

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WA.No. 1328 of 2014

AGAINST THE JUDGMENT DATED 10-06-2014 IN WP(C) 29090/2011.
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APPELLANTS/1ST RESPONDENT:

**UNION OF INDIA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
MINISTRY OF HOME AFFAIRS,
LOK NAYAK BHAVAN, KHAN MARKET,
DELHI - 110001.**

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

RESPONDENTS/PETITIONER/2ND RESPONDENT:

- 1. THALIYIL SREEDEVI AMMA,
W/O. LATE PULUKKOOL KANNAN NAIR,
THALIYIL HOUSE, PAYYAVOOR P.O., KANNUR-679633.**
- 2. STATE OF KERALA,
REPRESENTED BY SECRETARY,
GENERAL ADMINISTRATION
(FREEDOM FIGHTERS PENSION-A) DEPARTMENT,
SECRETARIAT, TRIVANDRUM-695001.**
- 3. THE DISTRICT COLLECTOR,
COLLECTOR, KANNUR-679002.**

**R1 BY SRI.GRASHIOUS KURIAKOSE (SENIOR ADVOCATE)
ADV.SRI.SEBASTIAN JOSEPH (KURISUMMOOTTIL)
R2 & R3 BY SENIOR GOVT. PLEADER SRI.C.R.SYAMKUMAR
BY SRI.V.C.JAMES**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-09-2015
ALONG WITH WA.1411/2014 & CONNECTED CASES, THE COURT
ON 20-11-2015 DELIVERED THE FOLLOWING:**

mbr/

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A. Nos.1328, 1411, 1427 & 1466 of 2014,
398, 400, 401 & 423 of 2015

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Dated this, the 20th day of November, 2015

J U D G M E N T

Shaffique, J.

These appeals are filed by the petitioners as well as the respondents in the writ petitions, which were decided by a common judgment. The issue involved in the appeals relates to the date on which pension is payable to the writ petitioners, under the Swatantrata Sainik Samman Pension Scheme (hereinafter referred as 'Pension Scheme').

2. W.A.Nos. 1328, 1411, 1427 and 1466 of 2014 are filed by Union of India, the respondent in the writ petitions and W.A.Nos. 398, 401, 400 and 423 of 2015 are filed by the petitioners in W.P.(C) Nos. 29090/2011, 25159/2011, 24791/2011 and 24790/2011 challenging judgment dated 10.6.2014 by which the learned Single Judge while partly allowing the writ petitions directed the appellants to effect payment of pension from a date three years preceding the date of judgment in each of these

cases.

3. The short facts involved in the writ petitions would disclose that the application of the petitioners for pension under the Pension Scheme was not processed by the Central Government. Separate writ petitions were filed before this Court. Writ petitions were disposed directing the State Government and its authorities to consider their application and forward their recommendation within a time frame and thereafter Central Government was directed to consider the same within a certain period. Petitioners claimed that their late husbands had undergone detention in the prison during freedom struggle, viz., Kavumbai Struggle and were eligible to get the pension.

4. Pursuant to the judgments in separate cases, the Central Government recommended grant of pension to the petitioners on production of certain documents. Petitioners produced all the required documents and they are in receipt of pension.

5. The contention urged in the writ petitions is that the petitioners were entitled to pension from the date of application,

i.e., from 1998 itself, whereas pension is sanctioned only from 5.4.2010 in W.P.(C) No. 29090/2011, from 14.12.2009 in W.P.(C) No.25159/2011, from 26.5.2010 in W.P.(C) No.24791/2011 and from 9.3.2010 in W.P.(C) No.24790/2011. These were the dates on which the High Court had directed consideration of their claims.

6. In W.P.(C) No. 29090/2011, it is contended that the application is submitted in 1998, District Collector recommended the same on 10.5.1999, but claim was rejected on the ground that the certificate produced was relating to imprisonment as an under trial prisoner and there was no imprisonment after conviction. Writ petition was filed as W.P.(C) No.1467/2010 which was decided on 5.4.2010 directing that the case of under trial prisoners should also be considered for the grant of pension.

