

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 10850 of 2013 (E)  
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PETITIONER(S):  
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THANKAMMA, AGED 88 YEARS,  
W/O. LATE KRISHNAN DAMODARAN, THOPPIL VEEDU,  
ASRAMAM WARD, AVALOOKUNNU.P.O., ALAPPUZHA-688 006.

BY ADV. SRI.K.K.SATHISH

RESPONDENT(S):  
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UNION OF INDIA,  
REPRESENTED BY THE DEPUTY SECRETARY TO GOVT.,  
MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION,  
NEW DELHI CITY CENTRE-II BUILDING, 2ND FLOOR, 'A' WING,  
JAISINGH ROAD, NEAR YMCA, NEW DELHI-110 001.

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2015, THE  
COURT ON 19.11.2015 DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1: TRUE COPY OF THE PROCEEDINGS NO.R.DIS.23304/1983 OF THE DISTRICT COLLECTOR, ALAPPUZHA DATED 1-9-1983.
- EXHIBIT-P2: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 10-4-1998.
- EXHIBIT-P3: TRUE COPY OF THE NARC ISSUED BY THE CJM COURT, ALAPPUZHA.
- EXHIBIT-P4: TRUE COPY OF THE JUDGMENT DATED 2-12-2002 PASSED BY THIS HON'BLE COURT IN O.P.NO.33194/2001.
- EXHIBIT-P5: TRUE COPY OF THE ORDER NO.52/CC/KER/16/2001-FF(SZ)DATED 27-5-2003 ISSUED BY THE RESPONDENT TO THE PETITIONER'S LATE HUSBAND.
- EXHIBIT-P6: TRUE COPY OF THE PKC ISSUED BY SRI.H.K.CHAKRAPANI DATED 30-5-2005.
- EXHIBIT-P7: TRUE COPY OF THE JUDGMENT DATED 24-3-2009 PASSED BY THIS HON'BLE COURT IN W.P(C).NO.28524/2005.
- EXHIBIT-P8: TRUE COPY OF THE LETTER NO.42966/FFP.A2/2008/GAD DATED 29-7-2009 ISSUED BY THE STATE GOVT.TO THE RESPONDENT.
- EXHIBIT-P9: TRUE COPY OF THE ORDER NO.52/CC/K/50/2009-FF(SZ)DATED 6-10-2009 ISSUED BY THE RESPONDENT.
- EXHIBIT-P10: TRUE COPY OF THE JUDGMENT DATED 13-2-2012 IN W.P.(C)NO.115272010 AND CONNECTED CASES PASSED BY THE DIVISION BENCH OF THIS HON'BLE COURT.
- EXHIBIT-P11: TRUE COPY OF THE LETTER NO.64691/FFP.A2/2012/GAD DATED 25-9-2012 ISSUED BY THE STATE GOVT. TO THE PETITIONER.
- EXHIBIT-P12: TRUE COPY OF THAT LETTER NO.64691/FFP.A2/2012/GAD DATED 20-12-2012 ISSUED BY THE STATE GOVT.
- EXHIBIT-P13: TRUE COPY OF THE ORDER NO.52/CC/K/92/2010-FF(SZ)DATED 3-4-2013 ISSUED BY THE RESPONDENT.
- EXHIBIT-P14: TRUE COPY OF THE LETTER NO.6/1/97-FF(P) DATED 07.04.2003 ISSUED BY THE RESPONDENT TO THE STATE GOVT.
- EXHIBIT-P15: TRUE COPY OF THE EXTRACT OF CONVICT REGISTER IN RESPECT OF SRI.H.K.CHAKRAPANI.
- EXHIBIT-P16: TRUE COPY OF THE FILE NO.119/K/RTI/121/2014-FF(SZ) DATED 20.11.2014 ISSUED BY THE RESPONDENT TO MY COUNSEL.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**SHAJI P. CHALY, J.**

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**W.P.(C)No.10850 of 2013**  
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**Dated this the 19<sup>th</sup> day of November, 2015**

