

V. Subramanian Vs. the Union of India, Represented by Its Secretary, Ministry of Home Affairs, Freedom Fighters Division and Another

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Court : Chennai

Decided On : Oct-08-2012

Judge : V. Ramasubramanian

Appeal No. : W.P.NO. 4423 OF 2011

Appellant : V. Subramanian

Respondent : The Union of India, Represented by Its Secretary, Ministry of Home Affairs, Freedom Fighters Division and Another

Advocate for Pet/Ap. : For the Petitioner: S. Sathia Chandran, Advocate. For the Respondents: R1 - M. Devendran, Senior Panel Counsel for Central Govt., R2 - A. Tamilvanan, Govt. Advocate (Puducherry).

Judgement :

(Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order of the first respondent in No.52/CC/Pon/103/2008-FF (SZ) dated 12.8.2010 rejecting the petitioner's claim for Swantantra Sainik Samman Pension and quash the same and consequently direct the respondents to grant Swantantra Sainik Samman Pension to the petitioner from the date of his application dated 26.5.1981 with applicable rate of interest.)

The petitioner has come up with the above writ petition, challenging an order passed by the Government of India, Ministry of Home Affairs, rejecting the request of the petitioner for the grant of Central Samman Pension.

2. Heard Mr. S. Sathia Chandran, learned counsel for the petitioner, Mr. M. Devendran, learned Senior Panel Counsel for Central Government, appearing for the first respondent and Mr. A. Tamilvanan, learned Government Advocate (Puducherry) appearing for the second respondent.

3. The fact that the petitioner is already in receipt of pension from the Government of Puducherry, is not in dispute. The petitioner was granted Freedom Fighters Pension by the Government of Puducherry with effect from 21.6.1985. Though the very grant of Freedom Fighters Pension by the State Government will not make the petitioner automatically entitled to the grant of Central Government Pension, there is no bar for a person to receive both Central and State pension. This fact is not in dispute.

4. After protracted correspondence and one round of litigation, the request of the petitioner for the grant of Swantantra Sainik Samman Pension has been rejected by the first respondent primarily on the following grounds:-

(i) that the petitioner has not furnished any primary evidence, duly verified by the State Government, in support of his undergone sufferings;

(ii) that the petitioner has not furnished substantive evidence linking his externment in connection with the merger movement of Puducherry;

(iii) that the State Pension and Central Pension are two different Schemes and that the receipt of Pension under the State Scheme will not automatically enable the petitioner to get Central Pension; and

(iv) that the State Government had not recommended the case of the petitioner.

5. Though the Government of Puducherry has not filed a counter, the learned Government Advocate (Puducherry) produced the file relating to the application of the petitioner. In the said file, there is a communication by the second respondent

to the Director of the Ministry of Home Affairs, dated 26.3.2010. In the said letter, the second respondent has stated that the application of the petitioner dated 25.3.1974 was not available in the Office. However, the copies of the following were forwarded by the second respondent to the first respondent:-

- (i) Original application for SSS Pension dated 26.5.1981.
- (ii) All India Freedom Fighters Organization Certificate dated 26.1.1981.
- (iii) Certificate issued by the Former Chief Minister dated 2.10.1976.
- (iv) Certificate issued by a Labour Leader dated 17.12.1981.

6. The Government of India has filed a counter affidavit. The stand taken by the Government of India is almost on identical lines as contained in the impugned order. The Government of India contends that there is no primary evidence and that the State Government has not recommended the case of the petitioner.

7. On the question of recommendation by the State Government, I do not think that the respondents can blow hot and cold. It is admitted by the Government of Puducherry that they have granted Freedom Fighters Pension to the petitioner with effect from 21.6.1985. Once the State has granted such a pension, it indicates that the State Government recognized the petitioner to be a Freedom Fighter. The Government of Puducherry cannot take conflicting stands one for the purpose of grant of State Pension and another for the purpose of recommending the case of the petitioner to the Central Government. The Government of Puducherry, is estopped now from contending that the petitioner is not a Freedom Fighter. Therefore, they are obliged to forward a recommendation, irrespective of whether such recommendation is accepted by the Central Government or not.

8. The learned Government Advocate (Puducherry) contended that the Committee constituted to verify such applications, was wound up more than 25 years ago. Therefore, according to the learned Government Advocate (Puducherry), it is not possible today to make a recommendation.

9. But the above contention cannot be accepted. Today, the Government of Puducherry do not require any Committee to scrutinise the case of the petitioner. The Government of Puducherry has already granted Freedom Fighters Pension to the petitioner in the year 1985 itself. Therefore, despite the Committee having been wound up, the Government of Puducherry can certainly forward a recommendation to the Union of India, point out that the State Government had recognized the petitioner to be a Freedom Fighter, after verifying his credentials. If the Government of Puducherry takes a stand that they could not verify the claim of the petitioner that he was a Freedom Fighter, it would mean that they are now granting Freedom Fighters Pension without any basis to the petitioner. That cannot be the case. Therefore, the State owes a duty not only to speak in one voice to the Central Government, but also to support their own Officers who found the petitioner to be eligible for the grant of State Pension. The petitioner has pointed out, in paragraph 8 of his affidavit, that 4 persons similarly placed were granted pension. This has been admitted by the first respondent in their counter.

10. In so far as the contention regarding primary evidence is concerned, it is now fairly well settled by the decisions of this Court and the Supreme Court that primary evidence is possible only in cases where incarceration had taken place. In cases where persons went underground during freedom struggle, it is not possible to produce primary evidence. Secondary evidence is permitted in such cases and the petitioner has already produced such secondary evidence.

11. One thing that requires to be taken note of in this case is that Puducherry continued to be a French Colony, even after 1947. In October 1954, an agreement was signed between India and France for the de facto transfer of French Territories, including Puducherry, to India. A Treaty of Cession was signed in May 1956. It was ratified by the French Parliament in 1962. On 16.8.1962, both countries exchanged instrument of ratification. Consequently, de jure transfer got effected and Puducherry and the enclaves of Karaikal, Mahe and Yanam became the Union Territory or Puducherry from 01.7.1963. Therefore, the possibility for the petitioner to have participated in the struggle, even after 1947, but before the State was annexed to the Indian Territory, cannot be easily ruled out.

12. In view of the above, the writ petition is disposed of, with the following directions:-

(i) The second respondent shall forward to the first respondent, a recommendation, stating that despite the non-availability of records, it is a matter of fact that the petitioner had already been recognized as a Freedom Fighter by the State of Puducherry and that he had been paid pension from 1985 onwards.

(ii) The above recommendation of the second respondent shall be sent within 4 weeks from the date of receipt of a copy of this order.

(iii) Within 8 weeks of receipt of the recommendation from the second respondent, the first respondent shall examine the papers and pass appropriate orders, taking into account the above observation that in cases of persons like the petitioner, it is not possible to produce primary evidence and also taking note of the admitted fact that similarly placed persons have been granted pensionary benefits. There will be no order as to costs.

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