

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C).No. 15784 of 2014 (W)

PETITIONER:

CHINNU K, AGED 78 YEARS
W/O.LATE P.C.VIDHYARTHI, 'NAVADA', KOZHUR
P.O.ERUVATTY, THALASSERY, KANNUR DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.S.SHYAM KUMAR

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL ADMINISTRATION, SECRETARIAT
THIRUVANANTHAPURAM -695 001.

2. THE DISTRICT COLLECTOR
KANNUR - 670 001.

R1 BY ADV. GOVERNMENT PLEADER SRI RAFEEQ.V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P-1: A TRUE COPY OF THE CERTIFICATE ISSUED BY V.P.APPUKUTTAN.

EXT.P-2: A TRUE COPY OF THE CERTIFICATE ISSUED BY SRI.A.V.SREEKANDA
PODUVAL PROMINENT FREEDOM FIGHTER.

EXT.P-3: A TRUE COPY OF THE CERTIFICATE ISSUED BY SRI.P.V.KUNHIRAMAN
NAMBIAR PROMINENT FREEDOM FIGHTER.

EXT.P-4: A TRUE COPY OF THE PERSONNEL KNOWLEDGE CERTIFICATE ISSUED BY
PROMINENT FREEDOM FIGHTER T.V.KANNAN.

EXT.P-5: A TRUE COPY OF THE PERSONNEL KNOWLEDGE CERTIFICATE ISSUED BY
PROMINENT FREEDOM FIGHTER K.P.KANNAN.

EXT.P-6: TRUE COPY OF THE CERTIFICATE ISSUED BY V.M.GOVINDAN
NAMBISSAN.

EXT.P-7: A TRUE COPY OF THE APPLICATION FILED BY P.C.VIDHYARTHI FOR
FREEDOM FIGHTERS PENSION BEFORE THE 2ND RESPONDENT DATED 24.3.1995.

EXT.P-8: A TRUE COPY OF THE LETTER ISSUED BY THE TAHSILDAR.

EXT.P-9: THE RELEVANT PAGES OF THE BUDGET SPEECH OF THE FINANCE
MINISTER FOR THE YEAR 2004 - 2005.

EXT.P-10: A TRUE COPY OF THE RELEVANT PAGE OF MATHRUBHUMI DAILY DATED
7.7.2005.

EXT.P-11: A TRUE COPY OF THE REPRESENTATION DATED 18.12.2006.

EXT.P-12: A TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE
OFFICER, ERUVATTY DATED 10.5.2007.

EXT.P-13: A TRUE COPY OF THE COMMUNICATION
NO.108494/F.F.P.B.2/07/G.A.D DATED 12.2.2008.

EXT.P-14: A TRUE COPY OF THE COMMUNICATION DATED 22.2.2011 ISSUED BY
THE REVENUE DIVISIONAL OFFICER, THALASSERY.

EXT.P-15: A TRUE COPY OF THE REPRESENTATION TO THE CHIEF MINISTER.

EXT.P-16: A TRUE COPY OF THE JUDGEMENT OF THIS HON'BLE COURT DATED
9.1.2014 IN WPC NO.30500 OF 2011.

EXT.P-17: A TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND
RESPONDENT.

EXT.P-18: A TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED
20.3.2014.

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.15784 of 2014-W

Dated this the 25th day of May, 2015

JUDGMENT

The widow of a freedom fighter in the Malabar Area is petitioner herein challenging the rejection of her application for freedom fighters' pension. It is claimed that late Mr.P.C.Vidhyarthi, husband of the petitioner, was an active participant in the freedom movement since 1938; he participated in the Quit India Movement; apart from that he was actively involved in popularisation of Khadi and Hindi during the period from 1942 to 1947. The petitioner's husband had filed an application claiming freedom fighters' pension, but the same was rejected by Ext.P8 order of the District Collector, on 07.01. 1997, saying that the scheme under which he applied was cancelled.

2. The petitioner's husband had produced personal knowledge certificates Exts.P4 to P6, issued by M/s T.V.Kannan, K.P.Kannan and V.M.Govindan Nair, who are prominent freedom Fighters and recipients of central freedom fighters pension, certifying that he was an active freedom fighter who remained

underground for more than 6 months during August 1942 to February 1943 and was one on whom detention orders were issued and who evaded arrest. Exts.P2 and P3 certificates, issued by prominent freedom fighters Shri A.V.Sreekanda Poduval and Shri P.V.Kunhiraman Nambiar, show that he was a Khadi spinner, weaver and hawker and Hindi Pracharak under the Payyannur Charka Sangham and an institution formed under the All India Spinners Association, apart from being a freedom fighter.

