

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

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

WA.No. 491 of 2015

AGAINST THE JUDGMENT IN W.P.(C).NO.8510/2012, DATED 27-11-2014

APPELLANT(S)/RESPONDENTS 1 & 2 :

- 1. UNION OF INDIA,
REP.BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
NEW DELHI-110 001.**
- 2. SECRETARY TO GOVERNMENT,
MINISTRY OF HOME AFFAIRS, LOK NAYAK BHAWAN,
KHAN MARKET, NEW DELHI-110 001.**

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

RESPONDENT(S)/PETITIONER/3RD AND 4TH RESPONDENTS :

- 1. KRISHNAN RAGHAVAN,
PADINJARE KATTUNGAL, THAIKAL, CHERTHALA,
ALAPPUZHA.**
- 2. THE PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA,
GENERAL ADMINISTRATION (FFP.B) DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695 001.**
- 3. THE DISTRICT COLLECTOR,
ALAPPUZHA, PIN- 688 001.**

**R1 BY ADV. SRI.B.KRISHNA MANI
R2 & R3 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR**

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

Msd.

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APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A1: TRUE COPY OF LETTER NO.4615/FFPA2/2006/GAD
DATED 26.06.2006.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 491 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 respondents 1 and 2 in WP(C) No.8510/2012 challenging judgment dated 27/11/2014 by which the learned Single Judge while allowing the writ petition directed disbursement of the Swatantrata Sainik Samman Pension (hereinafter referred as Pension) to the writ petitioner with effect from the date of his application i.e, 15/5/1998.

2. The short facts involved in the writ petition would disclose that the petitioner claimed to be a freedom fighter entitled for pension under the Swatantrata Sainik Samman Pension Scheme (hereinafter referred as the Scheme). He submitted an application on 15/5/1998. However, his application was rejected as per communication dated 11/6/2002. Petitioner preferred WP(C) No.30725/05, which was disposed on 23/3/2009 quashing Ext.P6, the order by which claim for pension was

rejected. Thereafter, the learned Single Judge directed the State Government to consider the documents produced by him and to forward the verification-cum-entitlement to pension report along with the recommendation to the Central Government within a period of two months and the Central Government to pass appropriate orders. It was also observed that the petitioner is entitled to arrears of pension from the date of receipt of the application. By Ext.P3 dated 23/11/2010, the Central Government allowed the grant of pension, however, restricted the same from 15/5/2008. Petitioner submitted a representation to the Central Government regarding the restriction imposed for the grant of pension and claimed pension from 15/5/1998. In Ext.P5 dated 9/1/2012, it was mentioned that the application was forwarded by the State Government only on 14/9/2009 and the pension was granted from the date of judgment i.e., even prior to the date of receipt of the application and therefore his claim cannot be accepted. Contention urged by the petitioner is that in so far as his application is dated 15/5/1998, pension has to be paid from the said date as directed by the learned Single Judge in the judgment in WP(c) No.30725/2005.

3. Counter affidavit has been filed by the 1st respondent/1st appellant *inter alia* stating that the claim of the petitioner was not recommended by the State Government up to the period 13/09/2009. In compliance with the direction issued by this Court, the Government by letter dated 26/8/2009, forwarded his application with the recommendation. Pension was granted only on the basis of the recommendation of the Government and in compliance with the order passed by the High Court. The Government's report also highlighted certain deficiencies. When he claimed 5 years and 6 months of imprisonment in the state pension application, in the application under the scheme, he claimed 1 year and 1 month imprisonment. It is stated that the petitioner was given the benefit of doubt considering his age. Further it is stated that the Superintendent, Central prison had given a certificate stating that the petitioner was convicted and sentenced to rigorous imprisonment for one year and 6 months on 01/02/1949 and he was released on 28/1/1950, 1½ years after the country attaining Independence. Therefore, it was contended that the case of the petitioner was doubtful, but still pension was sanctioned.

4. Learned Single Judge on an appraisal of the facts and circumstances involved in the matter observed that in so far as the petitioner's claim has been substantiated by primary evidence viz., the jail certificate, he is entitled for pension from the date of application and the decision of the Apex Court in ***Government of India rep. by the Secretary v. K.V.Swaminathan*** [(1997) 10 SCC 190] has no application to the facts of the case.

5. It is impugning the aforesaid judgment that this appeal has been filed *inter alia* contenting that this is a case in which the claim of the petitioner was originally rejected and it was considered later only on the basis of directions issued by this Court. Being a doubtful case, the pension was limited from the date of the judgment of this Court and therefore, the judgment in ***Swaminathan*** (supra) applies to the fact situation.

6. Ext.P3 is the sanction order which also indicates that the pension is sanctioned as per judgment dated 23/3/2009 in WP (C) No.30725/2005 from 15/5/2008. No other reason had been stated. In the report of State Government, it is stated that the application was received only on 14/9/2009. It is also mentioned that there is discrepancy in the documents produced by the

petitioner for pension from the State Government as well as from the Central Government. When the petitioner claimed 5 years and 6 months of imprisonment in the state pension application, in the SSS application form, he claimed 1 year and one month alone. It is further stated that the Superintendent of Central Prison had given a certificate on 2/2/2007 stating that he was convicted and sentenced to one year rigorous imprisonment. He was released on 28/1/1950 and convicted on 1st February, 1949 which is almost 1½ years after attaining Independence. Hence, according to the Central Government, pension was granted taking a liberal view in the matter and treating the same as a doubtful case. It is evident from Ext.P1 that at the time of submitting the application, the jail certificate was not produced. The jail certificate is seen produced only in the year 2007 and that too was not very much convincing as far as the Central Government is concerned.

7. Under such circumstances, we are of the view that the learned Single Judge was not justified in granting pension from the date of application whereas it should have been granted only from the date of the order. At any rate, pension had been granted in the case from a date prior to the date of order which does not

require any interference.

8. It is relevant to note that each case has to be considered on its own merits and the facts and circumstances arising therefrom. These are cases where initially the claims have been rejected and it was only on the basis of High Court orders that the matter was reconsidered. The sanction orders clearly indicate that the grant of pension was based on the order passed by the High Court. The sanction order does not indicate any other consideration. In such circumstances, it is always open for the Central Government to bring to the notice of this Court the reason why the pension is sanctioned only from a date which they have indicated in the sanction order.

9. According to the Central Government, the petitioner had submitted a fresh application along with the recommendation of State Government only on 14/9/2009. In such circumstances, when it is evident that the grant of pension was based on the application which was received by the Central Government only on 14/9/2009, the grant of pension from a date prior to 14/9/2009, requires no interference.

10. The law in this regard is well settled. We have analysed

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the case law in our judgment dated 20/11/2015 in WA No.1328/2014 and connected cases (***Union of India v. Thaliyil Sreedevi Amma***). If the claim is made based on primary evidence, pension has to be given from the date of application. In this case, the jail certificate came to be produced along with a fresh application with the recommendation of the State Government and received by the Central Government only on 14/9/2009. Despite that, doubt is expressed by the Central Government regarding the entitlement of the petitioner for pension. The learned Single Judge did not consider these factual aspects before directing pension to be paid from 15/5/1998. Hence, the judgment of the learned Single Judge is liable to be set aside.

In the result, the appeal is allowed setting aside the judgment of the learned single judge and the writ petition is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp //True Copy//

PS to Judge