7. In W.P.(C) No.25159/2011, it is contended that the application was submitted on 5.4.1998, District Collector recommended the same on 24.5.1999, which was forwarded to Central Government on 15.7.1999, but claim was not processed for 11 years. Writ petition was filed as W.P.(C)No.35964/2009

which was decided on 14.12.2009 directing that the application should be considered for the grant of pension.

8. In W.P.(C) No.24791/2011, it is contended that the application is submitted in 1998, District Collector recommended the same, but claim was not processed, as the report of State Government was awaited. Writ petition was filed as W.P.(C) No.4357/2010 which was decided on 26.5.2010 directing that claim of the petitioner has to be considered for the grant of pension.

9. In W.P.(C) No.24790/2011, it is contended that the application is submitted in 1998, District Collector recommended the same on 24.5.1999 and forwarded to State Government, but claim was not considered. Writ petition was filed as W.P.(C) No.7581/2010 which was decided on 9.3.2010 directing that the claim has to be considered for the grant of pension.

10. Counter affidavit is filed by the respondent in W.P.(C) No. 29090/2011 *inter alia* stating that her application was originally rejected by the Central Government. After receipt of the judgment in W.P.(C)No.1467/2010, since the previous records/

file of the claim application was not available in the Ministry, the State Government was requested to provide a complete set of the application along with its recommendation. It is stated that pension was granted only on the basis of the judgment in W.P.(C) No.1467/2010, though the Scheme does not provide for sanction of pension for under trial prisoners.

11. Counter affidavit is filed by the respondent in W.P.(C) No. 25159/2011 *inter alia* stating that the District Collector has informed that enquiry through Tahsildar did not reveal details of any such person and they could not locate him. The Central Government had sanctioned pension only on noticing the deplorable position of the petitioner and on the basis of the directions issued by this Court and therefore, petitioner was not entitled for pension from the date of application.

12. Counter affidavit is filed by the respondent in W.P.(C) No. 24791/2011 *inter alia* stating that the State Government's recommendation revealed that genuineness of jail extracts could not be verified, as the documents were not traceable. The Central Government had sanctioned pension only on noticing the

deplorable position of the petitioner and on the basis of the directions issued by this Court and therefore, petitioner was not entitled for pension from the date of application.

13. Counter affidavit is filed by the respondent in W.P.(C) No. 24790/2011 *inter alia* stating that the State Government's recommendation revealed that genuineness of jail extracts could not be ascertained, as the prison documents were damaged. It is also indicated that since the conviction was on 29.10.1947, after the Independence, the claim is doubtful. 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.

14. Learned Single Judge however after considering the facts and circumstances in the matter relying upon the judgment in ***Thambayi Amma v. Union of India*** (2011 (3) KLT 105) and WA No.1910/2011 held that the benefit of pension should enure to the petitioners from a date three years preceding the date of judgment and not from the date of judgment.

15. It is impugning the aforesaid judgment that this appeal

has been filed by the respondent *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 documents whereas it is a case in which a liberal view has been taken as the claim was allowed giving benefit of doubt and therefore, the direction of the learned Single Judge to pay arrears of pension from a previous date, that is three years preceding the date of judgment, is liable to be set aside.

16. In the appeals filed by the writ petitioners, they seek for payment of arrears from the date of their application.

17. Heard the learned counsel for the appellants as well the learned counsel appearing for the respondents/writ petitioners.

18. The short question involved in these writ appeals is with reference to the date on which the petitioners are entitled for pension under the Pension Scheme.

19. Having regard to the contentions urged on either side, it will be useful to refer to various judgments relied upon by the learned counsel for the appellants as well as the learned counsel

appearing for the respondents.

