of Maharashtra. According to him, he participated in Goa Liberation Movement and he sustained bullet injuries on his left shoulder. He did not have any primary evidence to establish his claim. He relied on a certificate from Goa Vimochan Samiti. The claim was rejected by the State Government. The respondent therein filed a writ petition before the Mumbai High Court. The Mumbai High Court issued a direction to the State of Maharashtra to reconsider the issue. Once again the Maharashtra Government rejected the claim that he did not satisfy the criteria laid down for sanction of pension. He again filed a writ petition questioning the said order. The High Court, placing reliance on *Mukund Lal Bhandari v. Union of India and Others* (supra), referred to above, held that the Government shall adopt a liberal approach and a direction was issued to pay pension. The matter was taken to the Apex Court. The Apex Court held that the High Court could not act as an appellate authority. The Apex Court also found that the name of the petitioner is

not found place in the list furnished by the Goa Vimochan Samiti. In the said circumstances, the Apex Court reversed the decision. Therefore, the said judgment cannot be relied on here.

29. It is not the case of the first respondent that they are not in agreement with the co-prisoner Certificate submitted by Shri Palaiyan. On the other hand, it was rejected on the ground that there was contradiction between the earlier letter and his reply letter dated 06.06.1980. I have found that there is no contradiction in his reply. The first respondent cannot approach the matter in such a technical way.

30. The other judgment of the Apex Court reported in *State of Orissa Vs. Choudhuri Nayak (dead by LR) and Others*, also, is not applicable to the facts of this case. In that case, one Choudhuri Nayak claimed Freedom Fighters Pension under the Central Scheme. He claimed that he was convicted by the Sub Divisional Officer, Bhadrak, under the Defence of India Rules. Initially, he was sanctioned pension based on the Certificate stating that he was detained under the Defence of India Rules. Later, a Public Interest Litigation was filed by a person before the Orissa High Court alleging that Shri Choudhuri was given pension based on fabricated document and his name was fraudulently inserted among the names of the accused, who were convicted and sentenced in the criminal case. Thereafter, the State Government had conducted enquiry and found that the Choudhuri produced fabricated document about his detention. In these circumstances, the State Government cancelled the pension that was sanctioned earlier. The cancellation was challenged before the Orissa High Court and the Orissa High Court interfered with the order of cancellation. The Government of India took up the matter to the Apex Court. The Apex Court reversed the judgment of the Orissa High Court. The Apex Court found that it was a fabricated document. Hence, that case cannot be cited by the first respondent to reject the claim of Shri Palaiyan.

31. Reliance is placed by the first respondent on the judgments of Kerala High Court in *UOI v. V. Sarasanna and Others* W.A. No. 2494 of 2005, Rajasthan High Court in *Surati Prakash v. UOI* S.B. Civil W.P. No. 2981 of 1998, Madras High Court order dated 30.11.2000 in *C. Santhanam v. State of T.N. and Others* W.P. No. 7707 of 2000), to canvass the point that Pension under the Central Scheme is different from the State Schemes. There is no quarrel over the proposition that just because a person is in receipt of pension under a State Scheme, he cannot claim as a matter of right pension under Central Scheme. That is the proposition in those judgments.

32. Here, the claim of Shri Palaiyan is not based on the sanction of pension by the Tamilnadu Government. On the other hand, he claimed pension based on the two co-prisoners certificates. Instead of sanctioning pension based on these certificates, the first respondent wanted clarification as to his whereabouts before his detention in Central Prison at Rangoon. Shri Palaiyan replied that he was detained in campus before imprisonment in Central Jail at Rangoon. The first

respondent states that his reply is contradictory to his earlier statement made by him in his application. In my view, there is no contradiction between the application and the reply letter dated 6.6.1980 of Shri Palaiyan. I am not able to appreciate the reason given by the first respondent in the impugned order that Shri Palaiyan did not indicate the Battalion of the 1st Guerilla Regiment to which he was posted and the area where it was located. Seeking those details are not necessary. In fact, he gave various details in his letters dated 6.6.1980, 19.2.1991, 14.7.1993. Therefore, I have no hesitation to quash the impugned order dated 30.10.1980.

33. Further more, as rightly pointed out by the learned counsel for the petitioner, the approach of the first respondent in the counter affidavit differentiating between Military category in I.N.A. and Civilian category in the following passage, is highly condemnable:

The petitioner claims that he had suffered imprisonment on account of his claimed participation in the INA Movement. In this connection, it is submitted that INA comprised of (i) Military Category: who joined INA from British Indian Army and had taken an oath of allegiance to the British Crown and (ii) Civilian Category: who were recruited in INA locally from civilians. After defeat of Japan in the 2nd World War, Allied Forces took over the camps where INA personnel were stationed. After segregation, INA personnel of Military Category were taken prisoners by the Allied Forces as they had acted against their oath of allegiance but the civilian members of INA had not taken such an oath of allegiance to the British Crown and as such they were not tried or detained/imprisoned, in general. Though, there might have been exceptions but probability of the civilian members of INA being detained/imprisoned for six months or more is very low.

