

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WA.No. 1517 of 2015 () IN WP(C).34341/2011

AGAINST THE ORDER/JUDGMENT IN WP(C) 34341/2011 of HIGH COURT OF
KERALA DATED 27-11-2014

APPELLANT(S)/1ST RESPONDENT:

UNION OF INDIA
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS
(FREEDOM FIGHTER'S DIVISION), LOK NAYAK BHAWAN
KHAN MARKET, NEW DELHI-110 003.

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

RESPONDENT(S)/PETITIONER/2ND RESPONDENT:

1. V.C.VASUMATHI
WIFE OF P.K.PARAMESWARAN, POLLAYIL HOUSE
KADAKKARAPALLI.P.O., CHERTHALA, ALAPPUZHA-688 524.

2. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
GENERAL ADMINISTRATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.695 001.

R1 BY ADV. SRI.J.OM PRAKASH
R2 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.No. 1517 of 2015

Dated this the 13th August, 2015

JUDGMENT

Ashok Bhushan, CJ.

This Writ Appeal has been filed by the Union of India against the judgment dated 27.11.2014 in W.P(C). No.34341 of 2011, by which judgment the learned Single Judge set aside the order dated 19.9.2011 of the Central Government rejecting the claim of the petitioner for pension under the Swatantrata Sainik Samman Pension Scheme, 1980 with a direction to the Central Government to reconsider the application of the petitioner and issue necessary orders for granting Swatantrata Sainik Samman Pension. The parties shall be referred to as described in the Writ Petition. Brief facts giving rise to the Writ Petition are:

The petitioner is the widow of late P.K.Parameswaran, who was sanctioned State pension by order dated 29.6.1972 of the District Collector, Alappuzha. After the death of the petitioner's husband, the petitioner submitted an application dated 18.6.1998 for grant of Swatantrata Sainik Samman Pension to the Government of India. In the application the petitioner's claim that her husband had suffered imprisonment for a period of one year from January, 1947 to January, 1948. The State of Kerala by letter dated 2.5.2008 forwarded the application of the petitioner stating that the application of the petitioner is not recommended for two reasons; (1) in the application the petitioner has claimed that her husband suffered imprisonment from January, 1947 to January, 1948, but in the jail records it is seen that the petitioner's husband suffered imprisonment for the period from 1.3.1950 to 3.1.1951; and (2) in the extract of the convict register from the Central Prison, Thiruvananthapuram, the case number is recorded as

CC.2/1950 and it is not known whether that case is connected with Punnapra Vayalar Struggle or not. The petitioner submitted a review petition before the State Government praying for review of its letter dated 2.5.2008. The review petition filed by the petitioner was again rejected on 31.3.2010 by the State Government. The petitioner again submitted a letter dated 17.10.2010 stating that there was a mistake in her application regarding the period of jail suffering and instead of C.C.No.2/1950 of the First Class Magistrate Court, Cherthala, it was wrongly mentioned as PE.10/1122 of the Magistrate Court, Alappuzha, which was a bona fide mistake. The petitioner requested that her application be recommended to the Central Government. The petitioner filed W.P(C).No.3788 of 2009. The petitioner in the Writ Petition sought for an opportunity before the State Government to file further representation for correction of the application form and to put the correct details with regard to the case number and the correct period of

imprisonment. The Writ Petition was disposed of by the learned Single Judge by judgment dated 8.11.2010 directing the State Government to call for the original files leading to the grant of State pension and if the particulars are correct, then the Government will allow the petitioner to correct the wrong entries in the application and thereafter the Government will forward a report to the Central Government along with appropriate recommendation and the Central Government was directed to take a decision. After the order of the Court, the petitioner was permitted to correct the initial application by substituting the jail suffering from 1.3.1950 to 3.1.1951. The State Government, in compliance with the judgment dated 8.11.2010, sent a recommendation dated 12.5.2011 recommending the claim of the petitioner. After receipt of the recommendation dated 12.5.2011, the Central Government considered the recommendation and other materials available on record and took a decision to reject the application. Challenging

the order of the Central Government dated 19.9.2011, W.P (C).No.34341 of 2011 has been filed by the petitioner, which Writ Petition has been disposed of by the learned Single Judge with the direction as noted above. The Union of India, aggrieved by the judgment of the learned Single Judge, has come up in this Writ Appeal.

