

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2010

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.3980 of 2009

and

M.P.No.1 of 2009

A.Ebrahim

... Petitioner

...Vs....

1.The Union of India

Rep. by its Secretary to Government ,  
Ministry of Home Affairs,  
New Delhi.

2.The Under Secretary to Government of India,  
Ministry of Home Affairs,

FFR Division, New Delhi. .... Respondents

The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue of a writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent vide his order F.No.52/CC/4/2008-FF (INA) dated 03.02.2009 quash the same and consequently direct the respondents herein to sanction and pay Freedom Fighters Pension (Swantantrata Sainik Sanman Pension) to the petitioner from the date of the original application filed on 07.02.1983 with all attendant benefits such as Tamara Patra, Railway, Bus travel concession, Medical Health benefits etc.

For Petitioner : Mr.Mr.S.Pushpakaran

For Respondents : Mr.J.Ravindran,  
Asst. Solicitor General of India

O R D E R

This writ petition is filed to call for the records relating to the order of the second respondent vide his order F.No.52/CC/4/2008-FF (INA) dated 03.02.2009 quash the same and consequently direct the respondents herein to sanction and pay Freedom Fighters Pension (Swantantrata Sainik Sanman Pension) to the petitioner from the date of the original application filed on 07.02.1983 with all attendant benefits such as Tamara Patra, Railway, Bus travel concession, Medical Health benefits etc.

2. The facts which are necessary to decide the issue involved in the writ petition are as follows:-

The petitioner was one of the civilian members in Indian Independence League, Thinganyam (Rangoon), Burma. He joined in Indian Independence League Branch during the year 1943. He rendered his valuable service as a National Army Transit Camp (Caffor Road) Thinganyam(Rangoon),Burma. The petitioner is a freedom fighter having participated in Indian National Army and was convicted to undergo imprisonment during the year 1945. Hence, as a freedom fighter, he applied before both the Government of India and the Government of Tamil Nadu for the Freedom Fighters Pension from 07.02.1983. Though the Government of Tamil Nadu has granted freedom fighters' pension, the Government of India, the first respondent herein has rejected the case of the petitioner for grant of pension. Hence, the petitioner has filed a number of writs seeking issuance of writ of Certiorarified Mandamus to quash the impugned order dated 22.11.2007 and 14.12.2007 in No.52/CC/21/2004-FF(INA) and consequently directing the respondents to sanction and pay Freedom Fighters Pension (Swantantrata Sainik Sanman Pension) to the petitioner from the date of his original application dated 07.02.1983 with all attendant benefits. Lastly, the petitioner filed a writ petition in W.P.No.1610 of 2008 in the year 2008. In the said writ petition, this Court has passed an order directing the petitioner to submit a representation before the State Government and further directed the State Government by relaxing the rules shall make appropriate recommendation for granting of Swantantrata Sainik Sanman Pension by the Central Government within a period of four weeks from the date of receipt of the representation. As per the direction of this Court, the petitioner has submitted his representation along with a copy of the order dated 29.12.2008 made in W.P.No.1610 of 2008. The State Government has also made a recommendation to the Central Government by letter dated 09.01.2009. Thereafter the petitioner has also made a representation to the Ministry of Home Affairs, New Delhi, the second respondent herein. Finally, the second respondent once again passed the impugned order dated 03.02.2008 rejecting the claim of the petitioner stating that the claim of the petitioner cannot be accepted for grant of Swantantrata Sainik Sanman Pension. Aggrieved over the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioner submitted that by orders dated 30.06.2008 and 10.11.2008, this Court directed the State Government by relaxing the rules shall make appropriate recommendation to the Central Government for granting of Swantantrata Sainik Sanman Pension. Accordingly, the recommendation was also made by the State Government to the Central government. Moreover, in the said order, the respondents are directed to consider the case of the petitioner sympathetically, in respect of the production of co-prisoner certificate is concerned, against which no appeal was filed by the respondents. Therefore, the said order has become final. Since there was a direction to the respondents to consider the case sympathetically on the basis of the co-prisoner certificate, the respondents ought not to have dismissed the claim of the petitioner.

