

(1996) 09 MAD CK 0073
In the Madras High Court

S. Rajamani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-09-1996

Acts Referred:

Citation : (1997) 1 MLJ 31

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—The above writ petition has been filed for the issue of a writ of mandamus directing the 1st and 2nd respondents to grant the petitioner freedom fighters" pension, permissible under the State Government Scheme and also "Swatantrata Sainik Samman Pension Scheme" of the Central Government, introduced in the year 1980.

2. Along with his application, the petitioner was stated to have produced the certificate issued by the General Secretary of All India I.N.A. Committee and though it was initially rejected on, the ground of delay, the petitioner has submitted another application and the petitioner was also restlessly continuing his representations and the last of such representations was said to have been made on 24.6.1993. Apart from the I.N.A. certificate, referred to supra, a copy of the "Thamara Patra" as also co-prisoner's certificate obtained from Mr. Gnanadurai and Mr. Ooikattan, who were also I.N.A. personnel and recipients of Central Freedom Fighters" Pension, were stated to have been enclosed. Since, according to the petitioner, no proper order effectively dealing with or rejecting the claim of the petitioner, has been passed by the respondents, the petitioner was constrained to file this writ petition.

3. No counter-affidavit has been filed by the 2nd respondent. State Government, in so far as the claim as against it is concerned.

4. So far as the claim made as against the 1st respondent/Central Government is concerned, a counter affidavit has been filed, wherein, after disclosing the

guidelines and the requirements to be satisfied for justifying the grant of pension under the Central Government Pension Scheme for freedom fighters, a rejection letter dated 11.6.1993 has already been issued to the petitioner and that no mention is made in the affidavit filed in support of the writ petition to the said communication and the claim of the petitioner could not be acceded to for want of sufficient materials. In para 7 of the counter-affidavit, it was also slated that the claim of the petitioner will be considered by the Government, if the petitioner produces the movement order issued to him after he was released from jail and also the required evidence in support of the fact that he is an Indian national.

5. It may be noticed even at this stage that though the 1st respondent claims that a letter dated 11.6.1993 has been issued, there is no positive statement or materials produced to show as to whether it has been served and if so, on what date, it has been served and upon whom. In the light of the above, we have to proceed on the basis that no such rejection order has been served at least on the petitioner. Even if the claim that the rejection order was passed and a letter has been issued, is to be taken to be correct, on the peculiar facts and circumstances of this case, it becomes necessary for this Court to adjudicate on the merits of the claim in view of the fact that the controversy in this case is very narrow.

6. We have heard learned Counsel Mr. R. Ganesan, appearing for the petitioner and Mr. R. Santhanam, Additional Central Government Standing Counsel. The petitioner is indisputably the recipient of Thamara Patra and a copy of the same has also been filed along with the application seeking Central Government Freedom Fighters' pension, in addition to the other records submitted by him. Since learned Counsel for the petitioner, on the earlier occasion contended that the grant of Thamara Patra must be taken as the conclusive proof about the imprisonment suffered, particularly because the criteria for the grant of Thamara Patra as also the criteria for the award of pension for Freedom Fighters, are almost similar, we directed the learned Central Government Standing Counsel to obtain the views of the Central Government on this aspect. Mr. R. Santhanam was able to obtain the views of the Central Government and the communication produced, reads as follows:

PLEASE REFER TO YOUR LETTER NO. NIL DATED 18-7-96 (RECEIVED ON 30-7-1996 ONLY) REGARDING WRIT PETITION No. 16288 OF 1994 - S. Rajamani v. Union of India (-) It is clarified that at the time of awarding Thamara Patras to Freedom fighters in 1972 records of applicants were never scrutinised due to paucity of time. (.) However it came to notice of Central Government, that some of the applicants had never undergone the required minimum period of sufferings (.) Award of Thamara Patras in those cases was cancelled. (.) Instructions were also issued to State Govts. to ensure bona fides of applicants (sic.) for award of Thamara Patras subsequently at State level functions.(.) Despite instructions irregularities came to notice of Central Govt. and in May, 1978 it was finally decided to discontinue the scheme of Thamara Patras and all pending cases were treated as closed (.) It is also clarified that though the conditions for award of

Thamara Patras and grant of Samman Pension are almost similar but the persons who have been awarded Thamara Patra are not ipso facto eligible for grant of Samman pension and vice versa (.). In case of grant of Samman pension claim is subject to thorough scrutiny/verification (.). Such procedure was not adopted in case of Thamara Patras(.). Finally Central Govt. did not have any record establishing the sufferings of the applicant before awarding the Thamara Patra (.). Request position may be brought to notice of Hon"ble High Court and oppose the Writ (.) or else it creates a bad precedent and the interest of the Central Govt. severally suffers (.).

= THI 1830/30....SD BY RS DELIVERED ON 30-JUL-1996 23.06 HRS....

7. We have carefully considered the respective submissions of either side. Though Mr. Santhanam tried to reiterate the stand taken in the communication referred to above on behalf of the Central Government, we are unable to appreciate or approve of the stand so taken. There is no serious controversy over the position that the conditions for the award of Thamara Patra and for the grant of Samman pension are almost similar. But the stand taken by the Central Government in the communication is that while issuing the Thamara Patra, the Central Government had not scrutinised or sifted the materials in such careful manner, as they are now undertaking a scrutiny, while awarding the Samman pension and that in some of the cases, the award of Thamara Patra has also been cancelled on coming to know that the applicants therein, never had undergone the minimum period of imprisonment, etc. However, in the light of the indisputable position that the criteria for the grant of Thamara Patra as also the Samman pension now under consideration, are almost the same and the fact that the petitioner has been awarded Thamara Patra and the petitioner is still in possession of the same without the same being revoked or cancelled by the Competent Authority for genuine or justifiable reasons, it cannot be contended legitimately by the respondents that on account of lack of proper and sufficient care and scrutiny during the time of grant of Thamara Patra, it cannot be relied upon ipso facto for the grant of Samman pension. The stand taken by the respondent/Central Government, in our view, appears to be very unreasonable and cannot have the merit of our acceptance. The Thamara Patras issued were with a definite purpose in recognition of the services rendering by the Freedom Fighters in Freedom struggle and could legitimately presumed to be only on being satisfied with the existence thereof the requirements stipulated for the same. Consequently as long as the Thamara Patra issued to the Petitioner is allowed to be retained by him without properly revoking and cancelling the same, the inevitable consequence flowing from the same must be also recognised. Otherwise, the Thamara Patra granted will have no meaning or significance and purpose and it is futile to contend at this point of time that such Thamara Patras were also issued in certain cases without proper scrutiny. If that is the stand or position, even now, the respondents are not disabled from cross-checking the genuineness of the award of Thamara Patra in any individual case and unless and until the Thamara Patra is cancelled in any particular case, for just and sufficient

reasons, after due notice and opportunity to the recipient concerned, the recipient of Thamara Patra must be considered and held to have satisfied the requirements for the grant of "Samman pension" as well as the Freedom Fighters Pension to be granted by the State Government. The Respondents, in our view are estopped from taking such a plea to deny the legitimate claim for the Thamara patra. As a matter of fact, in our earlier judgment in *R. Thangavelu v. Government of India and Anr.* 1994 W.L.R. 137, we have held in para 43 thereof as under:

43. Materials to be taken into account before passing orders:

The Government should also take into account the book published by them under the title "Who is Who" containing the names of Freedom fighters and act upon the same. Equally, when once the Central Government grants the pension after satisfying themselves about the fulfilment of the conditions stipulated in the Scheme, it will not be fair for the State Government to reject the claim of the State Pension. Similarly, if the State Government grants pension to a freedom fighter, the same should be accepted by the Central Government and no further proof should be insisted upon. In other words, once either the State Government or the Central Government grants pension to a particular freedom fighter, he must automatically get the other pension either under the State or under the Central Government Scheme without any further enquiry, on the claimants satisfying the guidelines, and the Government cannot reject the claim summarily that he is not a freedom fighter at all. Further, when once Thamara Patra has been granted recognising the valuable services rendered during freedom struggle, the concerned Government should automatically grant pension without any further enquiry or proof.

(Italics supplied)

8. In view of the above, the petitioner cannot be denied samman pension to be granted by the Central Government as also the Freedom Fighters' pension to be granted by the State Government.

9. Consequently, the writ petition is allowed and there shall be a writ of mandamus as prayed for directing the respondents to consider the claim of the petitioner for the grant of Samman Pension and also the Freedom Fighters' Pension to be granted by the State Government from 17.11.1983, the date of application, at the rate prevailing from time to time in the light of our decision referred to *supra* and the directions contained in this order and pass appropriate orders sanctioning the said pension to the petitioners, within three months from the date, of receipt of a copy of this order by them. There will however, be no order as to costs.