

State of Kerala and Another Vs. K.Raghavan

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Court : Kerala

Decided On : Dec-20-2012

Judge : Hon'Ble the Chief Justice Mrs. Manjula Chellur

Appellant : State of Kerala and Another

Respondent : K.Raghavan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE THE CHIEF JUSTICE MRS. MANJULA CHELLUR & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE THURSDAY, THE 20TH DAY OF DECEMBER 2012 29TH AGRAHAYANA 193 WA.No. 351 of 2010 () -----
AGAINST THE JUDGMENT IN WPC.29695/2005 DATED 23 03-2009
----- APPELLANTS/RESPONDENTS IN THE WPC:
----- 1. STATE OF KERALA REPRESENTED BY THE SPECIAL SECRETARY TO THE GOVERNMENT OF KERALA, GENERAL ADMINISTRATION (FFP B) DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM.

2. TEH DISTRICT COLLECTOR, KOLLAM. BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS RESPONDENT/PETITIONER IN THE WPC:
----- K.RAGHAVAN, THADATHIL KIZHATHIL VEEDU, PULIYOORVANCHI SOUTH, EDAKULANGARA, THODIYOOR KARUNAGAPPALLY, KOLLAM. BY ADVs.SMT.D.P.RENU SRI.N.DHARMADAN

(SR.) THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10.9.2012, THE COURT ON 20.12.2012, DELIVERED THE FOLLOWING: VK MANJULA CHELLUR, C.J & A.M.SHAFFIQUE, J.

----- W.A.No. 351 of 2010
----- Dated this the 20th day of December, 2012

JUDGMENT

Shaffique, J.

The respondents in W.P.(C) No. 29695/2005 are the appellants. The petitioner in the writ petition is the respondent herein.

2. The writ petition is filed challenging Ext. P2 order of the Government denying the petitioner the Kerala Freedom Fighters' Pension as provided under the Kerala Freedom Fighters' Pension Scheme and for a direction to the official respondents to consider the application as per the Scheme framed by Government of Kerala.

3. The petitioner claims to be a freedom fighter, having participated in a freedom struggle by way of participation in the Quit India Movement and had undergone imprisonment from 25.1.1114 (M.E) to 25.3.1114 W.A.No. 351 o

2. and 26.3.1114 to 28.7.1114.

4. He had approached this Court on an earlier occasion when the Government rejected his application for freedom fighters' pension as per the Scheme which resulted in Ext.P1 judgment, wherein this Court directed the application to be considered afresh, notwithstanding the rejection of the same earlier.

5. Before the Government, petitioner produced various documents to substantiate the claim and Ext.P3 is the representation. The Government by Ext.P2, after referring to the documents produced and the materials relied upon by the petitioner opined that though the petitioner has produced co-prisoner certificates from Sri. Thundathil Kunhukrishna Pillai and Sri.K.Vasu and the abscondence certificates from Sri.K.K. Karunakaran and P.K.Shanmughan, no jail records were produced to show that the certifiers were eligible to issue such certificates. It is

further found that the Non-Availability of Record W.A.No. 351 o

3. Certificate produced from 1st Class Magistrate Court, Karunagappally would only indicate that there are no records in C.C.No. 36/1114 and it will not show that the case is related to the petitioner.

6. Before the learned Single Judge, additional documents were also produced in the form of co-prisoners certificate relied upon by the petitioner and also extract of school admission register.

7. The learned Single Judge came to a finding that in view of Ext. P7 series documents, it was evident that the persons who had issued certificates are Thamra Pathra Award holders and recipients of Central Freedom Fighters' Pension and therefore it was wrong on the part of the Government to have rejected such co-prisoners certificate and to deny the pension to the petitioner. Learned Single Judge also relied upon Ext.P4 to show that the date of birth of petitioner is 15.5.1099 M.E and therefore it was not correct on the part of the Government to hold that the W.A.No. 351 o

4. petitioner was a minor at the time of the alleged detention. In that view of the matter, learned Single Judge directed the respondents to consider the case of the petitioner in the light of documents and observations made in the judgment and pass appropriate orders within three months from the date of receipt of copy of the judgment and that the petitioner is entitled for pension from the date of application. Though a review was filed to limit the pension from the date of sanction of the pension, the same came to be dismissed with costs.

8. It is impugning the above judgment and the order in review the appeal is filed on the limited question regarding the date from which pension is to be awarded. Heard the Government Pleader, Sri.P.A.Davis appearing on behalf of the appellants and learned counsel for the respondent.

9. It is the contention of the appellants that the direction issued by the learned Single Judge to sanction W.A.No. 351 o

5. pension from the date of receipt of the application for pension is against the judgment of the Supreme court in State of Madhya Pradesh v. Devakinandan Maheshwari [(2003) 3 SCC 183.and Union of India v. Kaushalaya Devi [2007 (9) SCC 525]. According to learned Government Pleader as per Rule 18 of the Freedom Fighters Pension Rules, pension is payable only from the date of sanction. It is clearly indicated that the pension sanctioned under the Rules shall be payable from 1.4.71 only in the case of applications received up to 15.8.72 and with reference to application received after 15.8.72, pension will be granted only from the date of issue of sanction order.

10. It is not in dispute that Rule 18 of the Kerala Freedom Fighters' Pension Rules governs the issue. In so far as the pension of the petitioner was not sanctioned earlier and the same stood rejected, even as per Ext.P2 and even in a case of wrongful rejection , it may not be open for W.A.No. 351 o

6. the petitioner to claim pension from the date of application as the Rule is very specific that the pension will be allowable only from the date of order. In fact, according to the Government by virtue of Ext.P2, the request for pension was rejected as there were disparities and contradictions in the documents produced and the same were not sufficient for the grant of pension. Learned Single Judge, however, found on the basis of Ext.P7 series of documents and Ext.P4 that pension should be granted and the Government has agreed to provide the said benefit.

11. That apart it is held by the Supreme Court in Union of India and Others v. Kaushalaya Devi [2007 (9) SCC 525.that when pension is granted on the basis of secondary nature of evidence the pension can be granted only from the date of order and not from date of application. Therefore, such benefit can accrue only from the date of sanction of the pension and not from an W.A.No. 351 o

7. earlier occasion.

12. In that view of the matter, the judgment in the writ petition to the extent mentioned above and the order in review are set aside and it is made clear that the petitioner will be entitled for pension only from the date of order sanctioning the

pension. The writ appeal is allowed as above. MANJULA CHELLUR, CHIEF JUSTICE A.M.SHAFFIQUE, JUDGE rka

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