2. We have heard Sri.S.Krishnamoorthy, learned counsel for the appellant and Sri.J.OM Prakash, learned counsel appearing for the respondent writ petitioner.

3. Sri.S.Krishnamoorthy submitted that the order issued by the Central Government rejecting the claim of pension was based on consideration of relevant materials and the three reports submitted by the State Government. The Central Government has given cogent reasons after considering each and every material for rejecting the claim and this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India shall not reappraise the evidence and come to a different opinion. The Central Government has given mainly three reasons for rejecting

the claim and the learned Single Judge in the impugned judgment at best can be said to have adverted to only one reason, i.e., the State Government by a subsequent letter dated 17.8.2011 has verified the claim of jail suffering of the petitioner's husband. But the other two reasons given by the Central Government for rejecting the claim have neither been met nor have been set aside. It is submitted by Sri.S.Krishnamoorthy that one of the reasons, which has been given by the Central Government was that it is not known whether case No.CC.2/1950 in which the petitioner's husband had undergone imprisonment was connected with Punnapra Vayalar struggle or not. It is submitted that the State Government has also in its reports stated that it cannot be verified as to whether jail suffering of the petitioner from 1.3.1950 to 3.1.1950 is in connection with the Punnapra Vayalar Struggle. It is submitted by Sri.S.Krishnamoorthy that the order passed by the Central Government needed no interference in exercise of the writ jurisdiction.

4. Learned counsel for the writ petitioner submitted that the details given in the earlier application claiming jail suffering from January, 1947 to January, 1948 having been permitted to be corrected as jail term for the period from 1.3.1950 to 3.1.1951 and there being extract of convict register proving the jail term which was subsequently verified by the State Government by letter dated 17.8.2011, the reason given by the Central Government that jail suffering is not verified by the State Government is not correct and the learned Single Judge did not commit any error in setting aside the order of the Central Government and issuing direction to reconsider and grant the Swatantrata Sainik Samman Pension. He submitted that in any view of the matter, in case of any doubt, further verification could have been obtained from the State Government and this Court may direct the State Government to submit a report regarding the jail suffering and the nature of case. It is submitted that the petitioner's husband was in receipt of Swatantrata Sainik Samman

Pension and the Tahsildar has recommended the grant of State pension stating that the applicant had participated in the Punnapra Vayalar Struggle and undergone imprisonment for one year which was also proved by the District Collector stating that the applicant was included as serial number 25 in the Police list. Hence, the petitioner was entitled for grant of pension and the Central Government committed error in rejecting the claim.

5. We have considered the submissions of learned counsel for the parties and perused the records.

6. The petitioner has submitted the application dated 18.6.1998 in which jail suffering from January, 1947 to January, 1948 and the details of case was mentioned as PE.10/1122 of the Magistrate Court, Alappuzha. The petitioner has also submitted a co-prisoner certificate by P.A.Solaman, ex-MP to the effect that the petitioner's husband was in jail from January, 1947 to January, 1948 in connection with the Punnapra Vayalar Struggle. The State Government at the first instance sent the report without

recommending the claim of the petitioner by letter dated 2.5.2008. The State Government noted in the letter that although the objection was submitted claiming imprisonment for the period from January, 1947 to January, 1948, in the jail records it is seen that the petitioner's husband suffered imprisonment from 1.3.1950 to 3.1.1951. The following was another reason due to which the application could not be recommended:

“In the extract of the convict register from the Central Prison, Thiruvananthapuram, the case number is recorded as CC.2/1950. It is not known whether this case is connected with Punnapra Vayalar or not. Moreover, there is contradiction in the year, date and the period of imprisonment claimed by the petitioner and in the convict register. Hence the District Collector, Alappuzha has not recommended the claim for Swatantrata Sainik Samman Pension.”

7. The petitioner submitted a representation to review the report dated 2.5.2008. The State Government vide its letter dated 31.3.2010 informed the petitioner rejecting his review application. In the order rejecting the

review application the State Government further stated the following:

“Your argument that you were granted state pension for the same sufferings in the Punnapra vayalar struggle and shri.Vava Rajappan who was granted Central Pension considering his imprisonment in CC.No.17/1125 M.E., and your husband's case CC.2/1950 were charged under the same sections 9(1) and 9(5) of ordinance No.V of 1125 also does not stand to reason since the charges framed against the convicts in two cases under the same section is not proof to show that both the cases are related to Punnapra Vayalar Struggle. Since the cases in which they had been convicted are different, the section under which the charges are framed has no relevance.”

8. The petitioner again submitted a representation dated 17.9.2010 to the State Government. The petitioner thereafter filed W.P(C).No.3788 of 2009 before this Court contending that the details of jail suffering given in the application was under mistake and the case number was

also incorrectly mentioned. It was prayed that he may be permitted to correct the details and the State Government may be directed to recommend the grant of pension. This Court vide judgment dated 8.11.2010 issued direction, relevant part of which is as follows:

“8. If an appropriate representation is filed by the petitioner along with a copy of Exhibit P14, the Government will call for the original files leading to the grant of State pension, namely Exhibit P2 and peruse the files especially with regard to the original of Exhibit P14 and then reconsider the application. If it is seen that the particulars claimed by the petitioner are correct, then the Government will allow the petitioner to correct the wrong entries in the application. After doing the needful, the Government will forward a report to the Central Government along with appropriate recommendation. Since it is a case wherein the petitioner is relying upon primary evidence, all the aspects will be verified by the Government, including the submission of the petitioner that persons similarly placed have been granted pension. The needful will be done by the State Government within a period of two months. Based on the report of the State Government, the 1st

respondent will process the application and pass appropriate orders within a further period of three months."

9. The State Government after the judgment dated 8.11.2010 verified the report submitted in connection with grant of State pension and noted the recommendation made by the Tahsildar and sanction order issued by the District Collector, Alappuzha. In the report dated 12.5.2011 the State Government stated that the report of the Tahsildar was verified with the original one and it is found that the Tahsildar recommended her application for Kerala Freedom Fighters Pension subject to proof of his imprisonment. The State Government called for fresh application from the petitioner making all corrections as stated in the representation. In the above circumstances the claim of the petitioner was recommended. The State Government has referred to earlier report dated 2.5.2008. However, in view of the judgment dated 8.11.2010, the State Government ordered as follows:

“Along with the application she has produced a copy of the jail records of her late husband issued from the Central Prison, Thiruvananthapuram. But in the Jail records it is seen that Shri.Krishnan Parameswaran had suffered imprisonment for the period from 01.03.1950 to 03.01.1951. Both the period of imprisonment claimed by the petitioner in her Swathantrata Sainik Samman Pension application dated 19.06.1998 and the period of imprisonment shown in the jail certificate of her late husband issued from the Central Prison, Thiruvananthapuram are seen contradictory and doubtful. In the extract of convict register Central Prison, Thiruvananthapuram, the case No. is recorded CC2/1950. It is not known whether this case is connected with Punnapra Vayalar Struggle or not. More over there was contradiction in the period imprisonment shown in the jail certificate and that claimed by the petitioner. In view of the findings Government forwarded verification report to your office without recommending the claim for Swathantrata Sainik Samman Pension vide letter No.51775/FFPA2/05/GAD dated 02.05.2008.

As directed by the Hon'ble High Court in the Judgment cited, the petitioner has submitted a representation dated 02.12.2010 along with the report of Tahsildar Cherthala issued for Kerala

Freedom Fighters Pension purpose. As per the representation she stated that the application was filled up and sent by her with the help of others. She was under the belief that the jail sufferings was stated correctly as stated in the Jail records that is 01.03.1950 to 03.01.1951 in case No.CC2/1950.