4. Per contra, the learned counsel appearing for the respondents submitted that under the scheme of Central Government for grant of Swantantrata Sainik Sanman Pension, a person is eligible if he had undergone at least one of the sufferings prescribed in the Scheme. A person who claims the pension under the Central Government Scheme has to produce the primary evidence viz., imprisonment for detention certificate from the concerned authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release. In case official records of the relevant period are not available, secondary evidence in the form of 2 co-prisoner certificates from central freedom fighter pensioners who have proved the jail suffering of minimum one year and who were with the applicant in the same jail could be considered provided the State Government/Union Territory Administration concerned as the case may be after due verification of the claim and its genuineness, certifies that documentary evidence from the official records in support of the claimed sufferings are not available. So far the present case is concerned, the Government of Tamil Nadu has granted state freedom fighter pension to the petitioner by way of relaxing the condition as a special case. Though a recommendation was made by the State Government, pursuant to the order dated 10.11.2008 made in W.P.No.1610 of 2008 there was no clear recommendation of the State Government for grant of Central Samman Pension, as required under the scheme. The learned counsel appearing for the respondents further submitted that no required documents were produced by the petitioner for grant of pension under the scheme. Therefore, no fault could be found in the rejection order passed by the respondents. Further, the learned counsel appearing for the respondents submitted that if the recommendation of the State Government is in order, the Union Government can consider the said representation. Moreover, the scope of interfering with the order passed by the respondents in respect of granting of pension under the said scheme is very limited. In support of his contention, the learned counsel appearing for the respondents relied upon the judgment reported in (2004) 7 Supreme Court Cases 722 in Union of India Vs. Bikash R.Bhowmik and another reported judgment in 1997-3-Law Weekly 139 in N.Rajamani Ammal Vs. 1.The Government of India, Ministry of Home Affairs, New Delhi-110 003. 2) The Government of Tamil Nadu, Public(Political) Pension III Department, Madras-600 009 and reported judgment in (2007) 12 Supreme Court Cases 527 in Union of India Vs. M.S.Mohammed Rawther and this Court delivered Judgment in W.P.No.7707 of 2000 in C.Santhanam Vs. The State of Tamil Nadu rep. by its Secretary, Public (Political Pension-I) Department, Fort St. George, Chennai-9 and two others.

5. Heard, the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the materials available on record.

6. It is the case of the petitioner that he was a freedom fighter and he had undergone imprisonment from May, 1945 to December, 1945. Due to his involvement in the Indian Independent



League, Thinganyam(Rangoon),Burma in the year 1983, the petitioner had applied before both the Government of India and the Government of Tamil Nadu for freedom fighters pension. The Government of Tamil Nadu has granted pension by relaxing the condition as a special case. Therefore, when the Government of India has rejected his application for pension under the Swantantrata Sainik Sanman Pension scheme, he approached this Court by filing several writ petitions and lastly he has filed a petition in W.P.No.1610 of 2008, in which a direction was given to the petitioner to submit a representation before the State Government and further directed the State Government by relaxing the rules shall make appropriate recommendation for granting of Swantantrata Sainik Sanman Pension to the Central Government within a period of four weeks from the date of receipt of representation. Though, pursuant to the said order, a recommendation was made by the State Government, the same was not considered by the Central Government and ultimately by impugned order dated 03.02.2008 was passed, rejecting the claim of the petitioner. Now, it is the main contention of the petitioner that this Court has given specific direction to the respondents to consider the case of the petitioner sympathetically. In such situation, the petitioner ought not to have rejected the case of the petitioner, particularly in the circumstances, when the respondents have not filed any appeal against the order relating to the co-prisoner certificate.

7. On the other hand, it is the case of the respondents, the recommendation made by the State Government is not in order and the same has not created any impact on the Central Government to sanction the pension under the Swantantrata Sainik Sanman Pension scheme. Moreover, I find that as per the said scheme a person is eligible for pension if he had undergone at least one of the sufferings prescribed in the Scheme. A person who claims the pension under the Central Government Scheme had to produce primary evidence viz., imprisonment for detention certificate from the concerned authority, District Magistrate or the State Government as the case may be indicating the period of sentence awarded, date of release, facts of the case and reasons for release. If the sufficient proof of evidence is not available, then he can produce the co-prisoner certificate shows that the said co-prisoner had undergone jail suffering of minimum one year in the same jail as that of the claimant. But in the instant case, the co-prisoner certificate produced by the petitioner would show that they have undergone only imprisonment for a period of seven months. Though, this Court by order dated 10.11.2008 made in W.P.No.1610 of 2008, directed the respondents to consider the case of the petitioner sympathetically relating to the co-prisoner certificate, I am of the opinion that the said direction would not have any bearing on the part of the respondents to grant pension, in the absence of meeting the other requirements. Further, I find that in this case, the petitioner has claimed to have undergone imprisonment from May, 1945 to December, 1945 pursuant to court judgment of Allied Marshal Court. No details of the case and section under which he was tried have been mentioned by him. Under such circumstances, I

am of the opinion that this Court will not be satisfied by giving positive direction to grant pension to the petitioner, in spite of the fact that the petitioner is receiving pension under the State Government. In this regard, reliance could be placed on the judgment reported in (2004) 7 Supreme Court Cases, 722 (cited supra), wherein the relevant paragraph reads as follows:-

"2. Learned Additional Solicitor General appearing on behalf of the Union of India relied upon two decisions of this Court viz., *Muhund Lal Bhandari V. Union of India* and *Union of India V. Mohan Singh* to the effect that pension could be sanctioned only as per proof as required in the Pension Scheme and in no other manner. We think there is great force in the submission made by the learned Additional Solicitor General. We find that the High Court could not have travelled beyond the Pension Scheme to find that there was substantial compliance with the prerequisites as to suffering of imprisonment. In order to get the benefit of the Pension Scheme, the proof required must be provided in the Pension Scheme itself. As long as such proof was not available, the benefit could not have been granted. Therefore, we set aside the order made by the High Court and dismiss the writ petition filed by the respondent 1. The appeal is allowed accordingly."

In the other judgment reported in 1997-3-Law Weekly, 139 (Cited Supra), the relevant paragraph reads as follows:-

"5. As already seen only those Freedom Fighters who had proven sufferings of six months or more in connection with the freedom struggle are eligible for grant of SSS Pension. As far as the petitioner's case is concerned, her husband's suffering was not in connection with the freedom struggle and as a result, the case was not considered for grant of pension. This part, the criteria for grant of pension from the State and Central Government are different and grant of pension from State Government does not make one automatically eligible for Central Pension. The case of the petitioner is that the first respondent has sanctioned family pension to several persons on the basis of co-prisoner's certificate and jail certificates. In this regard, if the petitioner furnishes the details of other persons who were sanctioned pension from Central Revenue on the basis of similar certificates as that of her husband, then necessary action cannot be taken to re-examine those cases on merits."

and in yet another judgment reported in (2007) 12 Supreme Court Cases 527 (cited supra), the relevant portion of the judgment reads as follows:-

"6. We have heard learned counsel for the parties and perused the record. We are of the opinion that the course adopted by the learned Single Judge was the correct course and the matter should have been remitted back to the Union of India to decide the question of grant of freedom fighter's pension afresh. It required necessary investigation of facts as to whether the incumbent was entitled to SSS Pension or not. The Courts cannot encroach into the executive or legislative domain, and cannot assume the role of investigation of facts. It is the duty of the State and Union of India to have considered all the materials on the subject and consider whether it is a case worth granting pension as per the SSS Pension scheme, 1980. The Court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate to itself the power of the executive. If the order passed by the Union of India is not justifiable on Wednesbury principles the Court can only set it aside and remit the matter back to the executive for a fresh decision but the Court cannot assume the power of the Union of India. The Court must exercise judicial restraint in such matters. There is broad separation of powers under the constitution, and one organ of the state should not ordinarily encroach into the domain of another. Montesquieu's theory broadly applies in India too."