34. In the aforesaid paragraph, the first respondent has sought to distinguish between I.N.A. Members who deflected from the British Army to I.N.A. and the civilian personnel who were trained by I.N.A. The Indians who were serving in the British Army deserted from British Army and joined Indian Army. Apart from the said Section, a large number of members of I.N.A. are civilians who were trained by I.N.A. to fight British Army. The distinction made between those two groups is unwanted and unjustified and no such distinction is made in the Central Scheme. It is not known as to on what basis the first respondent has stated that the British Government did not imprison the civilian members of I.N.A. If that yardstick is adopted, neither Subash Chandra Bose nor Captain Lakshmi are entitled to pension under the Central Scheme as they were not deserters from the British Army to I.N.A. Therefore, the reason given by the first respondent, is really a humiliation and not giving due respect to the freedom fighters.

35. In my view, the judgment of this Court dated 18.8.2010 in W.P.(MD) No. 3360 of 2006, is directly on the point and paras 19 and 20, 23 and 24 of the said judgment are extracted hereunder:

19. According to the respondents, the Scheme contemplates that only Freedom

Fighters receiving Central Samman Pension, who have proven jail suffering of one year or more, alone are eligible to issue a co-prisoner certificate, then they should have applied the same yardstick in the case of Mr. M. Periyathambi also, in whose favour a certificate, dated 26.10.1987, had been issued much after the scheme, by Mr. K. Ramanathan, who was conferred only for 6 1/2 months.

20. Perusal of the material on record shows that all that is required to satisfy the eligibility criteria for grant of Swathanthra Sainik Samman Pension is that the applicant should have undergone at least one of the sufferings prescribed under the Scheme, namely, imprisonment/detention against an executive order/underground sufferings/externment/interment etc., on account of his participation in the freedom struggle. Participation in the INA and in the Indian Independence League is also treated as participation in the National Liberation movement and that it is suffice that he produces a co-prisoner certificate to prove proven jail suffering for a period of six months and in the case of persons belonging to Indian National Army category, only one co-prisoner certificate is required. If the entitlement for grant of Freedom Fighters Pension is jail suffering for six months, then it is illogical to except a certificate from a prisoner who had suffering for one year or more, which means that the person who had been imprisonment for six months would be eligible to grant of pension, but he would be ineligible to issue any certificate to his co-prisoner.

...23. Having regard to the objects of the Scheme to honour and wherever it is necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need and sanctioning of SSS pension to Mr. K. Ramanathan, recipient of IFA pension from the Central Government wide Ministry of Home Affairs order No. 39/3933/73, P.P./I.N.A., dated 15.01.77 and the subsequent order of sanction of central pension, dated 25.09.1989, to Mr. K. Periyathambi, this Court is of the considered view that keeping in mind with the object of the scheme, there cannot be any discrimination in respect of INA members, who had sought for the country freedom and suffered from imprisonment in a foreign country. As stated supra, the period of confinement of the above said three persons was only six months or more and when the respondents have considered such confinement as sufficient to grant SSS pension, insisting the petitioner to produce a certificate from a prisoner who had proven jail suffering is not proper and it is violative of Article 14 of the Constitution of India.

24. As rightly contended by the learned counsel appearing for the writ petitioner, the approach should not be hyper technical and ignoring the object of the scheme as observed by the Supreme Court in *Mukund Lal Bhandari v. Union of India and Others* (supra)

36. After the matter was reserved for judgment, the learned counsel for the petitioner has produced a judgment of the Division Bench of this Court in W.A. (MD) No. 809 of 2012, confirming the judgment of the order of this Court in W.P. No. 3360 of 2006.

37. In the above said circumstances, I am not inclined to agree with the submission made by the first respondent that the Widow shall make a fresh application through the State Government, enclosing again the co-prisoner certificates and there shall be recommendation from the State Government. The reason is that the learned Special Government Pleader submitted, when he produced the file, that the State Government is supporting the claim of the petitioner and family pension to the petitioner was granted for the participation of her husband Shri Palaiyan in the Independence Movement as a Member of I.N.A. In the said circumstances, again I do not want to make the Widow to make a fresh application. In the result, the impugned order dated 30.10.1980, is quashed. A direction is issued to the first respondent to pay Freedom Fighters Pension to Shri Palaiyan from the date on which he made application and also family pension to the Widow, the writ petitioner herein, from the date of death of Shri Palaiyan. The first respondent is directed to comply with the direction, by paying Freedom Fighters Pension within a period of three months from the date of receipt of a copy of this order. The writ petition is allowed in the above terms. No costs. The connected miscellaneous petition is closed.