20. In ***Mukund Lal Bhandari v. Union of India*** [(1993) Supp (3) SCC 2], the Supreme Court while considering the Freedom Fighters Pension Scheme 1972, which was later renamed as the present Pension Scheme observed that the claim for pension has to be granted from the date of making the application and not from any earlier date. As per the Pension Scheme introduced on 15/8/1972, pension was payable to freedom fighters and if they were not alive, to their families, whose gross annual income did not exceed ₹5000/-. That limit was taken away w.e.f. 1st August, 1980. In 1985, those who participated in Arya Samaj Movement of 1936-39 were also recommended for payment of pension under the Scheme with retrospective effect from 1980. There were several claimants. The petitioners in the said case raised claim for pension from 1st August, 1980. It was contended by the Central Government that the required proof in support of the case was not furnished, that they had filed their applications after the prescribed date and even if they satisfied the qualifying conditions, the pension would

be payable only from the date they produced the required documentary proof in support of their claim. In this background, the Supreme Court held at paragraphs 6 and 8 as under;

"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."

"8. Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents, would be readily in possession of the required documents. In the very nature of things, such documents have to be

secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time-limit. What is necessary in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished."

21. Similar matter again came up for consideration before the Supreme Court in ***Union of India v. Ganesh Chandra Dolai and Others.*** [(1997) 10 SCC 289]. That was a case in

which Government of India granted freedom fighters pension with effect from the date of the order. The claimants filed a writ petition before the High Court seeking pension with retrospective effect from 1980. The High Court relying upon ***Duli Chand v. Union of India*** [(1992) 2 SCC 28] directed the grant of pension from 1980. Apex Court held that ***Duli Chand*** (supra) was not applicable to the facts of the case as the said judgment was passed in the special circumstances of the case since Government of India has categorically stated that the respondents were given benefit of doubt and as such, pension could be given only from the date of order. Para 4 and 5 are relevant, which read as under;

"4. We have heard the learned counsel for the parties. We are of the view that the ratio in Duli Chand case is not applicable to the facts of the present case. In Duli Chand case this Court had by the order dated 16-7-1990 directed the Government of India to pay pension to the petitioners therein w.e.f. 1-8-1980. It was specifically mentioned in the order that all the 41 petitioners had produced the relevant documents supporting their claim and keeping in view the facts of these cases pension was directed to be given w.e.f. 1980. In this case the Government of India has categorically stated that the respondents

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were given benefit of doubt and as such the pension can only be given from the date of the order.

5. Keeping in view the documents produced by the respondents before the Government, the respondents have been rightly given pension by the Government of India from the date of the order. We allow this appeal, set aside the impugned order of the High Court and restore the order of the Government of India whereunder pension has been given to the respondents from the date of the order of the Government of India. No costs."

22. In **Government of India rep. by the Secretary v. K.V.Swaminathan** [(1997) 10 SCC 190], the claim for pension for freedom fighter was pending for a long time. However, giving benefit of doubt, he was given pension on 18/11/1989. He sought for pension from the date of his application, which was allowed by the High Court. After referring to **Union of India v. M.R.Chelliah Thevar** (CA No.7762/1996) decided on 30/4/1996, **Mukund Lal Bhandari** (supra) and **Ganesh Chandra Dolai** (supra), it is held that since the claimant was given the relief on the basis of the benefit of doubt, the pension is payable only from the date of order and not from the date of application. The aforesaid

judgment reads as under;

"1. Leave granted.

2. *This appeal by special leave arises from the judgment of the Madras High Court made on 14-3-1996 in WP No. 15732 of 1994. The respondent claimed the benefit as freedom fighter but the same remained pending for a long time. Ultimately, giving the benefit of doubt to the respondent, he was granted pension on 18-11-1989. Not feeling satisfied with the relief, the respondent filed writ petition claiming the pension from the date of his application. In the impugned order, the High Court has directed to pay the pension from the date of the application. The controversy is no longer res integra. This Court had considered the entire controversy in Union of India v. M.R. Chelliah Thevar (CA No. 7762 of 1996) decided on 30-4-1996 and held thus:*

