

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

W.P.(C)No.7069 of 2006 (N)

PETITIONER(S):-

- * [SMT.SOSAMMA CHERIYAN,
W/O. LATE CHERIYAN VARGHESE (LATE FREEDOM FIGHTER),
CHANDHAPEEDIKAYIL, CHENGANNUR P.O.,
(PRESENTLY RESIDING AT EDAVANANTHU KAVIL
ANGADIKKAL P.O., PUTHENCAVU, CHENGANNUR TALUK
ALAPPUZHA DISTRICT, KERALA STATE] **[DIED]**.

* ADDITIONAL PETITIONERS 2 TO 8 IMPEADED:-

2. E.C.SAKARIAH, S/O.LATE SOSAMMA CHERIYAN,
EDAVANATHUKAVIL, KEEZHCHERIMMEL,
I.T.I.JUNCTION, CHENGANNUR.
3. GRACY EPEN, AGED 60 YEARS, W/O.LATE E.C.EPEN,
PANAMVELLIL, KURICHIMUTTAM.
4. E.C.VARGHESE, AGED 60 YEARS, S/O.LATE SOSAMMA CHERIYAN,
EDAVANATHUKAVIL, ANGADICKAL, PUTHENCAVU P.O.,
CHENGANNUR.
5. CHERIYAN VARGHESE, AGED 54 YEARS,
S/O. LATE SOSAMMA CHERIYAN, EDAVANATHUKAVIL,
MULAKKUZHIU, CHENGANNUR.
6. SANTHAMMA SAMUEL, AGED 52 YEARS, PARAYIL THITTAMMEL,
CHENGANNUR.
7. VARGHESE POTHEN, AGED 47 YEARS,
S/O.LATE SOSAMMA CHERIYAN, EDAVANATHU KAVIL,
MULAKKUZHA MURI, MULAKKUZHI.
8. E.C.CHACKO, AGED 44 YEARS, S/O.LATE SOSAMMA CHERIYAN,
EDAVANATHUKAVIL, THITTAMMEL, CHENGANNUR.

* LEGAL HEIRS OF THE DECEASED PETITIONER ARE IMPEADED AS
ADDITIONAL PETITIONERS 2 TO 8 AS PER ORDER DATED 01.10.2009
IN I.A.NO.11468 OF 2009.

BY ADV. SRI.S.HARIKRISHNAN.

RESPONDENT(S):

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1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOME AFFAIRS, NEW DELHI.
 2. THE DEPUTY SECRETARY TO UNION OF INDIA,
MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTER'S DIVISION,
1ST FLOOR, LOK NAYAK BHAVAN, NEW DELHI.
 3. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF GENERAL ADMINISTRATION (FFP-A),
SECRETARIAT, TRIVANDRUM.
 4. THE DISTRICT COLLECTOR, COLLECTORATE, ALAPPUZHA.

R1 & R2 BY ASSISTANT SOLICITOR GENERAL OF INDIA SRI.N.NAGARESH.

R1 & R2 BY ADV. SRI.P.J.PHILIP, C.G.C.