In order to comply with the directions contained in the judgment Government called for the report from District Collector, Alappuzha with disposal related to sanctioning Kerala Freedom Fighters Pension to the petitioner's late husband (Ext.P2). The report of Tahsildar Cherthala is verified with the original ones and it is found that the Tahsildar recommended her application for Kerala Freedom Fighters Pension subject to proof of his imprisonment.

Thereafter Government called for a fresh application from the petitioner making all corrections as stated in the representation. As per the corrected application the period of imprisonment is from 01.03.1950 to 03.01.1951 in case No.CC2/1950 as mentioned in the Jail certificate.

In the circumstances the Swathantrata Sainik Samman Pension claim of Smt. V.C.Vasumathy is recommended. A copy of the judgment representation dated 02.12.2010, copy of jail certificate, report of Tahsildar the original

application and other available documents are forwarded herewith for appropriate action at your end.

The directions contained in the Judgment dated 08.11.2010 in W.P.(C) No.378809 is thus complied with."

10. After receipt of the report dated 12.5.2011, the Central Government has rejected the claim of the petitioner. The Central Government considered the reports dated 2.5.2008 and 31.5.2010 and the last report dated 12.5.2011 submitted by the State Government. The Central Government noted that the State Government has not recommended the claim of the petitioner in its earlier report dated 2.5.2008. The Central Government further noticed that vide subsequent letter dated 31.3.2010 the claim of the petitioner was also rejected due to the discrepancy found in the case number and year. It is useful to quote the following observations made in paragraphs (iv), (v) and 5:

"(iv) State Government vide its subsequent

letter No.78197/FFP.A2/2009/GAD dated 31st March, 2010 has also rejected the claim of the petitioner due to discrepancies found in case number and the year. Shri.P.A.Solomon, Ex.M.P. in his Co-Prisoner Certificate has certified that the petitioner's husband was a freedom fighter and he has undergone imprisonment in the Sub Jail at Alleppey along with him in connection with the freedom struggle (Punnapra Vayalar) during 1946, whereas the petitioner has claimed her late husband's imprisonment suffering from 1950-51. This CPC is not in prescribed form under the provisions of the Swatantrata Sainik Samman Pension Scheme, 1980, hence the same is not acceptable. Moreover, India got independence on 15th August, 1947 and the petitioner has produced documents/certificate of her late husband's participation/imprisonment in the freedom struggle in the year 1950-51, but as per records there was no freedom movement in the year 1950-51. Hence, the claim of the petitioner is doubtful and cannot be accepted for grant of dependent family pension.

(v) Although the State Government vide its letter No.78197/FFP.A2/2009/GAD dated 12th May, 2011 (p.49-71/c) has recommended the claim of the petitioner in compliance of the directions of the court, it has not given any concrete reasons/grounds

for nullifying its earlier negative report and rejection of the case. Further the State Government has not authenticated the genuineness of the extract of the Convict Register of Central Prison, Thiruvananthapuram, furnished in support of the claim. Thus, the recommendation of the State Government is incomplete, non-specific, non-categorical and for that matter it cannot be accepted.

5. In the given circumstances, the claim of Smt.V.C. Vasumathy, W/o.late P.K.Parameswaran does not meet the eligibility criteria and evidentiary requirements of the Swatantrata Sainik Samman Pension Scheme, 1980. It is, therefore, regretted that Smt.V.C. Vasumathy, W/o.late P.K. Parameswaran is not eligible for grant of dependent family pension under the Swatantrata Sainik Samman Pension Scheme, 1980. Hence, her claim is, hereby, rejected."