"Heard counsel for both sides. On behalf of the Union of India strong reliance was placed on the decision of the Division Bench of this Court dated 24-4-1995. On the other hand, learned counsel for the respondent placed reliance on an earlier judgment of this Court in Mukund Lal Bhandari v. Union of India, as well as the decision in Amarnath Malhotra v. Union of India dated 19-10-1996. The distinction, however, is that in the case relied on

by the Union of India, the respondents were granted the benefit under the policy not because it was a clear case of the respondents being freedom fighters but because benefit of doubt was given and hence the pension was restricted from the date of the order and not the date of application. In the two cases relied on by the respondents, there was no question of the benefit having been founded on a finding of fact which did not clearly establish that the petitioners were freedom fighters but on the liberal ground of giving them the benefit of doubt and restricting it from the date of order. We are, therefore, of the opinion that there is a distinction between the decision relied on by the learned Additional Solicitor General on behalf of the Union of India and two decisions relied on by the respondent. In the instant case, since the benefit of doubt was given and the status of freedom fighter was recognised on that basis, the case would be covered by the first-mentioned decision dated 24-4-1995 (Union of India v. Ganesh Chandra Dolai)."

3. *In view of the above-settled legal position, though the respondent was not entitled to the pension as a freedom fighter, he was given the relief on the basis of benefit of doubt. Therefore, he is entitled to the pension only from the date of the order and not from the date of the application. We are informed that pursuant to the order of the High*

Court, the amount has been released. Under this circumstance, the appellant is directed to deduct the paid amount proportionately from the amount payable in every month, instead of asking him to refund the amount.

4. *The appeal is accordingly allowed. No costs”.*

23. In ***Union of India v. Kaushalaya Devi*** [(2007) 9 SCC 525], the Supreme Court after referring to ***K.V.Swaminathan*** (supra) observed that when the claim is allowed on the basis of secondary evidence, and not on the basis of jail certificate produced by the claimant, pension should be granted from the date of order and not from the date of application. Para 4 to 7 are relevant, which read as under;

“4. *It has been held by this Court in Govt. of India v. K.V. Swaminathan that where the claim is allowed on the basis of benefit of doubt, the pension should be granted not from the date of the application but from the date of the order.*

5. *In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the*

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claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.

6. *Learned counsel for the respondent has relied on the judgment of this Court in Mukund Lal Bhandari v. Union of India.*

7. *In our opinion that decision is distinguishable as it has been stated therein that the pension cannot be granted from any date prior to the application. In our opinion this does not mean that it cannot be granted from a date subsequent to the application”.*

24. Our High Court had occasion to consider these issues.

One such judgment is ***Union of India v. Radhamony*** (2005 (4) KLT 27) wherein Division Bench referring to ***Mukund Lal Bhandari*** (supra) held at para 4 as under;

"4. Learned Counsel appearing for the appellant Union of India however brought to our knowledge the decision of the Apex Court in Mukund Lal Bhandari v. Union of India (1993 Supp. (3) SCC 2), wherein the Apex Court has examined the question regarding the eligibility for Central Pension. While disposing of the matter the Apex Court gave the following directions:

“(a) The respondents should accept the applications

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of the petitioners irrespective of the date on which they are made. The applications received hereafter should also be entertained without raising the plea that they are beyond the prescribed date.

(b) The respondents should scrutinise every application and the evidence produced in support of the claim and dispose it of as expeditiously as possible and in any case within three months of the receipt of the application, keeping in view the laudable and sacrosanct object of the Scheme.

(c) The pension should be paid to the applicant from the date on which the original application is received whether, the application is filed with or without the requisite evidence. The sanction of the pension would, however, be subject to the requisite proof in support of the claim.”

It is evident from the above mentioned directions given by the Apex Court that pension should be given to the applicant from the date on which the original application is received irrespective of whether the application is filed with or without requisite evidence. It is also opined that the sanction of pension would however be subject to the requisite proof in support of the claim. The Apex Court has already held that the relevant date is the date on which the application was received by the authorities. Judgment of the learned Single Judge in Krishnankutty’s case is therefore not

good law".

25. In ***Devaki v. Union of India*** (2010 (3) KHC 823), the learned Single Judge while considering a similar question directed the grant of pension from the date of application. That was a case where the very claim was being considered by the learned Single Judge with reference to a claim made by the wife of a soldier in the Indian National Army (INA).

