

K.Madhavan. Vs. Union of India.

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Court : Chennai

Decided On : Sep-17-2010

Judge : P.Jyothimani, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P.No.15145 of 2010 & M.P.No.1 of 2010

Appellant : K.Madhavan.

Respondent : Union of India.

Advocate for Def. : Mr.D.Srinivasan; Ms.S.Seethalakshmi, JJ.

Advocate for Pet/Ap. : Mr.Yashod Varadhan, Adv.

Judgement :

1.This is an unfortunate case where a person, who has participated in the freedom struggle movement, who is entitled for the Swatantrata Sainik Samman Pension as per the Pension Scheme of 1980 framed by the Government of India has been dragged by the respondents only to deny his legitimate rights as per the Scheme. This can only be termed as shame and harassment.

2. It is seen that the petitioner has approached this Court atleast two times earlier and inspite of the earlier direction given by this Court to consider the case of the petitioner for the purpose of grant of pension on admitted factual matrix, the 3rd respondent has chosen to pass the impugned order once again stating that the

petitioner has not produced any records or certificates to show that either he participated in the freedom movement or he was dismissed from service for such participation and was not reinstated within a period of two years. The petitioner, who is a resident of Mahe, which is in the Union Territory of Puducherry has participated in the Mahe Liberation Movement apart from Indian Independent Movement. It is due to the said participation, he was dismissed from service while he was working as a Teacher in Sree Narayana Vilasam Senior Basic School, Punnol, which is a recognised Aided Government School in the State of Kerala.

3. It is the case of the petitioner that it is not a dispute, since the same has been settled in earlier round of litigation in W.P.No.3714 of 2010 in the order dated 25.2.2010. For his participation in the freedom struggle, he was brutally attacked by the police as well as the goondas and the employment which he was holding was taken away and he had to live in self-exile on many occasions. To prevent him to be attacked by the ruthless attack by the then rulers, he was stated to have been in the underground for 19 months period. It is stated that to support his involvement in the freedom struggle, he has enclosed a certificate of a co-convict, who was also sentenced to undergo imprisonment along with the petitioner in Alipuram Jail in Bellari from 1942 to 1944. It is also seen that in recognition of the service of the petitioner, the Government of Puducherry, namely the 1st respondent has given Freedom Fighter Pension as per the proceedings dated 14.8.1985 and in the book Published by the Government of Puducherry (who is who Freedom Fighters), the name of the petitioner finds place. Therefore, as per the Swatantrata Sainik Samman Pension Scheme, 1980 formulated by the Government of India, especially with reference to clause 2.7, which is as follows, "2.7. Loss of Government job: A person who lost his Government job for participation in freedom struggle is eligible subject to furnishing of orders of dismissal or removal from service. However, persons who were reinstated in service before expiry of two years from their dismissal of removal from service and were in receipt of benefits or pay and allowances are not eligible for pension" he was eligible for the Central Government Pension as per the Scheme, since he was dismissed from service as a Teacher and he was not reinstated within two years thereafter and accordingly the petitioner made an application on 19.2.1997. It is stated that the 1st respondent has recommended the name of the petitioner for

grant of pension and forwarded the same to the 2nd respondent.

4. Earlier, when the proposal was forwarded by the 1st respondent, the 2nd respondent has rejected the proposal on 14.12.2000, which was challenged by the petitioner by filing Writ Petition No.11273 of 2001 and the Writ Petition came to be disposed of with a direction against the 2nd respondent to consider the representation. In spite of the subsequent representation made by the petitioner, the claim of the petitioner for payment of pension under the Scheme has not been considered, which has compelled the petitioner to approach this Court by filing W.P.No.3714 of 2010, which came to be disposed of by this Court in the order dated 25.2.2010. wherein this Court after narrating the entire facts directed the 2nd respondent to consider the case of the petitioner without directing the petitioner again to file another Writ Petition. The said order came to be passed after contest elaborately discussing the various facts. In fact, this Court has found that the 1st respondent State Government of Puducherry has not only recommended the name of the petitioner for the payment of pension to the petitioner under the Central Scheme, the 1st respondent Government itself has paid the pension under the Scheme of the State Government. The Certificate issued by the person, who was convicted along with the petitioner for undergoing imprisonment in Alipuram Jail also was considered by this Court and the observation made by this court in that regard has become final. While so, under the impugned order passed by the third respondent Government of India, pursuant to the direction given by this Court in the above said Writ Petition, the third respondent has chosen to reiterate the same stand stating that there is no evidence to show that the petitioner has lost his Government job for participating in the freedom struggle and therefore he is not eligible for Swatantrata Sainik Samman Pension.

