



W.A.No.2169 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 09.02.2024

JUDGMENT PRONOUNCED ON : 15.02.2024

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Writ Appeal No.2169 of 2023
and C.M.P.No.18598 of 2023

The Under Secretary to Govt. of India
Ministry of Home Affairs
Freedom Fighter Divisions
2nd Floor, NDCC-II Building
Jai Singh Road, New Delhi – 110 001.

.. Appellant

Versus

1. R.K.Venkatachalam
2.The Collector of Thiruvallur
Thiruvallur.
3.The Tahsildar of Ponneri
Ponneri.
4.The Govt. of TN rep.by Additional Secretary
Public (Political Pension) Department
Secretariat, George Fort
Chennai.

.. Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 21.04.2022 passed in W.P.No.15150 of 2020.



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For the Appellant : Mr.R.Rajesh Vivekananthan
Dy.Solicitor General

For the Respondents: Mr.A.Edwin Prabhakar
State Government Pleader for RR2 to 4
Mr.P.Satheesh Kumar for R1

JUDGMENT

(Judgment made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

This Writ Appeal is directed against the order of the learned Single Judge in W.P.No.15150 of 2020 dated 21.04.2022 in and by which the Writ Petition filed by the 1st respondent herein was allowed. By the said Writ Petition, the 1st respondent challenged the order of the appellant dated 27.07.2018 in and by which, the claim for Freedom Fighters Pension under the *Swatantrata Sainik Samman Yojana (SSSY for short)* was rejected by the appellant.

2. The case of the writ petitioner is that he was a member of the Indian National Army, having joined the Indian Independence League under the leadership of *Shri Nethaji Subash Chandra Bose* in the year 1943 and



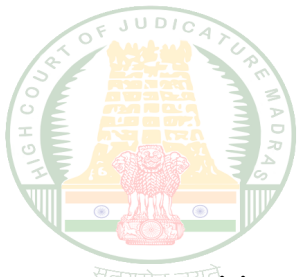
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undertook campaign for freedom struggle under the immediate leadership of one *Panchatcharam* in *Kiaktan Syriam* area, *Burma*. While so, he was arrested by the British Army, during May 1945 and was in Rangoon Jail, until December 1945, thus, having suffered incarceration for more than 6 months. The said fact has been affirmed by two of his co-prisoners, *Mr.S.V.Subramani* and *Mr. K.Thiyagarajan*. He also possesses a certificate from Colonel *Dr.Lakshmi Sehgal*, Member of the Indian National Army Freedom Fighters Pension Committee.

3. He had applied for pension, both under the State Government Freedom Fighters' Allowance Scheme and under the SSSY. However, no orders were passed and therefore, earlier he approached this Court by way of W.P.No.734 of 2018.

4. When the Writ Petition came up for hearing, on behalf of the State Government, it was submitted that the order would be passed within a period of three weeks. On behalf of the Central Government it was submitted by the learned Assistant Solicitor General of India that no application from the



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petitioner therein is pending, however, when such application is made and forwarded to the Central Government by the State Government with their recommendations, the claim of the petitioner will be considered. Accordingly, the earlier Writ Petition was disposed of with the following directions:-

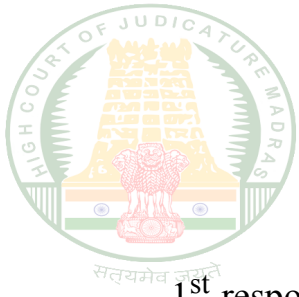
“5.Thus, this writ petition is disposed of, with the following directions:

a) The petitioner is directed to send one more application to the Central Government through the State Government seeking for freedom fighter's pension within a period of two weeks from the date of receipt of a copy of this order, since the State Government has already granted pension to the petitioner.

b) On receipt of the said application, the State Government shall forward the same to the Central Government with recommendation to the petitioner within a period of three weeks thereafter, since the State Government has already granted pension to the petitioner.

c) On receipt of such application with the recommendation of the State Government as stated supra, the fourth respondent shall pass necessary orders on such application within a period of 8 weeks in accordance with the relevant scheme and procedure also by taking note of the fact that the State Government granted pension to the petitioner on very same set of facts. No costs. The connected miscellaneous petitions are closed.”

