

(2009) 10 MAD CK 0319
In the Madras High Court
Case No : W.A. No's. 1465 of 2009

V. Ramasamy

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Citation : (2009) 10 MAD CK 0319

Hon'ble Judges : R. Banumathi, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : Su. Srinivasan, for the Appellant; J. Raja Kalifulla, Government Pleader, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—By consent of both sides, the writ appeal is taken up for final disposal even at the admission stage.

2. The appellant, who is a Freedom Fighter, aged 87 years underwent imprisonment for having participated in the Quit India Movement. He was imprisoned in Central Prison, Coimbatore, as an under-trial prisoner from 20.9.1942 to 7.12.1942. The appellant, in the capacity of Freedom Fighter, submitted application for the sanction of State Freedom Fighters Pension in June, 1981 and subsequently on 8.7.1986. The District Collector, Coimbatore/second respondent herein, in his proceeding dated 29.7.1983 stated that the appellant's application submitted in June 1981 was forwarded to the State government. The appellant enclosed co-prisoner's certificate obtained from one P. Velusamy and R. Velumayil, who were receiving Freedom Fighters Pension from the Central Government. The appellant was repeatedly making representations for the sanction of Freedom Fighters pension and on 4.3.1999, the District Collector sent his recommendation to the Government stating that the appellant is having acceptable proof for his participation in the freedom struggle.

3. The respondents having not passed any order, appellant filed W.P. No. 18425 of 2000 and prayed for a direction to the first respondent to grant Freedom

Fighters Pension as per the recommendation of the second respondent. This Court by order dated 1.11.2000 directed the State Government/first respondent herein to consider the claim of the appellant for the sanction of Freedom Fighters Pension within four months. By order dated 6.2.2001, the appellant's claim was rejected by the first respondent, against which the appellant filed W.P. No. 37188 of 2003 and by order dated 27.6.2006 this Court set aside the said order dated 6.2.2001 and directed the first respondent to consider the claim of the appellant in the light of the recommendations made by the District Collector/second respondent as per the judgment of the Supreme Court. The first respondent, thereafter sanctioned Freedom Fighters Pension by order dated 24.1.2007 with effect from the said date and the appellant is receiving the same till date. Since the appellant was given pension only from the date of the said order i.e., from 24.1.2007, he submitted an application seeking arrears of pension. The said request was rejected by order dated 7.11.2008 and the same was challenged in W.P. No. 6923 of 2009. The learned single Judge upheld the said order and dismissed the writ petition, against which this writ appeal is preferred.

4. Mr. Su. Srinivasan, learned Counsel for the appellant argued that the appellant's claim having been recommended by the District Collector as early as on 4.3.1999 and the appellant having filed W.P. No. 18425 of 2000, which was ordered by this Court on 1.11.2000, the appellant is entitled to get arrears of pension at least from the date of the order made in the writ petition. In support of his contention the learned Counsel cited the judgment of the Supreme Court reported in Gurdial Singh Vs. Union of India and Others, wherein the Supreme Court considered whether a Freedom Fighter is entitled to get freedom Fighters Pension under the Central Scheme and ordered to sanction pension from the date of filing of the first writ petition, even though in the judgment reported in Mukund Lal Bhandari and others Vs. Union of India and others, the Supreme Court has ordered to sanction Freedom Fighters Pension from the date of the application. The learned Counsel also cited the judgment of the Division Bench of this Court reported in 1994 WLR 137 (R. Thangavelu v. Government of India) which was followed in W.A. No. 3264 of 2000 dated 5.2.2007, wherein one of us was a party (N. Paul Vasanthakumar, J.). The Division Bench in the said matter ordered to sanction Freedom Fighters Pension from the date of application. The learned Counsel for the appellant also cited the order made in W.A. No. 558 of 2007 dated 10.4.2007, wherein another Division Bench of this Court dismissed the writ appeal filed by the State ordering sanction of arrears of State Freedom Fighters Pension. The Judgment of the Division Bench made in W.A. No. 1280 of 2008 Judgment dated 27.4.2009 was also cited and prayed for sanction of arrears of Freedom Fighters Pension from the date of the order passed in the first writ petition.

5. Mr. J. Raja Kalifulla, learned Government Pleader, on the other hand submitted that under the Tamil Nadu State Freedom Fighters Pension Scheme, pension can be ordered only from the date of the sanction order and not from any date prior to that and the learned Judge relied on the said clause in the scheme and denied

arrears of pension.

6. We have considered the rival submissions of the learned Counsel for the appellant as well as the learned Government Pleader for the respondents.

7. The issue to be decided in this writ appeal is, whether the appellant is a Freedom Fighter and is there any justification on the part of the respondents to deny pension from 1.11.2000 till the date of sanction order ?

8. It is not in dispute that as early as on 4.3.1999, the District Collector/second respondent recommended for sanction of the Freedom Fighters Pension to the appellant. There was persistent inaction on the part of the first respondent in passing any order and hence the appellant approached this Court by filing W.P. No. 18425 of 2000, in which an order was passed on 1.11.2000 to consider the appellant's claim within a period of four months. Thereafter, the first respondent erroneously rejected the claim on 6.2.2001 and the said rejection order was also challenged in W.P. No. 37188 of 2003. This Court found that the said order cannot be sustained and consequently set aside the said order by order dated 27.6.2006 and remanded the matter back to the State Government with a direction to consider the recommendation already made by the District Collector on 4.3.1999. Thereafter the first respondent has chosen to sanction Freedom Fighters Pension to the appellant from 24.1.2007. Thus, it is evident that the first respondent has taken about eight years to accept the recommendation.

9. The Scheme providing pension to the Freedom Fighters and the object behind the same is already considered by the Supreme Court in the decisions reported in R. Narayanan Vs. Union of India and another, , Mukund Lal Bhandari and others Vs. Union of India and others, , Gurdial Singh Vs. Union of India and Others, and by the Division Bench of this Court in the decision reported in 1994 WLR 137 (R. Thangavelu v. Government of India). In the above Division Bench judgment the State Freedom Fighters Pension Scheme as well Central Freedom Fighters Pension Scheme were considered in depth and in paragraph 36 it is held thus,

36. It is clear from the Schemes referred to above that the Government wanted to grant pension to the freedom fighters who had suffered imprisonment for liberating our nation from the yokes of foreign rule. The object of the Scheme appears to be that the persons who suffered imprisonment during freedom struggle should not be left to suffer in their old age. This pension is granted to freedom fighters and that class of persons are slowly becoming extinct. Having regard to the above laudable object and purpose behind the scheme it is but necessary that the appropriate Government should adopt a liberal approach in the matter of grant of pension to the real freedom fighters. When we say this, it does not mean that when a person makes a claim under the Scheme for pension, he should be granted the same as a matter of course. No doubt, the applicant should satisfy the conditions stipulated in the Scheme.

10. Another Division Bench of this Court in W.A. No. 3264 of 2002 by judgment

dated 5.2.2007, in which one of us was a party (N. Paul Vasanthakumar, J.) considered similar issue and upheld the order of sanction of Freedom Fighters Pension arrears, which was ordered to be paid from the date of the application. Similar order passed by the learned Single Judge ordering Freedom Fighters Pension from the date of application was upheld in W.A. No. 558 of 2007 by Judgment dated 10.4.2007. Recently in W.A. No. 1280 of 2008 by Judgment dated 27.4.2009, the Division Bench ordered to sanction pension with arrears from the date of filing of the writ petition at the first instance. We see no reason to differ from the said decisions of the earlier Division Benches of this Court.

11. The last date for submitting the application is fixed in the Central Scheme. The Supreme Court in the decision reported in *Mukund Lal Bhandari and others Vs. Union of India and others*, held that the said date was fixed only for administrative convenience and the same cannot be a rigid time limit. In paragraph 4 the Supreme Court held thus,

4. Writ Petition (Civil) No. 75 of 1991, *Surja v. Union of India* was filed by some of the participants in the Arya Samaj Movement in the late 1930s in the erstwhile Nizam State of Hyderabad. The participants in question were sentenced to various terms of imprisonment exceeding six months. The Union of India filed a counter-affidavit and pointed out that the earlier petition in *Duli Chand* case was decided *ex parte* and by accepting all the allegations made by the petitioners therein. The Court, therefore, felt that it would not be appropriate to dispose of the petition by adopting the order made by it in the earlier petition. One of the questions which fell for consideration was whether the petitioners had suffered the minimum sentence of six months' imprisonment on account of their participation in the said Movement, which was the qualifying period of imprisonment under the Scheme. It was found from the material produced by most of the petitioners that they were sentenced to imprisonment for terms exceeding six months. However, while they were undergoing their sentences, a general amnesty was declared by the then Nizam on his birthday, and without their asking for the same, their sentences were reduced and they were set free. In view of the fact that the petitioners' sentences were reduced without their praying for the same, it was held that the petitioners had satisfied the condition under the Scheme, viz., that they had been imprisoned for six months. While interpreting the qualifying condition of six months' imprisonment, it was in terms held that if a prisoner was sentenced to imprisonment for six months or more and if the period of actual imprisonment was reduced not on account of his claiming any remission, he should be deemed to have fulfilled the qualifying period of imprisonment for six months. In the circumstances, the claim of the petitioners was accepted and they were directed to be paid pension with effect from August 1, 1980. Here again, it may be pointed out, it was not contended on behalf of the Union of India that the pension should not be made payable with retrospective effect and hence there was no occasion to consider whether notwithstanding the delay in making the application and whatever the date on which the applicant made the claim, he should be entitled to the same with effect

from the retrospective date as if he had made his application in time, viz., before the date prescribed for making such application.

12. In the decision of the Supreme Court reported in Gurdial Singh Vs. Union of India and Others, while ordering arrears of pension from the date of application, it is held that "the case of the appellant has been disposed of ignoring the mandate of the law and the scheme. The impugned order also appears to have been passed with a biased and closed mind, completely ignoring the verdict of this Court in Mukundlal Bandari Case. The appellant has unnecessarily been dragged on to the Court for no fault of his."

13. The Supreme Court having issued guidelines as to how the Freedom Fighters Pension cases should be considered for the sanction of Freedom Fighters Pension, the appellant is justified in claiming the arrears of pension in this case.

14. The learned single Judge, though relied on the scheme to restrict sanction of pension from the date of the order of sanction, we are of the view that the eligibility for the sanction of Freedom Fighters Pension having been established by the appellant and also of the fact that there is unreasonable delay of about eight years on the part of the first respondent in considering the recommendation made by the District Collector/second respondent for the sanction of Freedom Fighters Pension to the appellant even though the appellant was pursuing his claim by filing writ petitions, the said Rule 14 cannot be put against the appellant as the delay is entirely on the part of the first respondent in sanctioning pension belatedly and the appellant is unnecessarily dragged on to this Court thrice for getting relief.

15. Viewing the issue in the above manner, we are of the firm view that the appellant is right in claiming arrears of Freedom Fighters Pension from 1.11.2000, the date on which the first writ petition filed by him was ordered by this Court.

16. In fine, the order of the learned single Judge dated 6.7.2009 made in W.P. No. 6923 of 2009 is set aside and the writ appeal is allowed. The respondents are directed to pay the arrears of State Freedom Fighters Pension to the appellant from 1.11.2000 till the date of sanction i.e., 24.1.2007, within a period of six weeks from the date of receipt of copy of this order. No costs.