3. Late Vidyarthi along with the petitioner, was in Calcutta during the period from 1961 to 1993 and he could submit the application for pension only in the year 1995, as in ExtP7, on 24.03.1995. Even though the application was sent along with all supporting documents, it was rejected on 7.1.1997 by Ext.P8 order of the District Collector, on the ground that the scheme under which he applied was already cancelled. In fact the cancellation was of the scheme with respect to the Khadi and Hindi movements alone and not the scheme for freedom fighter's pension. Petitioner's husband passed away on 26.07.1997. While so it was heard that the scheme for freedom fighters pension was being revived for Hindi workers. Thereupon, the petitioner

submitted another application, Ext.P11, on 18.12.2006 along with all supporting documents. After conducting an inquiry, the Village Officer submitted Ext.P12 report on it on 10.5.2007, as to the genuineness of the claim and eligibility for freedom fighters' pension. But the Government rejected the application, as per Ext.P13 on 12.2.2008, saying that the arrest warrant, records from jail, court, etc. were not produced, to prove the claim that he went underground participating in Quit India movement and also for the reason that the District Collector had not recommended it. On request made by the petitioner, the Revenue Divisional Officer, on 22.2.2011, informed the petitioner that records relating to petitioner's arrest could not be found out despite a thorough search. When there was no action even after submitting representation before the Chief Minister in Ext.P15, she approached this Court in W.P.(C)No.30500/2011, which was disposed of by Ext.P16 judgment directing the petitioner to approach the 2nd respondent and the 2nd respondent to consider the same. By Ext.P18 letter addressed to the District Collector, the Government rejected the request, saying that official records like arrest warrant, Court/Jail records were not produced along with the application. The 2nd respondent has

forwarded the same to the petitioner as per Ext P17. Petitioner is challenging the action of the Government, on the ground that the documents produced by her were not at all considered, with due application of mind before mechanically rejecting it.

3. The Government has filed a counter affidavit stating the circumstances under which one is eligible for freedom fighters' pension. There it is stated that under Rule 23 of the Kerala Freedom Fighters Pension Rules, the applications/review/appeal petitions received after 31.03.1994 will be considered only on production of documentary evidences from official records, showing the applicant's sufferings in connection with the freedom struggle. It is stated that the petitioner did not produce any documentary evidence to show her husband's eligibility. It is also stated that as per G.O(Rt) No.7200/96/GAD dated 31.08.1996 Khadi Hindi Pension was dropped in 1996 and again restored in 2011 as per G.O(P) No.230/2011/GAD dt.20.07.2011. But the petitioner gave emphasis on khadi Hindi pension when she applied for freedom fighter's pension, when one can claim only one pension.

4. I heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents.

5. It is seen that the petitioner's husband had already approached the authorities for pension submitting an application on 24.03.1995, as can be seen from Ext.P7, which happened to be rejected as per Ext.P8 letter dated 7.1.1997 under the guise of cancellation of the scheme. Petitioner or husband never raised claims for 2 pension. The 1st rejection itself indicates non-application of mind. The 2nd application was rejected by Ext.P13 on 12.2.2008, for want of documents. Ext.P11 application and Ext.P12 report/recommendation of Village Officer would indicate that documents were produced along with her application and those were found genuine. Respondents rely on Rule 23 to non-suit the petitioner.

6. Rule 23 was inserted only on 5.2.2008, providing that applications/review/Appeal petitions received after 31.3.1994 will be considered duly on production of documentary evidence from official records such as warrant of arrest, court records, jail records clearly showing the applicant's suffering in connection with the freedom struggle. By keeping the application pending for long, the respondents should not have rejected Ext.P11 application of the petitioner, invoking the new provision, despite the fact that it was duly recommended in Ext.P12, well before

the new rule came into force on 5.2.2008, even if the rule refers to applications submitted after 31.3.1994. Respondents ought to have considered the claim with reference to the records produced, instead of waiting for amendment of rules to reject the application. The ground for rejecting the application on the third occasion, as per Ext.P18 is also the same. The respondents ought to have looked into the materials-the certificates issued by prominent freedom fighters and the letter of RDO as to the improbability of searching out the jail/court records. Therefore the rejection by Ext.P13 as well as Ext.P18 are illegal.