8. On the principle laid down in the above said judgments, this Court cannot give any direction to the respondents to grant of pension in exercise of its power under Article 226 of the Constitution of India. This Court having regard to the facts of the case will not be satisfied in interfering with the administrative function of the respondents, it is represented by the learned counsel appearing for the respondents that, if the required proof is produced, the respondents may consider the case of the petitioner.

9. In the result, this Writ Petition is dismissed. No costs. Consequently, connected M.P. is closed. The petitioner is at liberty to produce any further document as required under the Swantantrata Sainik Sanman Pension scheme to the respondents in future.

Sd/-  
Asst.Registrar.

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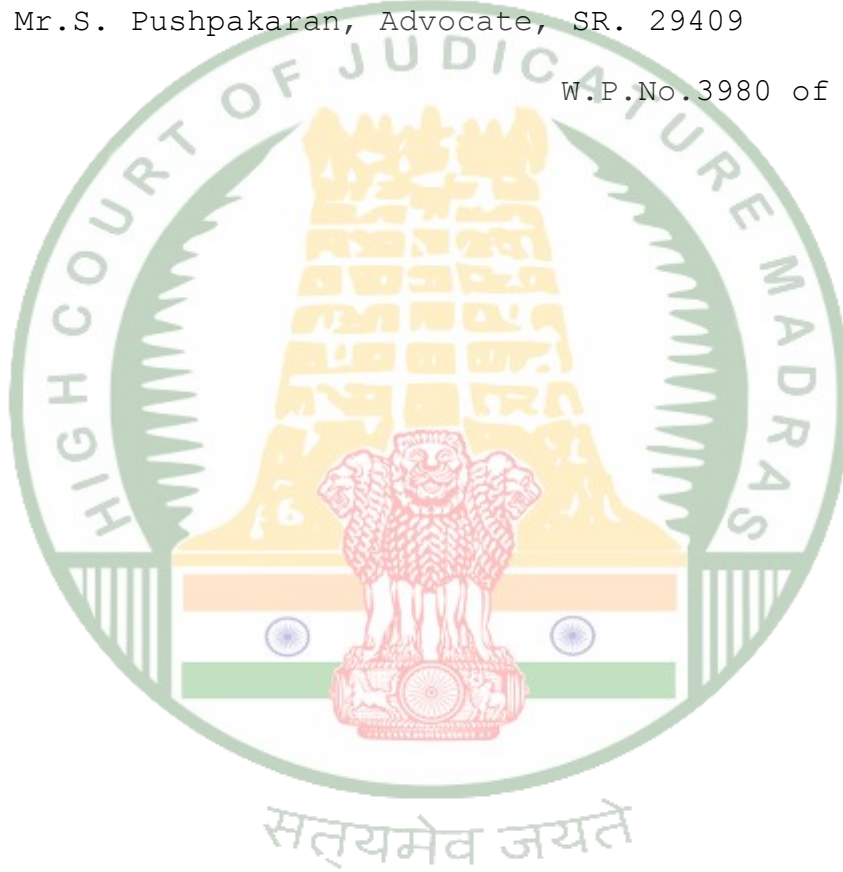
1.The Secretary to Government ,  
The Union of India  
Ministry of Home Affairs,  
New Delhi.

2.The Under Secretary to Government of India,  
Ministry of Home Affairs,  
FFR Division, New Delhi.

1 cc to Mr.S. Pushpakaran, Advocate, SR. 29409

W.P.No.3980 of 2009

SP (CO)  
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