26. In ***Union of India v. Lennyamma*** (2012 (3) KLT 852), a Division Bench of this Court observed at para 53 as under;

"53. It is also not in dispute that the State machinery has to process the application through the General Administration Department (Freedom Fighters Pension), either it can recommend or it can reject or it can decline to recommend the application. However, the application has to be forwarded to the Central Government accompanied by verification and entitlement of pension report, where either the recommendation or otherwise will be mentioned. It is also well settled now that in spite of recommendation of entitlement by the State Government, it is open to the Central Government to decline grant of pension for the reasons recorded by the authority concerned. Therefore, what is envisaged is, the State machinery will receive the applications and other

documents submitted by the applicants, then it has to verify the applications and documents accompanying the applications and then forward the same with its report, as indicated at Clause 10, which reads as under :

"ISSUE OF SANCTION ORDER : The receipt of advance copy of application form is acknowledged. The claim of the applicant will be scrutinized in the State Government/Union Territory administration in consultation with State Advisory Committee on the basis of copy of application submitted to them. After receipt of State verification and entitlement to pension report, the claim of the applicant is scrutinized and if found eligible Pension is granted. Sanctions are issued as applications are scrutinized and conveyed to the Accountant General of the areas with copies to the Chief Secretary of the State Government/U.T. Administration and the Collector/D.C. of the District concerned. Simultaneously, a communication conveying sanction of pension as also the amount of pension is issued to each grantee. Applicants whose applications are not approved are duly informed."

27. In ***Union of India v. Puthussery Vallyaveettil Thambayi Amma*** (WA No.1910/2011), a Division Bench of this Court after referring to the factual situation in the said case

directed that the pension has to be paid from a date, three years prior to the date of filing the writ petition.

28. Reference is also made to the judgment in ***Union of India v. Elizabeth Sipri*** (WA 1858/2013) wherein direction was given by the Division Bench to grant pension from the date of application. Para 3 reads as under;

“3. It is contended on behalf of the appellant that the appellant having received the application long after 20.3.1998, when the application was made to the State Government, they cannot be made liable for granting pension from the date of the application. However, this contention cannot be accepted in the light of the principles laid down by the Hon'ble Apex Court, which have been followed by the learned Single Judge, where it has been held that when pension is granted on the basis of the 'primary evidence' such grant shall be effective from the date of application. In so far as this case is concerned, admittedly, Ext.P8 order was issued on the basis of 'primary evidence' as contemplated under the Scheme. If that be so, the learned Single Judge was fully justified in directing that payment of pension be made from 20.3.1998, the date when the application was made.”

29. Having regard to the aforesaid statement of law by the

Supreme Court as well as the judgments of this Court, the following factors are rather clear:-

(i) If the grant of pension is based on primary documents, pension is to be granted from the date of application.

(ii) If the pension is sanctioned taking a liberal approach by giving benefit of doubt, pension can be granted from the date of order.

(iii) If the claim is allowed on the basis of secondary nature of evidence, pension can be granted from the date of order.

30. In all the cases referred above, the appellants have filed counter affidavit stating that they have given the benefit of doubt and had granted pension from the date of judgment of the High Court wherein directions were issued to consider their claims.

31. Therefore, these are cases in which though the Central Government was not satisfied with the materials produced, pension was granted based on judgments of this Court. Under such circumstances, what is the date on which the claimants are

entitled for grant of pension is the question which requires consideration.

32. It is apparent from the facts involved in the above cases that the Central Government had either refused to grant pension or did not consider the application on account of the deficiency in the documents made available. It is true and as held by the Supreme Court in ***Mukund Lal Bhandari*** (supra), merely for the reason that the application was not accompanied by sufficient documents by itself cannot be a reason for not granting pension from the date of application.

33. Therefore, it has to be verified whether, in the cases on hand, the documents produced were not in accordance with the requirement under the Scheme and the Central Government became obliged to pay the pension by taking a liberal view and giving benefit of doubt.

34. Hence, we have to verify the factual situation in each of these cases to either allow or disallow the claim made by the petitioners.