R3 & R4 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1: TRUE COPY OF THE PENSION SANCTION ORDER NO.R.DIS.15424/72 DATED 13.2.74 ISSUED BY THE 4TH RESPONDENT.
- EXT.P2: TRUE COPY OF THE COMMUNICATION NO.19(3784)/73-FF VIII DATED 8.8.1973 ISSUED BY THE 2ND RESPONDENT.
- EXT.P3 TRUE COPY OF THE DEATH CERTIFICATE ISSUED BY THE CHENGANNUR MUNICIPALITY.
- EXT.P4 TRUE COPY OF THE SANCTION ORDER NO.R.DIS.38612/87/N4 DATED 16.6.1987 ISSUED BY THE 4TH RESPONDENT.
- EXT.P5 TRUE COPY OF THE REPRESENTATION DATED 22.9.1989 SUBMITTED BEFORE THE ERSTWHILE PRIME MINISTER.
- EXT.P6 TRUE COPY OF THE APPLICATION DATED 27.3.1999 WITH COVERING LETTER ALONG WITH AFFIDAVITS BEFORE MAGISTRATE PLUS THE CO-PRISONER CERTIFICATES DATED 23.3.1999, ALL SENT ALONG WITH A COVERING LETTER.
- EXT.P7 TRUE COPY OF THE REPRESENTATION DATED 20.2.01 UPON WHICH THE ABOVE ENDORSEMENT IS MADE BY THE JAIL SUPERINTENDENT, KOTTARAKKARA.
- EXT.P8 TRUE COPY OF THE REPRESENTATION DATED 20.2.01 WITH THE ENDORSEMENT OVERLEAF.
- EXT.P9 TRUE COPY OF THE REPRESENTATION DATED 20.2.01.
- EXT.P10 TRUE COPY OF THE ABOVE COPY APPLICATION WITH THE ENDORSEMENT OF THE OFFICER.
- EXT.P11 TRUE COPY OF THE ABOVE ORDER NO.H3.16528/99/DIS. DATED 5.1.2002 ISSUED BY 4TH RESPONDENT.
- EXT.P12 TRUE COPY OF THE REPRESENTATION DATED 24.12.2005 BEFORE THE 3RD RESPONDENT.
- EXT.P12(a) TRUE COPY OF THE REPRESENTATION DATED 24.02.2005 BEFORE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.7069 of 2006-N

Dated this the 26th day of May, 2015

JUDGMENT

The petitioner, who is the widow of a freedom fighter, was before this Court claiming family pension under the Swatanthrata Sainik Samman Pension [for brevity “SSS Pension”] Scheme of the Central Government.

2. The petitioner's husband, admittedly, was a recipient of Freedom Fighters Pension from the State Government. The petitioner, as the widow, had applied for the SSS Pension under Exhibit P6 with all the relevant documents, which, however, was not recommended by the District Collector by reason of the fact that there was nothing evidencing the alleged freedom fighter to have been convicted pursuant to the imprisonment suffered by him. The same is evident at Exhibit P11.

3. It is to be noticed that the petitioner, Sosamma Varghese, is no more and the additional petitioners 2 to 8, being the legal heirs, are impleaded. None appears for the additional

petitioners. However, since the matter is one relating to SSS Pension, this Court has taken up the matter and heard the learned Government Pleader.

4. At the outset it is to be noticed that Exhibit P11 order has been passed only on the ground that there is nothing to indicate that the freedom fighter was convicted pursuant to the imprisonment. The imprisonment of six months, which is a condition precedent for consideration of the application under the SSS Pension Scheme, even as per Exhibit P11, stands satisfied. However, the details of the conviction not being available, the District Collector has refused to recommend the claim of SSS Pension.

5. The said issue is squarely covered by the decision of this Court in ***Union of India v. Peter Devassia* [2003 (1) KLT 467 (FB)]**. A Full Bench of this Court found, as per the Freedom Fighters Pension Scheme, 1980, that the Scheme does not reveal any provision to enable a person who had been detained as an under-trial prisoner for a minimum period of six months, to the pension under the Scheme; on condition only of a conviction being entered in the trial. The authoritative pronouncement of the Full

Bench would indicate that what is required is a 'detention and actual suffering of imprisonment' and not a conviction in the trial, pending which the imprisonment was made.

6. In the above circumstances, on the basis of the authoritative pronouncement of the Full Bench, Exhibit P11 is set aside. It is to be noticed that the recommendation was declined only for reason of no detail being available as to the conviction. There is no insufficiency of documents alleged in the claim submitted. The deceased freedom fighter purportedly has suffered imprisonment for the minimum required period. In such circumstances, the District Collector, the 4th respondent herein, shall issue notice to the additional petitioners, the address of whom are shown in the cause title and if those persons turn up, the claim shall be considered afresh in accordance with law.

The writ petition is allowed on the above terms. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]