**JUDGMENT**

This writ petition is filed by the petitioner seeking to declare that the petitioner is entitled to get the benefit of "Swatantrata Sainik Samman Pension" (SSS Pension) due to her late husband Krishnan Damodaran, and also seeking to quash Ext.P13 order passed by the Government of India refusing to grant pension to the petitioner vide its order dated 03.04.2013, and for other related reliefs.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner's husband, late Krishnan Damodaran was a freedom fighter who had actively participated in the 'Punnapra-Vayalar Movement' during the freedom struggle and on account of his participation in the said struggle, an arrest warrant was issued against him by the then Special Magistrate's Court, Alappuzha in case No.P.E.7/1122 ME and in order to evade the arrest, he had gone underground for a

period of more than one year from 28.10.1946 to 30.12.1947. Therefore, the petitioner claims that her husband was a freedom fighter entitled to get the benefit of SSS Pension launched by the Government of India.

4. It is contended that petitioner's husband was granted the benefit of Kerala Freedom Fighters' Pension (State Pension) on account of his participation in the Punnappra-Vayalar struggle, evident from Ext.P1, and pursuant to his death on 18.12.2006, petitioner is getting the benefit of dependent family pension under the said Rules. It is further contended by the petitioner that since the freedom struggle stated *supra* was one recognized by the Government of India as part of the National Freedom Struggle for the purpose of grant of SSS Pension with effect from 20.01.1998, late Krishnan Damodaran had submitted Ext.P2 application along with other relevant documents including Personal Knowledge Certificate issued by one prominent freedom fighter Sri. Kunjan Sukumaran, who had undergone imprisonment in the Central Prison, Trivandrum for a period of more than five years and who is also a recipient of SSS Pension. It is the contention of the petitioner that along with Ext.P2 application, late

Krishnan Damodaran had produced the Non-availability of Records Certificate (NARC) from the Chief Judicial Magistrate's Court, Alappuzha, evident from Ext.P3. Since there was delay in considering Ext.P2 application, petitioner's husband had approached this Court earlier and secured Ext.P4 judgment by which this Court had issued direction to the Respondent to consider the application of the petitioner.

5. It is contended that, thereupon Ext.P5 order was passed rejecting the claim of late Krishnan Damodaran. Ext.P5 was passed by the Respondent holding that no sufficient proof was produced by the petitioner so as to establish the claim of the petitioner. Thereupon, late Krishnan Damodaran submitted a representation to the State Government along with Personal Knowledge Certificate issued by prominent freedom fighter Sri. H.K.Chakrapani who had undergone imprisonment in the Central Prison, Trivandrum for a period of more than five years and who is also a recipient of SSS Pension as well as holder of "Thamrapathra", evident from Ext.P6. Since the State Government did not recommend late Krishnan Damodaran, he again approached this Court and secured Ext.P7 judgment whereby the State Government was

directed to consider the application submitted. Accordingly, by Ext.P8, State Government has recommended the claim for the pension to the Respondent. But, again the same was refused by the Respondent, as per Ext.P9 order.

6. Being aggrieved by Ext.P9 order, petitioner approached this Court by filing W.P.(C) No.11527 of 2010 and as per Ext.P10 judgment dated 13.02.2012 along with other connected cases, the State Government was directed to process the applications of the petitioner and similarly situated persons including issuance of NARC. Apart from the same, other directions were also issued. On consideration, State Government issued Ext.P11 communication to the petitioner to rectify certain defects and thereupon petitioner produced original of Personal Knowledge Certificate issued by Sri. H.K.Chakrapani and NARC issued by the Chief Judicial Magistrate's Court.

7. Thereafter, State Government has issued specific recommendation along with NARC, evident from Ext.P12. Even though the said recommendation was forwarded to the Respondent, same was rejected by the Respondent by Ext.P13 order dated 03.04.2013 and it is thus aggrieved by Ext.P13,

petitioner has filed this writ petition.

