

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYASHTA, 1937

WP(C).No.10833 of 2014 (D)

PETITIONER:

**V.K.MEENAKSHI,W/O.SRI.HARIDASAN NAIR (LATE),
PRAKASH VIHAR,MELANGOTTU,KANHANGAD,
KASARAGOD DISTRICT.**

BY ADV.SRI.P.C.SASIDHARAN

RESPONDENTS:

- 1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF HOME AFFAIRS,FREEDOM FIGHTERS DIVISION,
2ND FLOOR,NEW DELHI CITY CENTRE - II,
PARLIAMENT STREET,NEW DELHI - 110 001.**
- 2. DEPUTY SECRETARY TO GOVERNMENT,
MINISTRY OF HOME AFFAIRS,FREEDOM FIGHTERS DIVISION,
2ND FLOOR,NEW DELHI CITY CENTRE -II,
PARLIAMENT STREET,NEW DELHI - 110 001.**
- 3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL ADMINISTRATION DEPARTMENT,
SECRETARIAT,THIRUVANANTHAPURAM-695001.**
- 4. THE DISTRICT COLLECTOR,CIVIL STATION,KASARAGOD-671001.**

**R1,R2 BY SRI.P.MURALEEDHARAN, CGC
SRI.S.KRISHNAMOORTHY, CGC
R3,R4 BY GOVT. PLEADER SRI.BIJU MEENATTOOR.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT P1:TRUE COPY OF THE STATE PENSION ORDER ISSUED IN FAVOUR OF
THE HUSBAND OF THE PETITIONER.**

EXHIBIT P2:TRUE COPY OF THE JUDGMENT IN WP(C) NO.37460/2007.

**EXHIBIT P3:TRUE OF THE ORDER ISSUED IN FAVOUR OF ONE OF THE LEGAL
HEIR OF THE GOA FREEDOM FIGHTER.**

**EXHIBIT P4:TRUE COPY OF THE COMMUNICATION ISSUED BY THE CENTRAL
GOVERNMENT DATED 15.02.2013.**

**EXHIBIT P5:TRUE COPY OF THE REPRESENTATION PREFERRED BY THE
HUSBAND OF THE PETITIONER DATED 19.06.2013.**

**EXHIBIT P6:TRUE COPY OF THE COMMUNICATION ISSUED BY THE CENTRAL
GOVERNMENT DATED 19.08.2013.**

EXHIBIT P7:TRUE COPY OF THE DECLARATION GIVEN BY SRI.HARIDASAN NAIR.

EXHIBIT P8:TRUE COPY OF THE JUDGMENT IN WP(C) NO.15429/2013.

EXHIBIT P9:TRUE COPY OF THE JUDGMENT IN W.A.NO.40 OF 2014.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J.

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Dated this the 19th day of June, 2015

J U D G M E N T

The petitioner is the widow of a freedom fighter, who is said to have participated in the Goa Liberation Movement Phase-II. Admittedly the petitioner's husband was a recipient of the State pension as is disclosed by Ext.P1. Though Ext.P1 does not disclose the specific freedom movement in which the petitioner's husband participated, the counter affidavit of the State says so:-

3. The petitioner is the widow of late Sri. Haridasan Nair seeks declaration that she is entitled to be paid dependent pension under the Central Scheme for the participation of the petitioner's husband in the Goa Liberation Movement Phase-II. On account of his participation in the above movement Kerala State Freedom Fighters Pension had been granted to the husband of the petitioner as per proceedings of the 4th respondent dated 14.01.1974.

2. The petitioner's contention is that the entitlement

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of the freedom fighters, who had participated in the Goa Liberation Movement Phase-II had often been agitated before this Court. At an earlier point, the Central Government had disentitled those persons from the State of Kerala, the pension under the Swathantra Sainik Samman Pension Scheme (SSS Pension) for participation in the Goa Liberation Movement Phase-II. The association of freedom fighters of that particular movement were before this Court in W.P.(C) No. 3506 of 2006.

3. Though the judgment is not produced herein, in Ext.P2 judgment, in a later writ petition, it is categorically found that the non-inclusion of the Kerala State in the list of States for grant of pension, was held to be arbitrary in W.P.(C) No.3506 of 2006. The writ petition which led to Ext.P2 judgment was filed by an individual freedom fighter and an association of members, who participated in the specific freedom struggle, against the denial of pension for reason only of the Central Government

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having decided to exclude those persons from State of Kerala. This Court found that such exclusion is not proper especially on the strength of the earlier declaration made by this Court and held that the Goa Liberation Movement Phase-II participants need not satisfy the requirements of SSS Pension scheme and so long as they are in receipt of the State pension for participation in that struggle, they should be paid the pension under the Central scheme also.

4. A direction was issued in the writ petition to disburse pension to those petitioners who were before this Court. The petitioner's husband too applied for the same. However, the same was declined by Ext.P4. In Ext.P4 obviously there was a mistake in noticing the name of the petitioner's husband, which was rectified as per Ext.P6. Ext.P4 read with Ext.P6 indicates that the Central Government rejected the claim on the ground that the petitioner's husband was not a petitioner

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in the writ petitions, which were disposed of by Ext.P2.

5. Similarly situated persons had approached this Court with a number of writ petitions, which was disposed of by Ext.P8. This Court again relying on the authoritative pronouncement in Ext.P2 found that as long as the State Government pension is granted to the freedom fighters on the basis of their participation in the Goa Liberation Movement Phase-II, necessarily the Central pension also has to be granted. An appeal taken was also disposed of by Ext.P9. While confirming the judgment of a learned single Judge, the Division Bench also answered an alternate argument took up by the Central Government, against the Central Government. The said contention was that the order granting the State pension did not have a reference to the specific movement, in which the pensioner participated.

6. Therein, the Division Bench specifically noticed that

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in the recommendation of the State Government to the Central Government, it was specifically recommended that the petitioners may be granted pension for their participation in the Goa Liberation Movement Phase-II. The issue of exclusion of persons from Kerala, who participated in the specific freedom struggle and the issue of the eligibility of even, persons who were not parties in Ext.P2 judgment, stands answered against the Central Government. A freedom fighter who has participated in the Goa Liberation Movement Phase-II and granted pension on that account by the State Government would be entitled to pension under the Central scheme from the Central Government.

7. In such circumstance, Ext.P4 read with Ext.P6 shall stand set aside. The petitioner shall approach the 3rd respondent and the 3rd respondent shall verify as to on what account the petitioner has been granted State pension as per Ext.P1 and make a recommendation within a period of one month from the

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date of receipt of the certified copy of this judgment. On receipt of such recommendation, making it clear as to on what account the petitioner is being paid the pension, the Central Government shall consider the claim of the petitioner afresh and disburse pension within a period of six months from the date of receipt of a certified copy of the recommendation from the State Government. It is made clear that the eligibility to pension shall be restricted, till the death of the petitioner's husband and later on the eligibility shall be only with respect to family pension, if any admissible.

The writ petition is disposed of with the above directions.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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// true copy //

P.A to Judge.