11. The learned Single Judge in its judgment considered the ground taken in paragraph 11 of the counter affidavit filed by the State Government and noted that the State Government has subsequently verified genuineness of the the extract of convict register produced by the petitioner being satisfied with the

genuineness of the certificate. The only reason given by the learned Single Judge for disposing of the Writ Petition is stated in paragraph 4 of the judgment, which is extracted as below:

“4. The counter affidavit has been filed on behalf of the 2nd respondent in paragraph 11 it is stated as follows:

“As per the letter No.52/CC K/161/10-FF (SZ) dated 27.06.2011 Government of India have directed this respondent to verify the genuineness of the true extract of the convict register produced by the petitioner with the Department concerned and to sent report to that ministry. As directed by Government of India, this Government have verified the jail extract with the Superintendent, Central Prison, Thiruvananthapuram. He has reported that the true extract of the convict register submitted by the petitioner is genuine one. The fact has been reported to Government of India vide this Government letter No.49341/FFPA2/11/GAD dated 17.08.2011.”

Paragraph 11 would clearly indicate that the State Government has verified the genuineness of the extract of the convict register produced by the petitioner with the Department and satisfied with the genuineness of the certificate. In view of the above, Ext.P16 is set aside. There shall be a direction to the 1st

respondent to reconsider the application of the petitioner and issue necessary orders in the application for granting Swatantrata Sainik Samman Pension. Needful shall be done within a period of two months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above."

12. Even if it is accepted that the State Government by a subsequent report dated 17.8.2011 has verified the extract of convict register proving the jail suffering from 1.3.1950 to 3.1.1951 that itself does not lead to the conclusion that the petitioner was entitled for Swatantrata Sainik Samman Pension. As noted above, the following three main reasons were given by the Central Government in rejecting the claim of the petitioner:

"a. She has not submitted any acceptable record based primary evidence, duly verified by State Government, in support of her late husband's imprisonment suffering.

b. In the extract of the convict register from the Central Prison, Thiruvananthapuram the case number is recorded as CC.2/1950. It is not known

whether this case is connected with Punnapra Vayalar or not. Moreover, his imprisonment suffering has not been verified by the State Government.

c. The state government vide its subsequent letter no.7819/FFP.A2/2009/GAD dated 31st March, 2010 has also rejected the claim of the petitioner due to discrepancies found in the case number and year. The CPCs were not in the prescribed format hence not acceptable. Moreover, India got independence in the year 1947, as per our records there was no freedom movement in the years 1950-51 hence her claim is doubtful."

13. The State Government in its report has noted the fact that it is not known whether CC.2/1950 is connected with the Punnapra Vayalar Struggle or not. The Central Government in its order dated 19.9.2011 in paragraph IV as quoted above has stated that as per the record, there was no Freedom Movement between 1950 and 1951. The Central Government opined that the claim of the petitioner is doubtful and cannot be accepted for grant of family pension to the dependent. Thus, the Central Government has come to the conclusion that

there is no material to connect the jail suffering of the petitioner for the period from 3.1.1950 to 3.1.1951 with the Punnapra Vayalar Struggle, which was also reported by the State Government in its all reports as noted above. In the Writ Petition there is no pleading or material to challenge the aforesaid findings recorded by the Central Government. The only thing which has been stated in the Writ Petition is that the Tahsildar in his report recommending grant of Kerala State Pension has stated that the petitioner's husband had participated in the Punnapra Vayalar Struggle. Copy of the report of the Tahsildar has been brought on record. It is useful to quote the following three extracts of the report:

“Applicant has participated in Punnapra Vayalar Struggle and undergone imprisonment for one year.

xx xx

He was kept under detention for one year at Alleppey and Trivandrum. Evidence not produced.

xx xx

*Application recommended
subject to the proof of his
imprisonment."*

14. The District Collector, Alappuzha on the aforesaid report of the Tahsildar wrote the following endorsement:

*"Sanctioned. He is item No.25 in the Police list.
Also taken certificate from I.G of Prison."*