35. The learned Single Judge in fact observed that when

there is delay in sanctioning of the pension, arrears of pension has to be granted from a date three years prior to the date of judgment. Reference is made to **Thambayi Amma** (supra) wherein the learned Single Judge held as under:

“11. Coming to the case in hand, it is very much obvious that the sufferings of the deceased husband of the petitioner/freedom fighter in the jail is authenticated by the 'primary evidence' i.e., jail certificates issued by the concerned jail authorities in respect of the confinement for the period from 28.1.1947 to 16.8.1948. This factual position has been adverted to by this Court in the opening paragraph of Ext.P4 judgment. There is no dispute on the factual position in the counter affidavit. This being the position, the pension that has been given under Ext.P1 Scheme, by passing Ext.P6 order, is on the basis of 'primary evidence' i.e., jail certificate and not on the basis of any secondary evidence of 'co-prisoner's certificate' (CPC) and hence it is not by extending any benefit of doubt, so as to restrict the benefits by giving effect only from the date of the order/Judgment as stipulated by the Supreme Court in Union of India & Anr. v. Kaushalaya Devi (2007 (2) KLT SN 54 (C.No. 73) = (2007) 9 SCC 525). The said decision itself is an authority that, if the suffering is proved by “primary evidence” (as mentioned in paragraph 5), the

claimant is entitled to have the benefit with effect from the date of the application itself, as held by the Apex court in 1993 Supp (3) SCC 2) cited supra."

The above judgment was appealed by Union of India in WA No.1910/2011 and as per judgment dated 10/4/2012, the judgment of learned Single Judge was modified and direction was issued to grant pension from a date three years prior to the filing of the writ petition. The Division Bench in fact considered the law laid down in **Mukund Lal Bhandari** (supra) and thereafter relying on **Shiv Dass v. Union of India** [(2007) 9 SCC 274] observed that on account of such long delay in approaching the Court, pension arrears is payable only for three years prior to the date of filing the writ petition. In fact, in this case, there was a dispute as to whether the application was sent or received by the Central Government. Hence, this judgment does not apply to the facts of the case.

36. In **Radhamony** (supra), Division Bench only relied upon **Mukund Lal Bhandari** (supra). Subsequent judgments in **Duli Chand** (supra) and **K.V.Swaminathan** (supra) were not

referred to. Hence, this judgment will have no application to the facts of the case. That apart, none of the facts are borne out from the said judgment especially as to whether pension was granted based on primary evidence, secondary evidence or by giving the benefit of doubt. In judgment dated 19/8/2015 in WA No.1858/2013, it is observed that "in so far as this case is concerned, admittedly, Ext.P8 order was issued on the basis of 'primary evidence' as contemplated under the Scheme. If the pension is sanctioned on the basis of primary evidence, the position is well settled. This judgment will apply to the facts of the case only if we come to the conclusion that the grant of pension was based on primary evidence. Having regard to the position as emanating in the aforesaid judgments also, it has to be verified whether the facts involved in the above appeals permit grant of pension from the date of application.

37. In W.A.Nos.1328/2014 and 398/2015, the State Government has informed the Central Government that the petitioner's late husband had claimed to have suffered imprisonment from 16/1/1947 to 29/10/1947. It was further stated

that the under trial did not end in conviction. The pension was granted only on the basis of judgment in WP(C) No.1467/2010 by which the learned Single Judge relying upon judgment of the Division Bench in ***Union of India v. Lonan Benchamin*** (2002 (1) KLT 46) held that under trial prisoners are also entitled for claiming pension under the Scheme. Therefore, the contention is that Scheme originally did not permit grant of pension for under trial prisoners. In order to grant pension, the said imprisonment should end in conviction and therefore, it was based only on the judgment that the pension was granted and that too from the date of judgment. This, according to us, is a sufficient reason to deny pension from the date of application and therefore, as rightly contended by the appellant, petitioner is entitled for pension only from the date on which it was awarded by the appellant.

