

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

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

WA.No. 1627 of 2014

AGAINST THE JUDGMENT IN W.P.(C).NO.20792/2013, DATED 01-09-2014

APPELLANT(S)/RESPONDENT :

**UNION OF INDIA,
REP BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS DIVISION,
NEW DELHI CITY CENTRAL-II BUILDING, 2ND FLOOR,
'A' WING JAISING ROAD, NEAR YMCA , NEW DELHI-110 001.**

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

RESPONDENT(S)/PETITIONER :

**SUJATHA,
W/O.LATE C.K.PADMANABHAN, SUNIMANDIRAM,
PATTANAKKAD P.O, CHERTHALA, ALAPPUZHA.**

BY ADV. SRI.K.K.SATHEESH

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-09-2015 ,
THE COURT ON 20-11-2015 DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A1: TRUE COPY OF LETTER NO.74975/FFP-A2/2012/GAD
DATED 03.12.2012.**

RESPONDENT(S)' ANNEXURES :

**ANNEXURE R1(A): TRUE COPY OF THE RELEVANT PAGES OF REGISTER NO.2
KEPT IN THE OFFICE OF THE DISTRICT COLLECTOR,
ALAPPUZHA IN CONNECTION WITH THE PUNNAPRA-
VAYALAR STRUGGLE.**

ANNEXURE R1(B): TRUE ENGLISH TRANSLATION OF ANNEXURE-R1.

//TRUE COPY//

PA.TO JUDGE.

Msd.

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A. No.1627 of 2014

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Dated this, the 20th day of November, 2015

J U D G M E N T

Shaffique, J.

Writ appeal is filed by the 1st respondent in WP(C) No.20792/2013 challenging judgment dated 1.9.2014 by which the learned Single Judge while partly allowing the writ petition directed the appellant to effect payment of arrears of the Swatantrata Sainik Samman Pension (hereinafter referred as Pension) under the Swatantrata Sainik Samman Pension Scheme (hereinafter referred as the Scheme) from 28/7/1998 to 7/6/2010.

2. The short facts involved in the writ petition would disclose that the application of the petitioner for pension was initially rejected by the Central Government on the ground that there was no primary evidence to establish that her late husband had become eligible for pension under the Scheme. She claimed that her late husband had undergone detention in the prison during freedom struggle, viz., Punnappra Vayalar Struggle and was

accused in Case No.PE6/1122 ME, which was renumbered as SC No.8/1123 ME. Claim was that he had suffered detention from 11/3/1122 to 26/4/1123 ME and was also an under trial prisoner from 27/4/1123 ME to 19/8/1123 ME. The petitioner approached this Court by filing WP(C) No.6445/2010. By judgment dated 7/6/2010, this Court after setting aside the order passed by the Central Government directed grant of pension to the petitioner under the Scheme from the date when the original application for pension was filed either by the petitioner or by her husband. The matter was carried in appeal which came to be disposed on 14/8/2012 in WA No.2096/2010 in which Division Bench of this Court by setting aside the judgment disposed of the appeal with the following directions;

"i) The judgment of the learned Single Judge dated 7/6/2010 is set aside. The respondent/writ petitioner is directed to furnish additional documents in accordance with the Scheme to substantiate her claim in the writ petition and contents of Ext.P2 within a period of four weeks from the date of receipt of a copy of the judgment.

ii) The State Machinery that is General Administration (FFB) shall make the enquiry in

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accordance with the Scheme and forward the application of the respondent/writ petitioner along with additional documents within a period of four weeks from the date of receipt of additional documents along with entitlement cum verification of pension report.

iii) The appellant shall dispose of the application in accordance with the procedure contemplated in the Scheme within a period of four weeks from the date of receipt of the letter forwarded along with the entitlement cum verification of pension report by the State Government."

3. By order dated 3/12/2012, the Central Government recommended grant of pension to the petitioner from the date of judgment of the learned Single Judge. Ext.P9 dated 2nd July, 2013 is the order issued by the Central Government directing to release the family pension to the petitioner

4. The contention urged in the writ petition was that she was entitled to pension from the date of application, i.e., from 28/7/1998. Petitioner also relied upon judgment of the Supreme Court in ***Union of India v. Kaushalaya Devi*** (2007 (9) SCC 525) and contended that when the pension has been sanctioned on the basis of primary evidence viz., the jail certificate, the pensioner is

entitled to get pension from the date of application.

5. Counter affidavit is filed by the respondent *inter alia* contending that claim for pension was originally rejected by the Central Government as the documents were not sufficient for payment of pension under the Scheme. Though certificate for jail suffering had been produced, 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 however after considering the facts and circumstances in the matter observed that once the petitioner had furnished all the documents necessary to support her application and the State Government forwarded the application together with all evidence to support her claim, it has to be presumed that the defective application has since been regularised and in such a view of the matter, the benefit of pension should enure to the petitioner from the date of application. However, learned Single Judge while allowing the

writ petition by directing payment of pension from 28/7/1998 till 7/6/2010, denied the claim for interest on the said amount.

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 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.

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 Pension.

10. In ***Kaushalaya Devi*** (supra), the Supreme Court referred to earlier judgment in ***Government of India v. K.V.Swaminathan*** (1997 (10) SCC 190) and observed that where the claim is allowed on the basis of benefit of doubt, pension is to be granted from the date of order and not from the

date of application. It is further held that if the claim was allowed on the basis of secondary nature of evidence, i.e., it is not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu, pension has to be granted from the date of order. The Supreme Court distinguished the judgment in **Mukund Lal Bhandari v. Union of India** (1993 Suppl (3) SCC 2). In **Union of India v. Radhamony** (2005 (4) KLT 27), a Division Bench of this Court while relying upon **Mukund Lal Bhandari** (supra) held that pension has to be given from the date of application.

