

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 25938 of 2013 (N)

PETITIONER :

V.DEMIANOSE,
SUSHAMA NIVAS, OPP. T.C. LTD, ELEMPALLOOR,
KUNDARA P.O., KOLLAM. (DIED)

*ADDL.P2 IMPEADED

*ADDL. R2. C.V.MARY DASI,AGED 82 YEARS,
W/O.V.DEMINIOSE, SUSHAMA NIVAS,
OPP. T.C.LTD., ELEMPALLOOR, KUNDARA P.O.,
KOLLAM.

*ADDL.PETITIONER IMPEADED AS PER ORDER DATED 16.02.2015 IN
IA.NO.11398/14.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENT(S):

1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS DIVISION,
LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI-001

2. THE GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
GENERAL ADMINISTRATION (FFP-A) DEPARTMENT,
SECRETARIAT TRIVANDRUM-695 001

R1 BY ADV. SRI.N.NAGARESH ,ASG OF INDIA
SRI.S.KRISHNAMOORTHY, CGC
R2 BY GOVERNMENT PLEADER SRI.SAIDALAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE PROCEEDINGS NO. N2.5878/99 DATED 6-11-2000 OF THE DISTRICT COLLECTOR, KOLLAM SANCTIONING THE STATE PENSION TO THE PETITIONER.
- EXT.P2 - TRUE COPY OF THE LETTER NO.119/52 2000/FF(SZ) DATED 31-8-2000 OF CENTRAL GOVERNMENT ACKNOWLEDGING RECEIPT OF APPLICATION DATED 30-8-2000 OF THE PETITIONER.
- EXT.P3 - TRUE COPY OF THE PERSONAL KNOWLEDGE CERTIFICATE (CERTIFICATE OF ABSCONDANCE) FROM CO-FREEDOM FIGHTER SHRI.M.SREEDHARAN PILLAI DATED 17-1-1996
- EXT.P4 - TRUE COPY OF THE PERSONAL KNOWLEDGE CERTIFICATE (CERTIFICATE OF ABSCONDANCE) FROM CO-FREEDOM FIGHTER SHRI.O.RAGHAVAN DATED 4-11-1998.
- EXT.P5 - TRUE COPY OF THE PERSONAL KNOWLEDGE CERTIFICATE FROM CO-FREEDOM FIGHTER SHRI.H.K.CHAKRAPANI DATED 12-6-2005.
- EXT.P6 - TRUE COPY OF THE LETTER NO.119/9/2008-FF(SZ) DATED 19-11-2008 OF GOVERNMENT OF INDIA REJECTING PETITIONER'S APPLICATION.
- EXT.P7 - TRUE COPY OF THE LETTER NO.3689/FFP-A3/2009/GAD DATED 15-5-2009 OF THE STATE GOVERNMENT WITH CLARIFICATION & ISSUING AN NARC.
- EXT.P8 - TRUE COPY OF THE LETTER 3689/FFP-A3/2009/GAD DATED 23-10-2009 OF THE STATE OF GOVERNMENT FORMALLY RECOMMENDING PETITIONER'S CASE.
- EXT.P9 - TRUE COPY OF THE JUDGMENT DATED 10-8-2011 IN WPC.38000/2010 OF THIS HONOURABLE COURT.
- EXT.P10 - TRUE COPY OF THE COMMUNICATION NO.62023/FFP-A3/2011/GAD DATED 10-10-2011 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.
- EXT.P11 - TRUE COPY OF THE ORDER DATED 11-10-2011 ISSUED BY THE 1ST RESPONDENT
- EXT.P12 - TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN WPC.NO.34075/2011
- EXT.P13 - TRUE COPY OF THE JUDGMENT DATED 27-6-2013 IN WPC.34075/2011 OF THIS HON'BLE COURT.

