

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

WA.No. 432 of 2015

AGAINST THE JUDGMENT DATED 25.11.2014 IN WP(C) 5993/2012.
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APPELLANT(S)/RESPONDENT:

**UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
FREEDOM FIGHTERS DIVISION,
NEW DELHI - 110 001.**

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

RESPONDENT(S)/PETITIONER:

**MANIYAMMA,
W/O.MUKUNDAN, VAIKYATHUPARAMBIL,
MUHAMMA P.O., CHERTHALA,
ALAPPUZHA - 688 525.**

BY ADV. SRI.J.OM PRAKASH

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 14-09-2015, THE COURT ON 24-11-2015 DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' ANNEXURES: NIL

RESPONDENTS' ANNEXURES:

ANNEXURE R1(A) : TRUE COPY OF LETTER DATED 15.12.2009 OF THE SECRETARY TO GOVERNMENT.(IA.341/2015)

**ANNEXURE R1(A) : TRUE COPY OF LETTER NO.56544/FFP-A2/2008/GAD
DATED 15.12.2009.**

ANNEXURE R1(B) : TRUE COPY OF LETTER DATED 18.6.2003 OF UNDER SECRETARY TO GOVERNMENT OF INDIA.

/TRUE COPY/

P.S.TO JUDGE

mbr/

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A. No.432 of 2015

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Dated this, the 24th day of November, 2015

J U D G M E N T

Shaffique, J.

This appeal is filed by the respondent in W.P.(C) No.5993/2012 challenging judgment dated 25/11/2014 by which the learned Single Judge allowed the writ petition and directed the appellant to effect payment of Swatantrata Sainik Samman Pension (hereinafter referred as the Pension) from the date of receipt of the application.

2. The short facts involved in the writ petition would disclose that the application of the petitioner's husband for SSS Pension was submitted on 25/6/1998. Her husband died on 13/11/1998. She claimed that her late husband had undergone detention in the prison during freedom struggle, viz., Punnapra Vayalar Struggle as a convict. The jail certificate was received only on 3/2/2007. Though the State Government recommended the application, the Central Government rejected the same. The

petitioner approached this Court by filing WP(C) No.15403/2010. By judgment dated 26/11/2010, this Court after setting aside the order passed by the Central Government directed grant of pension to the petitioner under the Pension Scheme. From which date it has to be granted was left for consideration by the Central Government especially in the light of judgment in ***Union of India v. Kaushalaya Devi*** [(2007) 9 SCC 525].

3. Pursuant to the above judgment, by order dated 3/2/2011, the Central Government recommended grant of pension to the petitioner, from the date of judgment in W.P.(C) No.15403/2010.

4. The contention urged in the writ petition was that she was entitled to pension from the date of receipt of application, i.e., from 5/1/1999. Petitioner also relied upon judgment of the Supreme Court in ***Kaushalaya Devi*** (supra) and contended that when the pension has been sanctioned on the basis of primary evidence, the pensioner is entitled to get pension from the date of application.

5. Counter affidavit is filed by the respondent *inter alia*

contending that application submitted by the petitioner's husband was lacking in material particulars, especially the details of the movement and details of jail suffering was not furnished. He had only given personal knowledge certificates from one Sri.Kittan Chakrapani and Superintendent of Central Prison. Petitioner filed W.P.(C) No.2206/2008 for a direction to consider her claim. By judgment dated 10/3/2010, the writ petition was disposed directing the State as well as Central Government to consider her application. State Government furnished the report on 15/12/2009, the same was examined by the Central Government and the claim for pension was rejected as per Annexure R2, as the documents were not sufficient for payment of pension under the Scheme. It is thereafter that W.P.(C) No.15403/2010 was filed. It is stated that initially her husband did not claim any jail suffering, but only underground suffering and later, petitioner in 2007 produced a certificate claiming imprisonment in Central Prison. Being a case of doubtful circumstances, the Central Government had sanctioned pension only on the basis of the directions issued by this Court and therefore, petitioner was not entitled for pension

from the date of application.

6. Learned Single Judge having observed the judgment of the Apex Court in ***Mukund Lal Bhandari and others v. Union of India and others*** (AIR 1993 SC 2127) and a Division Bench judgment of this Court in ***Union of India and others v. Radhamony*** (2005 (4) KLT 27) allowed the writ petition and directed grant of pension from the date of receipt of the application.

