

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 4229 of 2014 (C)

PETITIONER(S) :

**KOCHAYYAPPAN THANKAPPAN, AGED 88 YEARS,
S/O.LATE KOCHAYYAPPAN, KUMARAN KANNEZHATH HOUSE,
PAZHAYAVIDATHIL, RAJAKKADU P.O., IDUKKI DISTRICT, PIN-685 566.**

**BY ADVS.SRI.M.K.THANKAPPAN
SMT.C.G.VINODINI**

RESPONDENT(S) :

**UNION OF INDIA,
REPRESENTED BY THE DEPUTY SECRETARY TO GOVT.,
MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION,
2ND FLOOR, NEW DELHI CITY CENTRE II, PARLIAMENT STREET,
NEW DELHI-110 001.**

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:: TRUE COPY OF THE JAIL CERTIFICATE ALONG WITH THE COVERING LETTER ISSUED BY THE SUPDT OF CENTRAL PRISON, THIRUVANANTHAPURAM DATED 23/07/2013.**
- P2: TRUE COPY OF THE FRESH APPLICATION SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 30/12/2009.**
- P3: TRUE COPY OF THE LETTER NO.2279/FFP A1/2010/GAD DATED 04/08/2010 ISSUED BY THE STATE GOVT. TO THE RESPONDENT.**
- P4: TRUE COPY OF THE JUDGMENT DATED 22/06/2012 PASSED BY THE DIVISION BENCH OF THIS COURT IN W.P(C).NO.8945/2008.**
- P5: TRUE COPY OF THE LETTER NO.72652/FFP A1/2012/GAD DATED 14/12/2012 ISSUED BY THE STATE GOVT. TO THE RESPONDENT.**
- P6: TRUE COPY OF THE ORDER NO.52/CC/K/122/2009 FF(SZ) DATED 04/04/2013 ISSUED BY THE RESPONDENT.**
- P7: TRUE COPY OF THE LETTER NO.49775/FFP-A1/2013/GAD DATED 12/12/2013 ISSUED BY THE STATE GOVT. TO THE RESPONDENT.**
- P8: TRUE COPY OF THE ORDER NO.52/CC/K/122/2009/FF/SZ DATED 15/01/2014 ISSUED BY THE RESPONDENT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P.(C) No. 4229 of 2014 (C)

Dated this the 1st day of July, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P8. The petitioner, on the claim that he had participated in the Punnapra-Vayalar Struggle (part of the freedom movement), applied for state pension, granted to the freedom fighters and was awarded the same. The Swatantrata Sainik Samman Pension (S.S.S.Pension) scheme being introduced by the Central Government, the petitioner approached the State Government for recommendation of the freedom fighters pension under the Central Government Scheme.

2. The petitioner is said to have also produced the extract of the Convict Register of Central Prison, Thiruvananthapuram, which is produced herein at Ext.P1. The application made is produced at Ext.P2 and the recommendation at Ext.P3 dated 4.8.2010. The petitioner having not been granted the said pension, was here with

W.P.(C) No.8945/2008. The said writ petition was disposed of along with a batch of writ petitions in Ext.P4.

3. The Central Government was directed to consider the applications filed by the various petitioners. Again the State Government by Ext.P5 dated 14.12.2012 recommended the pension of the Central Government. By Ext.P6 the claim was declined by the Central Government for reason of primary evidence not being legible and not being certified by the authorised officer.

4. The petitioner is said to have again applied to the State Government with a legible copy of the Convict Register certified by the Superintendent of the Central Prison which is produced at Ext.P1. The recommendation was again made at Ext.P7, which again stood declined for reason of the recommendation having not specified whether the petitioner had participated in the freedom struggle.

5. The S.S.S. Pension scheme requires primary evidence of imprisonment for a period of six months or

going under cover for a period of more than six months to entitle a freedom fighter to pension. What constitutes primary evidence and secondary evidence is stipulated in the scheme itself. In the present case there is no question of looking at any secondary evidence since the petitioner's conviction is evident from Ext.P1, which is a primary evidence under the S.S.S. Pension scheme. The petitioner is said to have been convicted in pursuance of an order of the Judicial First Class Magistrate, Cherthala, in C.C. No.18/1125 for one year. The sentence commenced on 13.12.1949 and after remission the petitioner was released on 16.9.1950. Hence, obviously the petitioner had suffered 8 months' imprisonment as is evidenced at Ext.P1.

6. The question raised in Ext.P8 is with respect to whether the imprisonment was on account of participation in the freedom struggle. The same is a relevant question and it is also seen that Ext.P7 does not specifically speak of that. However, the first recommendation by the State

Government, after making an enquiry through the Tahsildar produced at Ext.P3, specifically indicates that the petitioner was imprisoned for his participation in the Punnapra-Vayalar struggle and had undergone imprisonment in the Central Jail, Thiruvananthapuram, from 16.1.1950 to 16.9.1950. The said communication is dated 4.8.2010 and would be available in the files of the Central Government.

7. In any event, the petitioner shall forward a copy of the said communication to the Central Government along with the certified copy of this judgment and the pension claim shall be considered afresh in accordance with the provisions of the scheme within a period of three months from the date of receipt of the same.

Writ Petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE