

(2013) 12 MAD CK 0090

Madras High Court (Madurai Bench)

Case No: Writ Appeal (MD) No. 1269 of 2013 and M.P. (MD) No. 2 of 2013

The Govt. of India

APPELLANT

Vs

M. Pancharathinam

RESPONDENT

Date of Decision: Dec. 10, 2013**Hon'ble Judges:** S. Vaidyanathan, J; R. Sudhakar, J**Bench:** Division Bench**Advocate:** A. Saravanan, Central Govt, for the Appellant; B. Muruganandam, for the Respondent**Final Decision:** Dismissed

Judgement

R. Sudhakar, J.

The proceedings of the Under Secretary to Government, Government of India, Ministry of Home Affairs, Freedom Fighters Division, New Delhi, dated 13.08.2001, was challenged before the learned Single Judge and the said proceedings was set aside and the learned Single Judge directed that the respondent/writ petitioner should make another representation to the appellant for grant of Freedom Fighter Pension and after receipt of the representation, the appellant herein was directed to pass orders within a period of four weeks, with a specific direction not to return the claim for the reasons already set out in the impugned proceedings, dated 30th August, 2001, which was quashed. The present writ appeal is filed challenging the above said order of the learned Single Judge. Before we advert to the legal issues, the following factual aspects of the case require to be noted.

(a) The respondent herein is a widow of a freedom fighter, by name Muthusamy Servai, who was arrested and detained by the British Rule for more than nine months, when he participated in the "Quit India Movement" in 1942. The respondent made an application to the appellant for grant of freedom fighter pension under "Swathantrata Sainik Samman Pension (SSS) Scheme, 1980. The respondent, in her application, dated 29.12.1980, claimed that her husband was in imprisonment from 18.08.1942 to 26.05.1943, in connection with "Quit India

Movement" and he was confined in prison in a case in C.C. No. 35 of 1943. The respondent also stated that her husband was acquitted in the said case.

(b) In support of her application for grant of Swathantrata Sainik Samman Pension, as the Scheme requires, the respondent submitted a certificate issued by one Mr. S. Ramakrishna Theavar, dated 21.09.19980, who has stated that the freedom fighter "Muthusamy Servai", the husband of the respondent, was imprisoned in Madurai Central Jail, along with him, for participating in 1942 "Quit India Movement" and his period of imprisonment with him was from 18.08.942 to 26.03.1943. The respondent also produced another certificate, in support of her claim, issued by Thiru P. Kakkan, a former Minister of the Government of Tamil Nadu, who, in his certificate, dated 26.09.2070, has stated that "Muthusamy Servai" was imprisoned for 10 months in connection with "Quit India Movement" and that he was a co-prisoner with him in Madurai Central Jail.

(c) The case of the respondent, widow of the freedom fighter by name Muthusamy Servai, was forwarded to the appellant by Mr. E.M. Sudarshana Natchiappan, a Member of Parliament. Thereafter, it was considered and rejected by the appellant. The reason given by the appellant are as under:

I.(i) The period of suffering, as per the certificate issued by Mr. Ramakrishna Thevar was from 18.08.1942 to 26.03.1943, for about 7 months period.

I.(ii) As per the Certificate issued by Mr. P. Kakkan, the period of imprisonment was for 10 months.

I.(iii) As per the respondent, the period of imprisonment was more than nine months. Therefore, there is difference in the period of imprisonment in between the three documents, as above.

II. Even as per the application of the respondent, the freedom fighter "Muthusamy Servai" was acquitted in the criminal case and since he was only under-trial prisoner and was not convicted and did not undergo any suffering as convicted prisoner, he is entitled to be declared as a freedom fighter who suffered imprisonment in terms of SSS Pension Scheme.

III. The recommendation of the Government of Tamil Nadu has not been received by the Union Government and the State Government has only forwarded the application, without any specific recommendation.

IV. Paragraph 3 of the order impugned in the writ petition, reads as follows:

3. You have mentioned in your representation that you are also getting state freedom fighters pension. Grant of pension by State Govt. ipso facto does not one make eligible for grant of central pension unless the requirement of the central scheme are also fulfilled as State and Central Scheme are both separate scheme; having different requirements to be fulfilled. The State Govt. might be treating the

undertrial period leading to acquittal as a suffering under their own scheme but under SSS Pension Scheme it is not treated as a suffering.

2. The learned Single Judge was of the view that State Freedom Fighter Pension was granted in favour of the widow of the freedom fighter and the same is supported by two certificates issued by co-prisoners, which is not in dispute. The Certificate issued by Thiru P. Kakkan, former Minister of the Government of Tamilnadu, was known for his simplicity, honesty and integrity and therefore nothing more is required to be stated or considered for grant of pension. The learned Single Judge frowned upon the authorities for being hyper-technical while granting pension. Relying upon a Division Bench judgment of this Court in W.A. No. 879 of 2009, dated 25.02.2010 - State of Tamil Nadu v. A.K. Gopal, and also considering the plight of a widow of freedom fighter, who challenged the order of the appellant, dated 13.08.2001, rejecting her claim for pension, in the year 2009, held that her belated approach could be nothing but, of which we approve, sheer penury. The learned Single Judge came to the aid of the widow of the freedom fighter and directed the appellant to consider her claim on merits, eschewing the reasons stated in the impugned proceedings.

3. The appellant, Ministry of Home Affairs, Freedom Fighters Division, has filed this Appeal, challenging the order of the learned Single Judge, reiterating the stand taken by them in the impugned order challenged in the writ petition, on the following grounds:

(a) Once it is admitted that the freedom fighter is acquitted, the period of under-trial imprisonment cannot be treated as an imprisonment and therefore the person will not be eligible to claim the benefit of SSS Pension Scheme.

(b) There is discrepancy in the period of imprisonment in the certificates issued by co-prisoners.

(c) The mere fact that the State Government granted pension does not entitle the respondent/writ petitioner to get pension under the Central Government SSS Pension Scheme.

(d) It is the specific case of the department that though the State Government treated the period of under-trial imprisonment leading to acquittal as sufferings under their Scheme, under the SSS Pension Scheme, the period of under-trial imprisonment leading to acquittal is not treated as sufferings.

4. We have heard the learned counsel for the appellant and the learned counsel for the respondent.

5. We are not inclined to accept the stand taken by the Ministry of Home Affairs, Freedom Fighters Division, Union of India, for the following reasons.

(i) SSS Pension Scheme, 1980 of the Union of India speaks about the imprisonment. Paragraph 2.2 of the Scheme reads as follows:

2.2. Imprisonment:--A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:--

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Govt. indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case, the certified happens to be a sitting or Ex.M.P./M.L.A., only one certificate in place of the two is required....

Nowhere in the Scheme, differentiation is made between the pre-trial imprisonment and imprisonment on conviction.

(ii) The reason given by the appellant that in SSS Pension Scheme, 1980, the under-trial period will not be taken into consideration cannot be countenanced in view of Section 428 of the Code of Criminal Procedure, which reads as follows:

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.--Where an accused person has, on conviction, been sentenced to imprisonment for a term not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him....

The above said provision makes it clear that the period of detention should be set off against the sentence of imprisonment, thereby making it clear that such period should be counted as imprisonment.

(iii) The said provision has been analysed by the Hon"ble Supreme Court in [Atul Manubhai Parekh Vs. Central Bureau of Investigation](#), wherein it has been held that the period of detention of an accused, as an under-trial prisoner, shall be given set-off against the term of imprisonment, imposed on him on conviction. Thus, the period of under-trial detention is treated as period of imprisonment. Therefore, by no stretch of imagination, the authorities can make a distinction with regard to

pre-trial imprisonment or imprisonment on conviction.

(iv) In Appendix B-I to SSS Pension Scheme, 1980, in clause

(iv) and (v), it is stated as follows:

(iv) Release on bail would not be a disqualification provided imprisonment suffering was for six months or more - (Circular No. 8/8/75 - FF(P) dated 13.03.75).

(v) Imprisonment and abscondence sufferings should be taken together for calculating six months - (Circular No. 8/32/76-FF(P) dated 28.10.76)

The above circulars have been lost sight-off by the authorities. Even in a case of absconder, the Scheme provides for benefit as is evident from Appendix-B-II (ii). Therefore, the approach of the authority appears to be hyper-technical, as has been pointed out by the learned Single Judge. The authorities have failed to apply their own circulars. The order, therefore, has been rightly set aside.

6. Insofar as the discrepancy with regard to the dates mentioned in the two certificates given by two co-prisoners of the freedom fighter and in the representation of the respondent, we wish to state that both the persons, who gave certificates, have spoken out of memory about the incident which had happened during the freedom movement in 1942. One could not be expected to state from memory about an incident which had happened so many decades ago in exactitude. After all the difference in the period of pre-trial detention, mentioned in the two certificates given by the co-prisoners and in the representation of the respondent, is very meagre. Further, no one has stated that it was below six months. If the period of imprisonment is beyond six months, there is no question of rejecting the claim for freedom fighters pension under SSS Pension Scheme. The Scheme also speaks about providing pension to claims which are based no primary document, if certified by certain authorities. For example, if there is no record available in the Jail for imprisonment, a certificate by the Superintendent of Prison, supported by a certificate by a co-prisoner, would satisfy the requirement of the Scheme to sanction pension. The Scheme, therefore, provides for various measures to ensure that the persons who suffered for the freedom of our nation are not denied pension on technicalities. On the other hand, the Scheme provides for various methods by which eligible persons can seek benefit under the pension scheme. The authorities should approach the matter with a mind to further the objects of the Scheme and to achieve the purpose for which it was intended.

7. Paragraph 3 of the Scheme provides for the procedure, which reads as follows:

Persons who consider themselves eligible for Samman Pension under the Scheme and desire the Samman Pension, should apply in duplicate on the prescribed application form. The application, duly filled in and supported with required documents as proof of claim of suffering, should be sent to the Chief Secretary of the concerned State Government/Union Territory Administration. A copy of such

application should be sent to the Deputy Secretary to the Government of India, FF Division, MHA, New Delhi as an advance copy. However, claims can be processed by the Central Govt. only on receipt of verification & entitlement to pension report from the State Govt./U.T. Administration concerned.

8. It is seen from the order impugned in the writ petition, the State Government has forwarded the representation of the widow of the Free Fighter to the Ministry of Home Affairs, without any specific recommendation. But, there is no denial of the fact that the State Government has already granted pension. If that be the case, we fail to understand as to why the widow of a freedom fighter should be called upon to go up and down between the State Government and the Central Government for the relief. When the issue could be sorted out between two knowledgeable officers of the departments of the State and the Central Governments, who are well versed with the procedure and technically qualified and who also have the manpower to call for the records from one or other department to verify the genuineness of the claim, we find no reason why the Central Government Officer should shirk his responsibility on the technical ground that the State Government has not forwarded the representation of the respondent with proper recommendation. Is it the fault of the poor widow of a deceased freedom fighter? We ask ourselves. Does she have at her command the powers that the officers of the State and Central Governments have? What more can she say, except that the State Government has thought it fit to grant pension, why not the Central Government. In such circumstances, we feel it as unnecessary for the respondent, wife of a freedom fighter, to shuttle between the State Government and the Central Government seeking the relief for grant of freedom fighter pension.

9. We, therefore, call upon the Union Government, the Department of Home Affairs, Freedom Fighters Division, to ponder over this issue as to whether the widow of a freedom fighter should languish and lament for several decades to get freedom fighter pension, merely because the State Government has not forward the application in a proper form, when substantial part of the Scheme has already been complied with by furnishing Certificates issued by two co-prisoners, one among the two was an Ex-Minister of the State of Tamil Nadu, a person of great repute, honest and simple and a true Gandhian. Hence, with great pain, we direct the appellant to consider the case of the respondent for grant of freedom fighters pension under SSS Pension Scheme, 1980 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

10. We also direct the Chief Secretary to the Government Tamil Nadu, though not a party to the writ petition, to take immediate action in this matter and forward the papers to the Union Government, and report to this Court on the action taken, on or before 28th January, 2014. A copy of this order will be issued to the Chief Secretary to Government of Tamil Nadu, for compliance. The Writ Appeal stands dismissed with the above direction. No costs. Connected M.P. (MD) No. 2 of 2013 is also

dismissed.

Post the matter on 29.01.2014 for reporting compliance.