7. It is impugning the aforesaid judgment that this appeal has been filed *inter alia* contending that even assuming that the State Government had given the recommendation, it is not a case of placing complete reliance on primary evidence, whereas it is a case which is of a doubtful nature and therefore, the direction of the learned Single Judge to pay arrears of pension from the date of application is liable to be set aside. That apart, the application with full particulars and recommendation of the State Government was received only on 23/12/2009.

8. Heard the learned counsel for the appellant as well the learned counsel appearing for the respondent/writ petitioner.

9. The short question involved in this writ appeal is with reference to the date on which the petitioner is entitled for SSS Pension.

10. Ext.P5 is the order sanctioning pension w.e.f. 26/11/2010, the date on which the High Court disposed of WP(C) No.15403/2010. No other reason had been stated other than the judgment of the High Court. In the counter affidavit, it is stated that claim of the petitioner's husband was originally rejected as he did not claim to have suffered imprisonment under any particular freedom fighters movement. A direction was issued by this Court in WP(C) No.2206/2008 to consider her claim, which was rejected as per letter dated 4/5/2010. Aggrieved by which, she again filed the writ petition which was disposed on 26/11/2010 wherein the learned Single Judge while quashing the earlier order directed sanction of pension within a period of two months. It is stated that the pension was sanctioned only on account of the directions issued by the Court.

11. Ext.P3 is the certificate dated 2/2/2007 issued by the Superintendent, Central Prison, Thiruvananthapuram certifying

that Sri.Kesavan Mukundan was convicted and sentenced to six months imprisonment. The learned Single Judge in WP(C) No.15403/2010 observed that the rejection based on Ext.P3 was not correct as it was clear that he had undergone simple imprisonment for six months. Hence, direction was issued to the Central Government to sanction the pension and give the benefits within a period of two months. It was finally observed that in regard to arrears of pension, the Central Government will have to consider all aspects of the matter.

12. In the counter affidavit filed, it is stated that as per records available, the claim application of the petitioner's late husband was received in the Ministry on 23/12/2009. The earlier application had been rejected as the petitioner claimed under ground suffering, for which there was no material. It is stated that after the death of the claimant and it is after a lapse of nine years, a copy of the jail certificate was furnished. It is therefore contended that when a fresh application was received with all necessary particulars on 23/12/2009, at best, pension can be granted only from the said date.

13. It is therefore evident from the aforesaid facts that the first application filed by the freedom fighter was rejected as the particulars mentioned in the said application were not enough to grant the pension. It is after his death that the present petitioner obtained jail certificate and a fresh application is filed which was received by the Central Government with due recommendation on 23/12/2009. Therefore, the petitioner is entitled to get pension only from 23/12/2009, which is the application submitted based on primary evidence and a new set of facts. It is evident that there is considerable difference in the claim made by the applicant in Ext.P1 and the present application submitted by his wife which was received by the Central Government on 23/12/2009. However, in terms of Ext.P5 dated 3/2/2011, pension is granted only from 26/11/2010. In view of the fact that the application is received by the Central Government on 23/12/2009 with the recommendation of State Government along with Ext.P3 jail certificate, pension is payable from 23/12/2009. To that extent, Ext.P5 is liable to be modified.

14. The learned Single Judge however did not take note of

the aforesaid facts and has directed grant of pension from the date on which the original application was received based on **Mukund Lal Bhandari** (supra) and **Radhamony** (supra). In fact, we had occasion to evaluate the law laid down in the above judgments in our judgment dated 20/11/2015 in WA No.1328/14 and connected cases (**Union of India v. Thaliyil Sreedevi Amma**), wherein, we have indicated that each case has to be decided on its own facts. We have also relied upon the judgment in **Govt. of India rep. by the Secretary v. K.V.Swaminathan**. [(1997) 10 SCC 190] as well. Present is a case where the initial application submitted has been rejected by the Central Government. Thereafter, a fresh application seems to have been filed based on jail certificate dated 2/2/2007 which according to the Central Government was received only on 23/12/2009.

15. In the said circumstances, the learned Single Judge was not justified in directing grant of pension from the date of original application. We are of the view that in so far as no action had been taken pursuant to the original application and the same has been rejected and pension has been granted on the basis of a

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fresh application which was received by the Central Government along with the recommendation of State Government on 23/12/2009, pension is payable from 23/12/2009.

16. In the result, the judgment of the learned Single Judge is set aside and Ext.P5 is modified to the extent of directing the Central Government to pay pension to the petitioner from 23/12/2009. This shall be paid within a period of one month from the date of receipt of a copy of this judgment.

Writ appeal is disposed of as above.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge