
(2011) 01 MAD CK 0369
In the Madras High Court
Case No : Writ Petition (MD) No. 7660 of 2010

R. Ponnammal

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0369

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ramu, for the Appellant; S.C. Herold Singh, G.A., for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard both sides.

2. The writ petition is filed by the Petitioner, seeking to challenge an order dated 16.03.2009 passed by the first Respondent, the State of Tamil Nadu and after setting aside the same seeks for a direction to sanction family pension to the Petitioner, being the widow of freedom fighter Late Mr. Ramanarasimhan under the Freedom Fighters Pension Scheme with effect from the date of the Petitioner's husband's original application i.e. 15.01.1982 together with interest at the rate of 18% per annum.

3. The writ petition was admitted on 06.07.2010. On notice from this Court, the second Respondent District Collector, Madurai has filed a counter affidavit dated 02.09.2010. When the matter came up on 09.11.2010, this Court directed the original file relating to the case to be circulated. Accordingly, the learned Government Advocate had circulated the original file for perusal by this Court.

4. The facts leading to the filing of the case are as follows:

The Petitioner claims that her husband was a freedom fighter and participated in various struggles relating to the freedom movement since 1942. He was actively

involved in Quit India Movement and was arrested by the Police and imprisoned from 22.08.1942 to 21.11.1942. He was kept at the Alipuram Prison in Bellary District, now in Karnataka State. He was also kept at Palayamkottai Central Prison from 13.04.1943 to 12.07.1943. Even after his release from the prison, he was involved in distributing pamphlets and actively worked against the Colonial Government. The Police issued arrest warrant and therefore, the Petitioner's husband went underground on the advise of the Congress party. He had gone underground from February 1944 to December 1944. Thereafter, he came over ground and participated actively for getting our freedom.

5. The Petitioner's husband applied for the grant of Pension on 15.01.1982 under the State Freedom Fighters Pension Scheme. He enclosed a certificate dated 15.01.1982 issued by his co-prisoner V. Muthu, who was also a former Member of Legislative Assembly regarding his incarceration in Alipuram Jail from 22.08.1942 to 21.11.1942. But his request was rejected by the State Government by an order dated 18.09.1984 as his claim was not established beyond doubt. The Petitioner's husband applied to the jail Superintendent, Palayamkottai Central Prison at Bellari, the Court of Judicial Magistrate II, Madurai and other police officials to furnish document relating to his imprisonment and about his underground activities. They had informed that due to the long lapse of time and due to destruction of records, the requested documents could not be given to him. To that effect, he got reply from Palayamkottai Central Prison dated 13.06.1985, South Police Station, Madurai dated 21.11.1984 and Central Prison, Alipuram dated 18.05.1985.

6. The Petitioner's husband sent further representation and issued legal notice to the first Respondent. His request was once again rejected by the State on 28.04.1986. Her husband filed W.P. No. 14991 of 1994 to reconsider his application. The matter was dealt with by a Division Bench of this Court and this Court by a direction dated 25.11.1988 directed the Respondents to reconsider the application of the Petitioner's husband. Thereafter, the first Respondent sent a letter to the husband of the Petitioner on 05.03.1999 requiring a co-prisoners certificate from a prominent freedom fighter with whom he was imprisoned during the period from 13.06.1943 to 12.07.1943 in the absence of jail records for proving his imprisonment. The Petitioner obtained a certificate from one P.S. Lakshmipathi Raju of Madurai. But once again the first Respondent by an order dated 05.08.1999 rejected the same by saying that the said Lakshmipathi Raju was black marked due to his indiscriminate issuance of co-prisoner certificate.