WP(C).NO.25938/2013

- EXT.P14 - TRUE COPY OF THE ORDER DATED 12-8-13 ISSUED BY THE 1ST
RESPONDENT.
- EXT.P15 - TRUE COPY OF THE ORDER DAED AUGUST 2013 ISSUED BY THE 1ST
RESPONDENT CORRECTING THE 10TH PARAGRAPH OF THE EXHIBIT-
P14 ORDER.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 25938 of 2013

Dated this the 4th day of March, 2015

J U D G M E N T

Ext.P14, by which the 1st petitioner's claim for 'Swathanthra Sainik Samman Pension' was rejected by the 1st respondent, is under challenge in this writ petition.

2. It is quite unfortunate and distressing to note that the 1st petitioner has come up before this Court in the third round of litigation on this issue. The 1st petitioner died during the pendency of the writ petition; and the additional 2nd petitioner, who is his widow, was impleaded subsequently.

3. Initially, by Ext.P6 order, the 1st respondent declined the claim of the 1st petitioner for the following reasons;

- i. The co-freedom fighter, Shri. Chakerapani, who issued the Personal Knowledge Certificate, was not from the petitioner's administrative district, Kollam.

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ii. Non-availability of Records Certificate was not given by the State Government.

iii. State Government had not recommended.

4. The petitioners point out that the 2nd respondent, by Exts.P7 & P8, cured the defects pointed out by the 1st respondent. This Court, by Ext.P9 judgment, quashed Ext.P6 order and directed the 1st respondent to reconsider the claim of the petitioner within eight weeks from the date of receipt of the recommendations from the 2nd respondent. The 2nd respondent was also directed to forward the necessary documents to the 1st respondent within six weeks.

5. It is further alleged by the petitioners that the 2nd respondent along with the communication dated 10.10.2011 (Ext.P10) forwarded the necessary documents to the 1st respondent. But, even before the receipt of the communication from the 2nd respondent, the 1st respondent rejected the claim of the 1st petitioner by Ext.P11 order dated 11.01.2011 taking similar view as

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taken in Ext.P6 order. Again the 1st petitioner approached this Court with WP(C) No.34075/2011; and this Court, by Ext.P13 judgment dated 27.06.2013, quashed Ext.P11 order and directed the 1st respondent to reconsider the issue on the basis of Ext.P10 communication. The grievance of the petitioners is that the 1st respondent again declined the claim of the 1st petitioner by Ext.P14 order dated 12.08.2013.

6. A detailed counter affidavit has been filed by the 1st respondent. The 2nd respondent also has filed a counter affidavit. The stand taken by the State Government is that the sanctioning authority of pension is Government of India.

7. On going through Ext.P14, which is impugned, it can be seen that there was total non-application of mind. The concluding portion of Ext.P14 reads as under;

“10. Since the claim does not meet the evidentiary requirements and eligibility criteria of the SSS Pension Scheme, 1980, it is regretted that claim of Smt.Leela Thankappan W/o Late K.A.Thankappan, for grant of pension cannot be accepted and the claim is hereby rejected. This decision may please be communicated to the petitioner under intimation to this Ministry.”

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It is quite strange to note that the 1st petitioner's name is, 'V.Demianose'. However, as per Ext.P14, the 1st respondent has disposed of an application filed by one Leela Thankappan, W/o Thankappan, for grant of pension. Evidently, while passing Ext.P14, the 1st respondent was guided by the papers in the file relating to the claim preferred by the aforesaid Leela.

8. As the impugned order was passed without application of the mind, this Court is of the view that it is only proper to direct the 1st respondent to consider the matter afresh after affording the 2nd petitioner or her authorized representative an opportunity of being heard.

In the result, the writ petition is disposed of directing the 1st respondent to reconsider the application in the light of what has been stated above. As the 1st petitioner is no more, the 2nd petitioner or her authorized representative shall be given an opportunity of being heard before a final decision is taken in the matter. The entire exercise shall be completed within a period of one

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month from the date of receipt of a copy of this judgment.

To facilitate an early action, it shall be open to the 2nd petitioner or her authorized representative to produce a copy of this judgment and a copy of her application before the 2nd respondent.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-