11. It is true that **Kaushalaya Devi** (supra) is a subsequent judgment which clarifies **Mukund Lal Bhandari** (supra) and therefore, the question is whether the order passed by the Central Government recommending sanction of pension is under doubtful circumstances or not. Ext.P8 is the order wherein it is referred that in Register No.2 maintained in the office of the District Collector, in connection with Punnapra Vayalar Struggle, the name of the petitioner's husband was arrayed as the 19th accused. It is therefore apparent that the decision taken was

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based on the opinion given by the State Government. As per the Scheme which is produced as Ext.R1(a), pension is payable if a person has suffered minimum imprisonment of six months on account of participation in freedom struggle and the evidence required is imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release. However, when case records of the relevant period are not available, then secondary evidence can be given in the form of two co-prisoner certificates from freedom fighters who have proven jail suffering of minimum one year. In the aforesaid case, the petitioner claims that her husband being a member of Scheduled Caste had suffered imprisonment for more than three months as an under trial prisoner. Clause 2.2 sub clause (a) is relevant, which reads as under;

"2.2 Imprisonment:- A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle

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subject to furnishing of the following evidences:-

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Govt. indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release."

12. Ext.P1 is the true extract of register of under-trial prisoners. It is a certificate issued by the Superintendent of Central Prison, Thiruvananthapuram which indicates the date of admission into jail, date of release, etc. The case number is also indicated which is proved by the register maintained in the office of the District Collector. What is relevant is whether the sanction order is based on primary evidence as reflected in clause 2.2 (a) or not.

13. The appellant relies upon Ext.P8, letter dated 3/12/2012 issued by the Secretary, Government of Kerala to the Secretary, Government of India, Ministry of Home Affairs. In the said letter, it is stated that Smt.Sujatha had submitted an application for pension on 28/7/1998 claiming that her husband had participated in the Punnapra Vayalar Struggle and had suffered detention from 11/3/1122 to 26/4/1123 M.E and was an

under trial prisoner since then up to 19/8/1123 M.E. The pension application was rejected earlier as Sri. Padmanabhan had imprisonment for a period of less than six months. Thereafter, a certificate was produced from the Tahsildar certifying that her late husband belongs to Hindu Velan Community by which the minimum period for eligibility of pension has been reduced to three months. Hence the Government recommended the case as per Government letter dated 20/2/2009.

14. It was therefore clear that the recommendation by State Government was received only by 20/2/2009 and her application dated 28/7/1998 was initially rejected by the Government.

15. Learned counsel for respondent placed reliance on Annexure R1, a true copy of register No.2 kept in the office of the District Collector, Alappuzha. This is a register maintained in the District Collector's office in connection with the Punnapra Vayalar Struggle. The said document shows the details regarding the name of accused in SC No.8/1123 and it is stated that the name of the petitioner's husband is shown as the 19th accused, i.e

Karumpan Padmanabhan Kariyathuchirayil, Pattanakkad Muri, Vayalar, Thekkupakuthi. But it is relevant to note that the said register does not contain any other details being filled up from column 4 onwards. According to the learned counsel, it is pursuant to Annexure R1 that her late husband had undergone under trial imprisonment in Central Prison for a period of three months and 23 days till he was acquitted by the Additional Sessions Judge, Trivandrum. It is apparent that the under trial prisoners do not come under the scheme under the normal course but their cases are being considered based on the judgment of this Court in ***Union of India v. Lonan Benchamin*** (2002 (1) KLT 46).

16. Ext.P6 is the order dated 22/10/2010 by which pension has been sanctioned to the petitioner effective from 7/6/2010, the date of judgment in WP(C) No.6445/2010. In the order granting pension, no details had been indicated to arrive at a conclusion that the grant of pension is based on any primary evidence. Therefore, it is clear that the grant of pension was based on the judgment. The said judgment was later set aside by judgment

dated 14/8/2012 in WA No.2096/2010 and the State Government was asked to make necessary enquiry in accordance with the scheme and to forward the application of the petitioner with additional documents, if any. Ext.P8 is the said communication dated 3/12/2012 by which the State Government had recommended the grant of pension to the Central Government. The aforesaid document clearly indicates that the earlier application was rejected and thereafter when the caste certificate was produced, State Government recommended the grant of pension on 20/2/2009.

17. After the judgment in WA No.2096/2010, the Central Government did not make any changes in the order. It is only mentioned that keeping in view the positive recommendation of the State authorities, and the judgment dated 14/8/2012 of the Division Bench, the Pay and Accounts Office was directed to do the needful and release the family pension. Though it is argued by the learned counsel for the respondent that the claim was based on primary evidence, Ext.P1 relied upon is only an extract of register of under trial prisoners. Hence, there is justification on

the part of the appellant to contend that pension was sanctioned after taking a liberal approach and giving the benefit of doubt. The documents produced by the respondent cannot be a substitute for primary evidence which is required to be produced along with the application in terms of Clause 2.2(a). Under such circumstances, learned Single Judge was not justified in coming to a conclusion that the grant of pension should be from the date of application.

Accordingly, this appeal is allowed setting aside the judgment of the learned Single Judge, and the writ petition stands dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

P.S to Judge