7. Thereafter, the Petitioner obtained a certificate from I. Mayandi Bharathi, another prominent Freedom Fighter and resident of Madurai. He requested the Government to consider his application. It was stated that the said I. Mayandi Bharathi was not recognized as prominent freedom fighter by the Tamil Nadu Government for issuing co-prisoner certificate. It was also stated that M/s.A.C. Periasamy and V. Sankaran alone were recognised by the Tamil Nadu

Government for issuing co-prisoners certificates. The Petitioner's husband approached A.C. Periasamy, who vouchsafed the certificate of I. Mayandi Bharathi. But the first Respondent without considering his efforts, once again by an order dated 31.03.2000 rejected her husband's claim for pension.

8. The Petitioner again filed a writ petition in W.P. No. 1979 of 2002 before this Court challenging the order dated 31.03.2000. During the pendency of the writ petition, her husband died on 09.07.2004. The Petitioner substituted herself in that writ petition. This Court by an order dated 10.09.2008 remanded the matter for fresh consideration and directed the Government to consider the certificates issued by A.C. Periasamy and I. Mayandi Bharathi. But once again the first Respondent by an order dated 16.03.2009 rejected the claim of the Petitioner and the Petitioner is now again before this Court .

9. The reason given in the impugned order was the certificate of A.C. Periasamy dated 16.03.2000 indicated that the certificate was issued on the basis of co-prisoner certificate given by I. Mayandi Bharathi. It was indicated that A.C. Periasamy, while he was in Bellary jail, M/s. Paramanantham and Ramanarasimhan were in Palaymcottai jail. It was not indicated that the Petitioner's husband was actually kept in Palayamkottai prison. Further, the District Review Committee alone can recommend such applications. In the District Review Committee Meeting held on 26.07.2002, the certificate given by Periyasamy was rejected and the minutes of the Review Committee Meeting was signed by M/s. Mayandi Bharathi, A.C. Periasamy, M.K. Ramamoorthy, Lakshmana Naidu as well as by the District Collector.

10. It is contended by the Petitioner that one M. Paramanandam s/o. Muthu Nagappan Chettiar in Appan Thirupathi Village had also claimed freedom fighter's pension based upon the same certificate of A.C. Periasamy who was authorised by the State Government. The said Periasamy issued a certificate based upon the certificate given by I. Mayandi Bharathi. When the State Government by an order dated 16.03.2009 declined to grant pension to the Petitioner as well as to M. Paramanandam, the said Paramanandam filed W.P. No. 3553 of 2009, challenging the said order. This Court by a final order dated 07.01.2010 allowed the writ petition and directed the grant of pension to the said Paramanandam. The operative portion of the order as found in paragraphs 9 and 10 reads as follows:

9. From this, it is clear that the certificate issued by A.C. Periyasamy in favour of the Petitioner should have been accepted by the department as a proper certificate and as sufficient proof to be considered for forwarding the required freedom fighters' pension. Failure on the part of the Respondents to consider the said certificate vitiates the impugned order and the impugned order of rejection has to be set aside on that ground alone. Moreover, it is seen that all the persons who are eligible and participated in the freedom struggle along with the Petitioner, have been paid the pension and the Petitioner alone is being singled out and discriminated by the Respondent department for no justifiable cause. On

the other hand, the Respondent department ought to have considered the case of the Petitioner on the documents produced by him and in the light of the order passed by this Court on 16.12.2008, wherein this Court has categorically held that the certificate issued by A.C. Periyasamy in favour of the Petitioner should have been considered and that would be adequate and sufficient to do the needful.

10. Therefore, in my considered opinion, the case of the Government has to be rejected. Accordingly, the impugned order, dated 16.03.2009 is set aside and the writ petition is allowed. Further, the Respondents are directed to sanction the pension to the Petitioner under Freedom Fighters Pension Scheme with effect from the date of the Petitioner's original application dated 15.01.1982. Since the culmination of favourable orders given in favour of the Petitioner has taken place only during the later part of the year 2000, I am of the view that the Petitioner is not entitled to any interest for the pension amount to be paid by the department from the date of the application namely 15.01.1982 till the date of payment. Therefore, the Respondents shall pay the pension amount eligible to the Petitioner from 15.01.1982 without interest within a period of three months from the date of receipt of a copy of this order. Further, the freedom fighter pension shall also be paid regularly, thereafter as per the scheme to the Petitioner. No costs.