5. As a matter of fact, the application of the 1st respondent was sent to the concerned District Collector, who after ascertaining the genuineness, sent a report to the Government of Tamil Nadu, recommending the case of the



1st respondent. Thereupon, by a communication dated 13.07.2018, the Deputy
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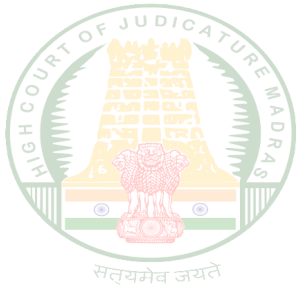
Secretary to Government, Public (Political Pension.I) Department, Government of Tamil Nadu, forwarded the application of the 1st respondent along with all requisite documents with the recommendation of the Government of Tamil Nadu to the Deputy Secretary to Government of India, Freedom Fighters' Division, Ministry of Home Affairs, New Delhi, recommending that the Central Pension also be granted to the 1st respondent.

6. Thereafter, the appellant considered the case of the 1st respondent and by an order dated 27.07.2018 rejected the claim, on the reason that the co-prisoners, who certified the imprisonment of the 1st respondent did not suffer incarceration for a period of one year. The relevant paragraph No.5 is extracted hereunder:-

“5.After examination of the case the following shortcomings has been emerged:

i) The Certificate issued by All India INA Committee only

certify that Shri.R.K.Venkatachalam was a member of INA, it does not certify the jail suffering of Shri R.K.Venkatachalam. As such, the said document is not enough for grant of SSS Pension under the provisions of SSS Yojana.



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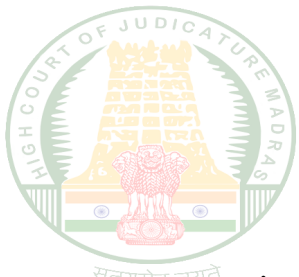


ii) As per provisions of SSS Yojana as secondary evidence, the CPC certifier must prove his own Jail Suffering Minimum period of one year. In this case, Shri S.V.Subramani, who has given, CPC in support of Shri R.K.Venkatachalam, has himself claimed to have suffered imprisonment for less than one year. Hence, he is not eligible certifier and CPC given by him is not valid.

iii) The Second copy of CPC has given by Shri K.Thiyagarajan, S/o Late V.Karuppiyah, in support of Shri R.K.Venkatachalam, he claimed to have suffered imprisonment for less than one year. Hence, he is not eligible certifier and CPC given by him is not valid.”

7. Challenging the same, the present Writ Petition is filed. The Writ Petition was resisted by the appellant by filing a counter affidavit, stating that so long as the 1st respondent herein did not fulfil the criteria, Pension cannot be granted. Reliance was also placed on the Judgments of the Hon'ble Supreme Court and this Court in support of their case.

8. The learned Single Judge considered the rival contentions and held that while the eligibility of the 1st respondent, that he was the member of the Indian National Army, and that he suffered incarceration in Rangoon Jail for a period of more than 6 months, is not denied, his case has been rejected only on the ground that the co-prisoners' certificates furnished by him were



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not given by the persons who had suffered the requirement of one year imprisonment. The learned Single Judge took into consideration that those two co-prisoners had suffered incarceration for about 8 months and since their incarceration exceeds six months and in the teeth of the fact that it is impossible for the 1st respondent to produce direct evidence of incarceration from the jail authorities, drew support from the Judgment of the Hon'ble Supreme Court of India in *State of Tamil Nadu Vs. A.Manickam Pillai*¹ and *Surja Vs. Union of India*² and also the Division Bench of this Court in *Union of India Vs. K.Duraisamy and Ors.*,³ allowed the Writ Petition and restricted the arrears of Pension only from the date of application, i.e., 04.02.2003. Aggrieved by the same, the present Writ Appeal is filed.

9. *Mr.Rajesh Vivekanandan*, learned Deputy Solicitor General of India assailing the order of the learned Single Judge would submit that Pension can be granted only if the 1st respondent is eligible and proves his claim as per the mandatory contained in the SSSY. The scheme categorically requires that

1 (2010) 2 SCC 669

2 (1991) 4 SCC 366

3 (2018) 8 MLJ 223



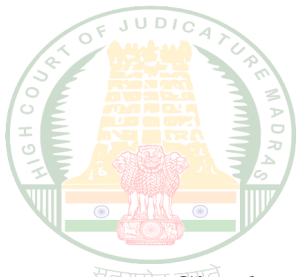
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in case whether the parties are not able to produce direct evidence, such secondary evidence in the form of co-prisoner's certificate has to be produced from the co-prisoners, who have suffered incarceration atleast for a period of one year. When admittedly, both the co-prisoners have not suffered incarceration for a period of one year, the claim has rightly been rejected. Mere fact that the State Government has granted Pension would not bind the Central Government.

10. In support of his submissions, he would rely upon the Judgment of the Hon'ble Supreme Court of India in *Union of India Vs. Bikash R.Bhowmik and Ors.*,⁴ whereunder a person who had visited the prisoner – freedom fighter, when he was in jail, who was not at all a co-prisoner gave certificate, was held to be invalid proof. He would submit that in an identical circumstances, a co-ordinate Bench of this Court in *Union of India Vs. V.Nagamalai and Ors.*,⁵ had upheld the rejection. He would further rely upon the Judgment of the Hon'ble Supreme Court in *Union of India Vs. Mohan*

4 (2004) 7 SCC 722

5 (2019) Scc Online Mad 32212



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Singh and Ors.,⁶, by placing reliance on paragraph Nos.4 and 5 to submit that it is for the Government to come to the satisfaction whether the 1st respondent has proved his case.

11. He would also rely upon the Judgment of the Division Bench of the Bombay High Court in **Rukminbai Vs. State of Maharashtra**⁷, to contend that the claim should be supported by requisite documents. Mr. Rajesh Vivekanandan, would contend that Hon'ble Supreme Court of India in **Union of India Vs. R.V.Swamy**⁸ has categorically held that it is not for the High Court to come to a conclusion or other, when it relates to a case of appreciation of evidence. In **Union of India Vs. A.Alagam Perumal Kone**⁹ the Supreme Court has categorically held that the pension under the SSSY can be sanctioned only as per the proof required under the scheme and in no other manner.

6 (1996) 10 SCC 351

7 (2022) 2 Mh.L.J.

8 (1997) 9 SCC 446

9 (2021) 4 SCC 535



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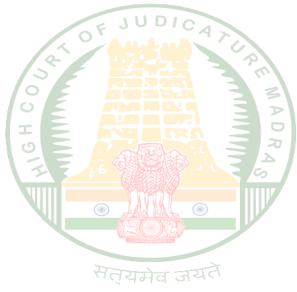
12. *Mr.Rajesh Vivekanandan*, would submit that the learned Single Judge erred in granting the arrears from the date of application, whereas, the Hon'ble Supreme Court in the case of *Union of India and another Vs. Kaushalya Devi*,¹⁰ had granted the benefit only from the date of the order of the High Court. Therefore, he would submit that a case is made out for interference.

13. Per contra, *Mr.P.Satheesh Kumar*, the learned counsel appearing on behalf of the 1st respondent would submit that the State Government found that the 1st respondent is eligible for Pension and also recommended for grant of Pension, upon conduct of enquiry by the District Collector. In an identical circumstances, a co-ordinate Bench of this Court in *Union of India Vs. K.Duraisamy*¹¹ had directed grant of pension. He would therefore, pray that the order does not require any interference.

14. We have considered the rival submissions made on either side and perused the material records of the case.

10 (2007) 9 SCC 525

11 (2018) 8 Mad LJ 223



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15. The Government of India, originally framed a Freedom Fighters' Pension scheme, 1972, which was later modified and re-notified as SSS Yojana, 1980 with effect from 15.08.1981. Under the said scheme, Pension is granted to Freedom Fighters', at the rates notified and modified from time to time. The Scheme lays down the eligibility as produced in the present case is reads as hereunder:-

“Who is Eligible

For the purpose of grant of Samman Pension under the scheme, a freedom fighter is:-

(A) a person who had suffered minimum imprisonment of six months in the mainland jails before independence. Ex-INA personnel are also eligible for pension if the imprisonment/detention suffered by them was outside India for six months or more. In case of women and SC/ST freedom fighters the minimum period of actual imprisonment for eligibility of pension is three months.”

16. Thus, it can be seen that Freedom Fighters who suffered minimum imprisonment of six months are eligible. They are required to apply in the form as contained in Annexure III. The applicants are required to prove their claims in the following manner,



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“How to prove claims (Evidence Required)

The applicants should furnish the documents indicated below, whichever is applicable, in order to prove his/her claimed sufferings for grant of pension under the scheme.