38. In WA Nos.1411/14 and 401/15, the facts involved would indicate that the pension was granted as per Ext.P5 based on the judgment in WP(C) No.35964/09. In the counter affidavit, it is stated that the State Government's report dated 14/1/2011

indicated that though the District Collector was directed to furnish formal application for the SSS Pension from the applicant, the same has not been received. In the meantime, District Collector by fax dated 12/1/2011 has informed the Government that the application was forwarded for enquiry through Tahsildar, Taliparamba, who reported that no such person or details relating to the said person was available on enquiry at Payyannur nearby Korome Village. Letter sent was returned by the postal authorities stating the reason as "*address was not known*". Further directions were sought from the Government. Government directed enquiry to be made at Payyavur. It was indicated that verification report and connected documents will be furnished as soon as it is received from the District Collector. It is indicated that though there was no positive response from the District Collector and the State Government's report was awaited, taking into consideration the deplorable condition of the petitioner, the dependent family pension was sanctioned. These being the facts, we are of the view that the sanction of the pension was granted even without a proper report from the State Government and as

such can be treated as a grant of pension under doubtful circumstances. When the grant of sanction is without even getting proper directions from the State Government, we are of the view that there was no illegality in granting pension from the date of judgment of the High Court.

39. In WA Nos.1427/2014 and 400/2015, Ext.P2 is the order by which pension was sanctioned. It is stated in Ext.P2 that the grant of sanction is in compliance with the direction issued by this Court in WP(C) No.4357/2010 . In the counter affidavit filed, it is indicated that pension was granted taking a liberal view and that it was a doubtful case since it was indicated by the State Government in the letter dated 13/10/2010 that the Superintendent, Central Prison, Kannur has reported that the genuineness of the extract of jail records concerning late T.R.Nambiar could not be verified since the respective register is not traceable. He has also stated that in the absence of case details, he is not in a position to report the genuineness of the extract. These being the facts, it is apparent that the Central Government had granted pension giving the benefit of doubt

which is evident from the materials on record. Hence, this is also a case in which the Central Government was justified in granting pension from the date of the judgment of the High Court.

40. In WA Nos.1466/2014 and 423/2015, Ext.P2 dated 26/11/2010 is the order by which pension is sanctioned. It is indicated that the pension is sanctioned in compliance with the order dated 9/3/2010 in WP(C) No.7581/2010. In the counter affidavit, it is stated that as per the State Government's recommendation, it was indicated that the District Collector who was asked to give a report on the jail certificate reported that Tahsildar was asked to enquire into the genuineness of the jail records in respect of the petitioner's late husband and could not be ascertained as the prison records during the period of freedom struggle are reported to be damaged due to efflux of time. It is further observed that the status after his conviction is not known from the jail extract and whether the under trial period ends in conviction. Further it is indicated that the extract of the jail certificate indicated the date of conviction as 29/10/1947 which is after the date of Independence. It is therefore stated that it was

also a case which was doubtful. However, pension has been granted from the date of judgment.

41. The requirement of the scheme as such would indicate the necessity for documents to be accompanied along with the application. As held by the Supreme Court in ***Mukund Lal Bhandari*** (supra), the applicants may not be in a position to produce all the records immediately. But that was a case in which the application ought to have been submitted within a specified time. There is no such restriction as matters stand now. But, as per the Scheme, the application has to be submitted to the State Government, who has to conduct necessary enquiry and then forward the same with their recommendation to the Central Government. If the report of the State Government is not found to be satisfactory, even if it is based on jail certificate, the genuineness of which could not be verified in terms with the Scheme, Central Government will be justified in rejecting the claim. However, at a later stage, when such pension is sanctioned, based purely on the directions issued by the Court, it is possible for the Central Government to take a contention that

WA No.1328/14 and conn.cases

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the pension could be granted only on the basis of directions issued by the Court though the documents were not sufficient enough for the grant of pension. However, each case has to be considered on its own facts. Under such circumstances, applying the principle laid down in **Swaminathan's case** (supra), we are of the view that the Central Government was justified in granting pension from the date of judgment in the respective cases.

In the said circumstances, the appeals filed by the Union of India viz., WA Nos.1328, 1411, 1427 and 1466/2014 are allowed setting aside the judgment of the learned Single Judge. WA Nos.398, 400, 401 and 423/2015 are dismissed and the writ petitions also stand dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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P.S to Judge