5. It is unfortunate that the third respondent in the impugned order has chosen to state that the Certificate issued by the Headmaster of the School to the effect that the petitioner was dismissed from service cannot be held as valid document in supporting the claim of the petitioner. The Certificate issued by the School, wherein the petitioner has served, which is in the following terms: "This is to certify that Sri.K.Madhavan, S/o.K.Govindan Nambiar residing at Keloth House, Chalakka, New Mahe, was a Teacher in this Institution. He participated in the

struggle for Indian Independence and took part in the Mahe Liberation Movement. Because of his participation in the freedom struggle, he was dismissed from this Institution. Sreenarayan Vilasam Senior Basis School is a recognised school and aided by the Government of Kerala. The salary of the Teachers and other staff are paid by the Government of Kerala. The teachers are paid by the Government of Kerala. The teachers are governed by the Kerala Education Rules and their service conditions are also fixed by the Government of Kerala in accordance with Kerala Education Rules. As such, this institution stands in the same footing as a Government school." which was also extracted in the earlier Writ Petition filed before this Court, makes it clear that the School where the petitioner is working was not only a recognised School but also it is an Aided School aided by the Government of Kerala.

6. The letter of the Joint Secretary to the Government dated dated 22.11.2007 addressed to the 2nd respondent makes it abundantly clear that the 1st respondent Government has in fact conducted an enquiry about the correctness of the Certificate issued by the School and found that in fact the petitioner was employed in the said School and was terminated from service early. The said letter is as follows: "In pursuance of the Court order passed in W.P.No.11273/2001 dated 14.3.2007 I am directed to forward herewith an application with enclosures received from Thiru K.Madhavan, S/o.Govindan Nambiar residing at Kelloth House, Chalakara, New Mahe, requesting for the grant of SSS pension on the ground that he lost his job due to his active participation in freedom struggle of India and took part in the Mahe Liberation Movement. It appears that the Sree Narayana Vilasam Senior Basic School, Kuruchiyil, Thallassery where, Thiru K.Mahavan worked is a recognized school since 1930 and aided by the Government of Kerala. He was dismissed from the above institution as per oral instruction. After liberation of Puducherry, he was not reinstated in the same school. The certificates issued by the present school authority mentioning his dismissal is enclosed for reference. There is no specific order for his dismissal except the above certificate. In this regard a copy of verification report of Regional Administrator, Mahe and Police report are enclosed for kind reference. I am therefore to request that the application furnished by Thiru K.Madhavan for the grant of SSS pension may kindly be considered for compliance of court order, if

found eligible."

7. It is the case of the petitioner throughout that it was due to his participation in the freedom struggle movement, he was ruthlessly treated by the then rulers and ultimately he was dismissed from service from the School where he was working, which was not written by an order. The 1st respondent on conducting an enquiry has found that the petitioner was in fact terminated from service for having participated in the freedom struggle movement. In addition to that a certificate was also issued by the co-prisoner. But, it is not known as to how the third respondent by closing his eyes has concluded that there is no recognizable evidence that the petitioner was dismissed from service. The contention of the learned counsel for the 2nd and 3rd respondents in supporting the impugned order cannot be accepted at all.

8. The way in which the petitioner has been treated by the 2nd respondent makes it abundantly clear that no prudent man will accept the conduct of the 2nd and 3rd respondents in treating a person like that of the petitioner, who has fought for the country and sacrificed his personal interest. It has been well established, as repeatedly held by the Hon'ble Apex Court, that in those cases of freedom fighters, the Government, which is paying by way of pension is not a gratis but it is the responsibility of the Government to make payment and such payment should not be made at the request made by the person concerned, but the same should be given to the person concerned at his door steps, for the valuable service rendered by him for the freedom of the country. The deliberate conduct of the 2nd and 3rd respondents, which is against the interest of the petitioner, must be treated as disgrace attributed to the petitioner, which cannot be accepted by courts. It is also astonishing to note the injustice meted out to the petitioner, who is now in the advanced age of 79 years, by the conduct of the 2nd and 3rd respondents in this manner.

9. In such view of the matter, the impugned order stands set aside with a direction to the 2nd and 3rd respondents to grant necessary pension to the petitioner as per Swatantrata Sainik Samman Pension Scheme, 1980 without any further delay and such order shall be passed within a period of four weeks from the date of receipt of

a copy of this order. The Writ Petition stands allowed. No costs. The connected Miscellaneous Petition stands closed. 17.09.2010

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