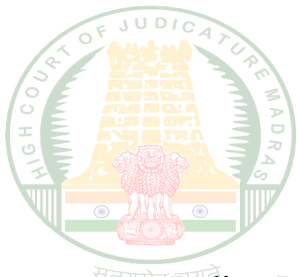
(A) IMPRISONMENT / DETENTION:-

Certificate from the concerned jail authority, District Magistrate or the State Government, indicating period of sentence awarded, date of admission, date of release and reasons for release. In the absence of such certificates from official records, a Non-Availability of Records Certificate (NARC) from the concerned authorities along with Co-Prisoners' Certificates (CPC) as under:-

i) Two Co-prisoners' Certificates from the freedom fighter pensioners who had a proven jail suffering of one year.

ii) One Co-prisoners' Certificate from sitting MP or MLA or from an ex-MP or ex-MLA specifying his jail period and that of the applicant. **(ANNEXURE-IV)**”

17. Thus, it can be seen that the primary mode of proving, was to obtain a certificate from the concerned Jail Authority or District Magistrate or the State Government or to obtain a Non-Availability of Record Certificate from the concerned authorities along with the co-prisoners certificate. A careful reading of the above, it would be clear that it is primarily concerned with Freedom Fighters who have suffered imprisonment in the mainland jails. The Scheme, it does not seem to specifically consider the method of primary proof in respect of the INA personnel, who suffered imprisonment outside



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India. In such cases it is the Central Government which has the wherewithal to verify the facts from other countries such as Myanmar and obviously the Freedom Fighters' cannot produce any certificate from Jail Authority or District Judge or the State Government. Nor those authorities can issue any Certificate. Thus, it can be seen that while the mainland prisoners have the primary mode of proving their claim either by producing the primary evidence or in the absence of the same, secondary mode of co-prisoners certificate, in the case of members of the INA such as the 1st respondent herein, the only possible mode by which they can prove is by producing the co-prisoners' certificate.

18. If the persons who are involved in the struggle, viz., the co-prisoners, were all taken into custody during May 1945 and released in December 1945, strict insistence upon the criteria that co-prisoners should have a proven jail suffering of one year, would become a condition of eligibility rather than a method of proof. Therefore, the scheme has to be read harmoniously and in the facts of the present case, where the co-prisoners have suffered a term slightly lesser than one year, the same cannot be put against the

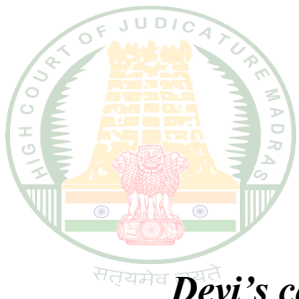


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first respondent, who is otherwise eligible for pension. It must be borne in mind that the fact that the first respondent is a member of INA and suffered incarceration is not doubted. The District Collector who conducts on-field inquiry is satisfied with his eligibility and the State Government has also recommended. Under the circumstances, when the learned Single Judge has held that various clauses of the scheme have to be read harmoniously and exercised her discretion, this Court as an Appellate Court need not interfere in the discretion exercised by the learned Single Judge.

19. As far as the decisions relied upon on behalf of the appellant are concerned, the question as to the non-availability of the primary mode in case of the persons such as the 1st respondent belonging to the Indian National Army, incarcerated in a foreign country was not the issue which was specifically considered and answered.

20. The alternative submission made on behalf of the appellant is that having allowed the Writ Petition, the learned Single Judge while following the earlier Judgment of the Hon'ble Supreme Court of India in *Kaushlya*



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Devi's case (cited supra) had ordered the pension arrears from 04.02.2003, i.e., the date of recommendation of the District Collector, whereas as per the Judgment of the Hon'ble Supreme Court of India, it must be from the date of the order of the High Court. In the instant case, the present Writ Petition is the second round. Earlier, the 1st respondent filed W.P.No.734 of 2018, which was disposed of with a direction to consider and pass orders by an order dated 19.03.2018. Therefore, the 1st respondent would be entitled to arrears from the said date of the earlier Order dated 19.03.2018.

21. In the result, this Writ Appeal is disposed of with the following terms,

(i) The order of the learned Single Judge dated 21.04.2022 in W.P.No.15150 of 2020 is upheld with the modification that the 1st respondent will be entitled for arrears of pension with effect from the date of the order of this Court in W.P.No.734 of 2018, i.e., with effect from 19.03.2018.

(ii) In view of the fact that the 1st respondent is aged 94 years, the appellant shall comply with the order within a period of two months from the date of receipt of a copy of this Judgment.



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closed.

(iii) No costs. Consequently connected miscellaneous petition is

(S.V.G., C.J.,)

(D.B.C., J.,)

15.02.2024

Index : Yes
Speaking order
Neutral Citation : Yes
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To

1.The Collector
Thiruvallur District.

2.The Tahsildar
Ponneri.

3.The Additional Secretary
Govt. of Tamil Nadu
Public (Political Pension) Department
Secretariat, George Fort
Chennai.



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VERDICTUM.IN



W.A.No.2169 of 2023

**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,**

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Pre-Delivery Judgment made in
Writ Appeal No.2169 of 2023

15.02.2024