7. One of the claims raised by the petitioner is that the petitioner's husband was actively involved in popularisation of Hindi/Khadi for about 5 years. The eligibility conditions enumerated for grant of freedom fighters' pension, as given in para.4 of the counter affidavit includes at clause (i): a period of not less than 3 years in the popularisation of Hindi/Khadi before 15.08.1947. Petitioner's eligibility is not disputed in the counter affidavit, while stating that only one claim is admissible. Therefore the petitioner is entitled to be considered for pension on both grounds.

8. In this case the petitioner relied on the judgment

reported in **Augusthy Mathai v. Union of India** [2008(2) KLT SN 8 (C.No.9)], in which this Court held that since the object of the claim is to honour and to mitigate the sufferings of the freedom fighters, a liberal and not a technical approach should be made. The claims under the scheme should be determined on the basis of probabilities and not by applying the test of “beyond reasonable doubt”. The petitioner also relied on **Kelappan K.M v. State of Kerala and another** [2007(3) KLJ 468 : 2007 KHC 4409], in which this Court held that personal knowledge need not be ascertained as a co-underground sufferer. It is also held that as a person in the know of the activities of the movement, his knowledge regarding the others in the struggle cannot be simply brushed aside and the claim cannot be rejected without considering the claim when certificates are issued by prominent freedom fighters.

9. It is settled law that the applications for freedom fighters’ pension are to be considered with due application of mind. This Court as well as the Apex Court have time and again reminded the requirement to honour the freedom fighters. But the respondents failed to consider the application of the petitioner in the light of such principles.

10. Absence of jail records or the records from court cannot be a reason for rejection of the application, when the certificates from prominent freedom fighters were already produced. Moreover the Rules are amended recently inserting Rule 23A, enabling consideration of the cases without insisting on any of the conditions prescribed in the rules. Therefore the respondents are not justified in sticking on Rule 23 of the Rules in order to reject the application. The respondents ought to have considered the documents produced by petitioner with due application of mind and with due regard to the cause for which persons like the petitioner's husband fought for the freedom of our country, in the light of the principles laid down in the judgments cited supra. The claims under this scheme required to be determined on probabilities and not on strict rule of evidence. In this case the respondents passed Ext.P18 order without any application of mind, simply reproducing the words in the order of rejection passed by them earlier in Ext.P13. When this Court directed the respondents to consider the application submitted by the petitioner, the respondents were duty bound to consider that application with reference to the documents produced, keeping in mind that the object of this scheme is to

mitigate the sufferings of the freedom fighters for which a liberal and not technical approach should be made. In this case though the respondents have already rejected the application submitted by the petitioner's husband as per Ext.P8 on 07.01.1997, there cannot be any dispute over the fact that the application was submitted claiming freedom fighters' pension at least on 24.03.1995, which is reference No.2 in Ext.P8. Unfortunately that rejection happened to be on the ground that the scheme for Hindi Pracharak was cancelled, without going into the merits of the claim for freedom fighters pension.

11. In the above background, the Government ought not have rejected the request of the petitioner in the manner shown in Ext.P18, merely on the ground that the petitioner did not produce certificates from jail authorities along with her application. In the absence of such records, which the concerned officials themselves found unable to trace out, the respondents ought to have considered the documents produced by the petitioner, in which the prominent freedom fighters certified her husband's involvement in the freedom struggle and in Hindi and Khadi movement. Her claim for freedom fighters pension on the ground that her deceased husband was engaged

in Khadi/Hindi movement, is also not considered, even when the provision for pension for Hindi workers have been restored in 2011. Respondents in their own counter affidavit, stated in para 4 that one of the eligibility conditions for grant of Freedom fighters pension under the rules is involvement in popularisation of Khadi or Hindi for a period less than 3 years before 15th August 1947. That being so, there was no reason for denying her claim at least on that ground.

In the above circumstances, I quash Ext.P18 and direct the 1st respondent to reconsider the claim of the petitioner in the correct perspective, with reference to the documents Exts.P1 to P6, P12 and P15 and in the light of the principles underlying the judgments cited supra, and to pass orders thereon after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

This Writ Petition is disposed of accordingly.

Sd/-

(P.V.ASHA, JUDGE)

rtr/