15. The Tahsildar in his report has clearly stated that the application recommended will be subject to the proof of his imprisonment. Even if it is assumed that the proof of imprisonment of the petitioner stands verified by the State Government, there is no material to indicate that the said imprisonment was related to Punnapra Vayalar Struggle. There are different conditions for grant of State Pension and the Swatantrata Sainik Samman Pension under the Swatantrata Sainik Samman Pension Scheme, 1980. The conditions for grant of central pension have already been extracted in the order of the Central Government dated 19.9.2011. When the petitioner was claiming jail suffering from 1.3.1950 to 3.1.1951, it has to

be proved that the said suffering was on account of the Punnapra Vayalar Struggle. The State Government having clearly stated in the report that there is no proof that the above jail suffering was on account of Punnapra Vayalar Struggle and there being nothing on record in the Writ Petition to come to any different conclusion, the order of the Central Government rejecting the claim cannot be interfered by this Court in exercise of the writ jurisdiction. The scope of interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India with a decision of the Central Government rejecting the claim of pension has been considered time and again by the Apex Court in different cases. The Apex Court in ***State of Maharashtra and others v. Raghunath gajanan Waingankar*** [(2004)6 SCC 584] had occasion to consider the scope of Article 226 of the Constitution of India while considering the claim of pension. The Apex Court had held that the High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an

appellate authority. The High Court exercising writ jurisdiction cannot enter into re-appreciation of evidence and reverse the findings arrived at by the State Government unless they be perverse or be such as no reasonable man acting reasonably could have arrived at. It is useful to quote paragraph 7 of the judgment, which is to the following effect:

"7.It is true that in Gurdial Singh's case (supra) this Court has emphasized the need for dealing with the claim of freedom fighters with sympathy dispensing with the need for standard of proof based on the test of 'beyond reasonable doubt' and the approach should be to uphold the entitlement by applying the principle of probability so as to honour, and to mitigate the sufferings of the freedom fighters. However, the observations of this Court in Mukund Lal Bhandari's case (supra) cannot be lost sight of and given a complete go by wherein this Court has very clearly directed that :

"6.As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly."

The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an appellate authority. Ordinarily, the High Court exercising writ jurisdiction cannot enter into re-appreciation of evidence and reverse the findings arrived at by the State Government unless they be perverse or be such as no reasonable man acting reasonably could have arrived at. If the High Court found that the decision arrived at by the State Government was flawed in any way then the High Court should have, after laying down the necessary principles or guidelines or issuing directions, directed the State Government to reconsider the case of the respondent. In no case, the High Court could have in exercise of its writ jurisdiction relaxed the need for full satisfaction of the necessary requirements on the fulfilment of which alone the respondent's entitlement to the release of freedom fighters' pension depended."

16. As observed above, the decision of the Central Government was based on various reasons, out of which one was non verification of jail term from 1.3.1950 to 3.1.1951 by the State Government. Even if it is accepted by the State Government after sending report dated 12.5.2011, which was considered by the Central

Government while taking a decision has subsequently sent a letter on 17.8.2011 verifying the jail sufferings as has been stated in the counter affidavit filed in the Writ Petition and relied on by the learned Single Judge, the other reasons for rejecting the claim of the petitioner are still unaffected and untouched by any findings of the learned Single Judge.

17. As observed above, this Court in exercise of writ jurisdiction is not to reappraise the evidence. There being sufficient material and reasons for the Central Government to come to the conclusion that the petitioner was not eligible for grant of Swatantrata Sainik Samman Pension and the decision of the Central Government being not perverse or based on no material, this Court in exercise of writ jurisdiction shall not interfere with the said decision. The judgment of the learned Single Judge setting aside Exhibit P16 order of the Central Government is unsustainable.

In the result, the Writ Appeal is allowed. The judgment of the learned Single Judge dated 27.11.2014 is

set aside. The Writ Petition filed by the respondent/writ petitioner is dismissed.

The parties shall bear their own costs.

Sd/-

**ASHOK BHUSHAN
CHIEF JUSTICE**

Sd/-

**A.M.SHAFFIQUE
JUDGE**

vgs

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