Therefore, the Petitioner claimed that she also should be given freedom fighter's pension on that basis.

11. In the counter affidavit dated 02.09.2010, apart from re-iterating the contentions found in the impugned order, in paragraphs 9 and 12, it was averred as follows:

9... As far as Madurai district is concerned, the Government have recognised Tvl.A.C. Periyasamy and A.M. Lakshmanan as certifiers for the issue of co-prisoner certificate. The certificate obtained from others will not be accepted as co-prisoners certificate. Hence, there is no valid reason in these paras.

12... It was clearly informed in the above said self contained letter that the Co-prisoner certificate obtained from Thiru A.C. Periyasamy and furnished by the husband of the Petitioner cannot be accepted by the Government since the said Certificate was not at all a Co-prisoner Certificate. The Certificate was issued only on the basis of the certificate issued by Thiru I. Mayandi Bharathi and not because of the imprisonment suffered along with the husband of the Petitioner. Further, one of the main condition requested for sanction of the State Freedom Fighter Pension is the recommendation of the District Level Screening Committee. However, in the instant case, the request of the husband of the Petitioner was not recommended by the Committee.

12. Even though the counter affidavit was sworn to by the District Collector on 02.09.2010, there is no reference about the judgment passed in the case of M. Paramanandam dated 07.01.2010. It is rather unfortunate that the District

Collector did not even adverted to the fact that this had set aside the impugned order and rejected the contentions raised herein. Since identical contentions were rejected by this Court in respect of another person Paramanandam covered by the same impugned order, the Petitioner is also entitled to succeed for the very same reason.

13. It must be noted that earlier in W.P. Nos. 1979 and 1980 of 2002, this Court by a common order dated 16.12.2008 had categorically gave the following findings in paragraph 6 which is as follows:-

6. I consider the submission made by the learned Counsel appearing for the Petitioner and the learned Additional Government Pleader appearing for the Respondents. It is not in dispute that A.C. Periyasamy is the competent authorised person to issue a certificate regarding the factum of arrest of a person during British rule and the imprisonment there on. However, the only thing that has been put against the Petitioners is that the certificate issued by the said A.C. Periyasamy, is not in order since he relies on the certificate issued by another person. However, I am unable to accept the said reasoning for rejection of the claim made by the Petitioner. The said A.C. Periyasamy has clearly stated in the said certificate that during the relevant period he was in Alipuram Prison in Bellary District and he knows about the Petitioners and hence reliance on the certificate of Mayandi Bharathi who certified that the Petitioners were in prison during the relevant point of time cannot be found fault. When such a statement has been made by the said A.C. Periyasamy in his certificate, without considering the same, rejection has been made on the ground that a proper certificate has not been obtained from the said A.C. Periyasamy. The Petitioners who were imprisoned during the British rule and having suffered during the British empire could not be denied of pension on certain flimsy ground as

14. In the absence of any challenge to the said judgment of this Court, the Respondents cannot circumvent the said order by giving once again the very same reason which did not find favour from this Court. It is not the case of the Respondent that I. Mayandi Bharathi, a well known freedom fighter of Madurai was not a freedom fighter. On the other hand, he was a recipient of Swatantra Sainik Samman sanctioned by the Government of India vide an order dated 19.06.1973. He was also recipient of Tamrapatra Award from the then Prime Minister Mrs. Indira Gandhi. He had also received Freedom Fighter's family pension from the Respondent State Government.

15. In the certificate of I. Mayandi Bharathi dated 15.09.1999, apart from describing his various activities and the person who were incarcerated along with him which included a galaxy of freedom fighters of India like the late President of India R. Venkatraman, late Chief Minister Omandur Ramasamy Reddiar and many others. With reference to the case Ramanarasimhan, the husband of the Petitioner in his certificate dated 15.09.1999 he had stated as follows:

I do hereby state that Shri.K. Ramanarasiman S/o. Sri. Karuppanan Ambalam

residing at Pondi Village Appan Thiruppathi P.O. (Via) Alagar Koil, Madurai District, is known to me for a long time.

He participated in all the Freedom Struggles since 1937.

During 1942 August Quit India Struggle, he opposed the repression of the British Government. He organised his village people and raised Anti-British Slogans. The police arrested him u/s code detained MS 3691 Pub (General) dated 1.9.42.

He was brought to Palayamkottai Borstal Jail on 10.06.1943. He was released on 9.7.43.

I was detained at Palayamkottai Jail on 3.11.42 and transferred to Tanjore Special Sub-Jail on 23.09.43.

So, Sri.K. Rama Narasimman spent his jail life along with me from 10.06.1943 to 9.7.43.

He is a bona fide Freedom Fighter, who is eligible for Tamil Nadu State Government's Freedom Fighters Family pension.

16. One need not give any certificate to I. Mayandi Bharathi either about his bona fides or about his credentials. In fact Mayandi Bharathi's pamphlet known as "Padugalathil Bharatha Devi" written as early as 1938-39 was widely distributed to the people in the area surrounding Madurai, including by late Kamaraj, N.R. Thyagarajan, Laxmipathy Raju, Muthuramalingathevar to various people and they had spread the message of the freedom movement. It was also widely circulated in various countries under the British Empire including Burma, Malaysia, Sri Lanka, Singapore and South Africa. A recent re-print of the said pamphlet published in December 2009 by the New Century Book House, Chennai was circulated for perusal by this Court which clearly brought out the spirit of freedom fighters of those days and the untold sacrifice rendered by them in getting this country freed from the clutches of the colonial rulers.

17. Though the Respondents have taken a hyper-technical contention that they have recognized M/s. A.C. Periasamy and A.M. Lakshmanan alone for issuing certificate of co-prisoners, it is impossible that those two individuals alone will be knowing all the freedom fighters who were incarcerated at the relevant time. In the absence of any jail records or police records, they will have to act only from their memory. At this stage of their life, it will be impossible for them to recognize the names of every individual. The certificate given by A.C. Periasamy based upon the personal certificate given by I. Mayandi Bharathi cannot be said to be a worthless document not befitting the scrutiny by the Government. On the other hand, when A.C. Periasamy issued the certificate, he only stated that he was not personally aware of the incarceration of Petitioner's husband. But he believed the certificate issued by I. Mayandi Bharathi for the purpose of grant of freedom fighters pension. The Government might have framed a scheme and had issued certain guidelines, it cannot be said that they are inscrutable like a scripture. On the other hand, the Government must be pragmatic in such

matters. At the relevant time, when thousands of youth were languished in jail in this country, authorizing only two individuals to give co-prisoners' certificate would not be practical. The Government must also be realistic in such matters. As noted already even the authorized persons when their memory fail will have to rely upon other credible materials.

18. In the present case, when I. Mayandi Bharathi's certificate was considered to be a credible material by another freedom fighter, the Government should have no hesitation for accepting such materials. No one can accuse the bona fides or the genuineness of I. Mayandi Bharathi, who is known for his integrity and rectitude and who had suffered considerable years in his prime youth in various jails of this country.

19. Under the present circumstances, the order dated 16.03.1999 having already been set aside by this Court in the case of M. Paramanandam, the Petitioner also cannot be denied the similar relief.

20. In view of the above, the writ petition stands allowed and the impugned order stands set aside. The Respondents are directed to grant pension to the Petitioner under the Freedom Fighter's Pension Scheme with effect from the date of the original application sent by the Petitioner's husband on 15.01.1982 but without interest. The said exercise shall be carried out within a period of three months from the date of receipt of a copy of this order. However, there will be no order as to costs.