8. Respondent has filed a counter affidavit reiterating its stand taken in Ext.P13 impugned order and contended that petitioner has not produced required documents so as to substantiate her claim that she is entitled to get SSS Pension in accordance with the terms of the Scheme proclaimed by the Respondent. It is also contended that the recommendation forwarded by the State Government is not acceptable since the State Government has not given any basis for recommending the claim and issued NARC based on the mere endorsement of Non-availability Record from the Court and the same is found to be contradictory. It is also contended that the documents provided by the petitioner cannot be treated as valid and to substantiate NARC in respect of the claim of the petitioner as per the provisions stipulated in the Scheme, sufficient evidence is not provided and therefore the NARC is not acceptable especially when the State Government has not issued the same in the prescribed manner as stated in the guidelines of the Scheme. It is the further contention of the Respondent that there was no application of mind by the State Government before making the recommendation. Therefore, the

Respondent prayed for dismissal of the writ petition.

9. Petitioner has filed a reply affidavit refuting the contentions, allegations and statements contained in the counter affidavit and produced three more documents to substantiate the claim.

10. Heard Advocate Sri. K.K. Sathish appearing for the petitioner and Sri. S. Krishnamoorthy, learned C.G.S.C appearing for the Respondent.

11. Having considered the rival submissions, I am of the considered opinion that the subject matter of the issue revolves around the correctness of Ext.P13 order passed by the Respondent. Respondent has considered the claim of the petitioner and has arrived at a conclusion that there is no primary evidence to justify the claim of the petitioner. But, in the absence of the primary evidence, held, secondary evidence is acceptable. But, it is stated that the secondary evidence viz. NARC issued by the State Government along with Personal Knowledge Certificate from a prominent freedom fighter viz. Sri. H.K. Chakrapani is not acceptable for the reason that, Sri. Chakrapani has been misusing the status of a freedom fighter and issuing Personal Knowledge Certificates indiscriminately

and that he was given pension in 2002 by giving the benefit of doubt and therefore the Personal Knowledge Certificate issued by him cannot be relied upon. It is also stated that the secondary evidence should be reliable enabling to induce a reasonable belief that the applicant fulfils the conditions of the Scheme. It is also held that the Personal Knowledge Certificate cannot be taken as genuine or conclusive proof as it can be obtained without much effort. Ext.P13 order further reveals that detailed investigation was conducted with regard to the Personal Knowledge Certificate issued by Sri. Chakrapani and it was held that the certificate is unable to be believed especially for the reason that, the certificate contains the exact date of underground period suffered by the late Krishnan Damodaran, which, according to the authority, is unable to believe.

12. It is also found by the Respondent that the recommendation made by the State Government is not binding on the Respondent if the conditions necessary for the grant of pension are not fulfilled by the State Government. Before passing of Ext.P13 order, directions contained in Ext.P10 judgment of this Court was also relied on by the Respondent in

order to examine the parameters that it was bound to follow while taking a decision.

13. I have gone through the entire documents produced by the petitioner, pleadings in the writ petition, counter affidavit and the reply affidavit. On an evaluation of facts and circumstances of the case, it is found that Ext.P13 order which is issued by the Respondent is founded on facts elicited by it by conducting necessary enquiries and it was found that the documents produced by the petitioner along with the application and also recommendation of the State Government do not inspire confidence on the statutory authority to consider the case of the petitioner. On an evaluation of the circumstances considered by the Respondent, I am of the considered opinion that in spite of factual enquiries made by the Respondent, they could not arrive at a conclusion that petitioner is a person entitled to SSS Pension on account of the underground period suffered by late Krishnan Damodaran. Therefore, neither the circumstances nor the documents produced by the petitioner are sufficient enough to establish that the order passed by the Respondent is unsustainable, illegal or arbitrary. Taking stalk of the entire factual and legal

circumstances, I am unable to reach a conclusion other than the one arrived at by the Respondent as per Ext.P13 order. Therefore, I do not find any reason to interfere with the said order passed by the Respondent, and accordingly this writ petition is dismissed.

14. However, taking into account the fact that the claim of the petitioner was declined, since she could not produce necessary documents to establish her claim, the right of the petitioner is left open and if and when the petitioner is able to secure relevant documents and evidence in accordance with the terms of the Pension Scheme, petitioner is given the liberty to approach the Respondent.

The writ petition is dismissed with the above observation.

Sd/-  
**SHAJI P. CHALY**  
**JUDGE**

//true copy//

P.S. to Judge

St/-  
16.11.2015