

Bindu C. vs State of Kerala

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Court : Kerala

Decided On : Mar-05-2025

Judge : Honourable Mr. Justice Amit Rawal,Honourable Mr.Justice K. V. Jayakumar

Appeal No. : WA/830/2021

Appellant : Bindu C.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR WEDNESDAY, THE 5TH DAY OF MARCH 2025 / 14TH PHALGUNA, 1946 WA NO. 830 OF 2021 AGAINST THE JUDGMENT DATED 12.03.2021 IN WP(C) NO.16048 OF 2020 OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS IN THE WRIT PETITION:

1 BINDU C., AGED 46 YEARS, W/O. LATE HAV. RADHAKRISHNAN K, R.K.BHAVAN, CHUNAKKARA NORTH P.O, MAVELIKKARA, ALAPPUZHA DISTRICT. 2 SINDHU B., D/O. LATE HAV.

RADHAKRISHNAN K, R.K.BHAVAN, CHUNAKKARA NORTH P.O, MAVELIKKARA, ALAPPUZHA DISTRICT. BY ADVS. GEORGE VARGHESE(PERUMPALLIKUTTIYIL) A.R.DILEEP P.J.JOE PAUL MANU SRINATH RESPONDENTS/RESPONDENTS IN THE WRIT PETITION: 1 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT, DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001. 2 SECRETARY SAINIK WELFARE DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.

WA NO. 830 OF 2021 -2- 3 DIRECTOR DEPARTMENT OF SAINIK WELFARE, VIKAS BHAWAN, THIRUVANANTHAPURAM - 695033. 4 ZILA SAINIK WELFARE OFFICER ZILA SAINIK WELFARE OFFICE, ARATTUVAZHY ROAD, ALAPPUZHA - 688007. BY ADV. SRI T.K.VIPINDAS, SR.GOVERNMENT PLEADER THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WA NO. 830 OF 2021 -3-

JUDGMENT

AMIT RAWAL, J.

Present appeal is directed against the judgment

of the Single Bench dated 12.03.2021 in W.P. (C)No.16048 of 2020, whereby the following relief sought by the petitioner has been rejected: i) declare that Exts. P8 and P16 are illegal, unjust and arbitrary; ii) issue a writ in the nature of certiorari or any other writ, order or direction quashing and setting aside Exts. P8 and P16; iii) declare that Ext. P7 is unconstitutional, void and inoperative to the extent it excludes the dependents of personnel of Assam Rifles who die in combat from the benefit of employment assistance; iv) declare that Ext. P15 is unconstitutional, void and inoperative to the extent it grants the benefit of employment assistance to

the dependents of personnel of Assam Rifles who die in combat only for casualties on or after 07.06.2019; v) declare that the exclusion of Assam Rifles WA NO. 830 OF 2021 -4- from clause 2 (i) of Ext. P7 is grossly illegal, unjust, arbitrary and unconstitutional and declare that Assam Rifles along with other Central Armed Police Forces are liable to be included therein for the grant of employment assistance from the date of its issuance;

vi) declare that clause 3 (i) of Ext. P15 which limits the grant of employment assistance to the dependents of Assam Rifles and other paramilitary forces only if the casualties occurred on or after 07.06.2019 is illegal and unconstitutional and declare that the benefits provided thereunder shall accrue to the benefit of the dependents of Assam Rifles and other paramilitary forces from 29.04.2002 i.e. the date of issuance of Ext. P7;

vii) declare that the 2nd petitioner is entitled for grant of employment assistance under Ext. P15 de hors clause 3 (i) therein; viii) issue a writ of mandamus or any other writ, direction or order directing respondents to grant employment assistance to either of the petitioners under Exhibit P7, de hors the restrictions therein, within such time as may be fixed by this Honourable Court; ix) grant such other reliefs as deemed fit by this Honble Court; WA NO. 830 OF 2021 -5-

2. The short point involved in the present

case is that the appellants are the wife and daughter of Mr. Radhakrishnan, who was a Hawildar/Operator Radio in Assam Rifles. Unfortunately, he died while on duty. The grievance expressed was that the dependents of the personnel of Defence Forces, Border Security Force

(BSF) and General Reserve Engineering Force (GREF)

were entitled to compassionate employment. However, the Government came out with a policy Ext. P7, whereby the benefit of compassionate appointment was not included to the personnel working with the Assam Rifles. Though a representation was submitted, that has also been rejected. Learned Single Bench dismissed the

writ petition by observing as under:

15. When I evaluate the afore submissions, I am without doubt that the competence of this Court to inter-meddle with the policy decisions of the Government is extremely restricted. It is now well settled that it is only in cases where the policy is capricious or perverse or is contrary to the Constitutional scheme of this country, this Court will step in to set it aside or correct it.

16. In the case at hand, it has been explained by the Government that they first
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classified the Military, along with GREF and BSF as one category in the year 1974, taking into account the fact that these forces were directly involved in war. It was thereafter relaxed through Ext.P7 to include not merely dependents of martyred soldiers, but also those who were discluded; but the status of the categories of forces included, as in the year 1979, was maintained.

17. It is only subsequently in the year 2019, that the Government decided to include

various other categories of forces and this order

was issued only on 07.06.2019, which date has been retained in Ext.P15 order dated 11.03.2020, to be the cut-off, after which fatalities for the purpose of compassionate employment have been recognised.

18. I cannot find the justification

offered by the Government in support of their policy to be perverse or flowed though Sri.George Varghese - the learned counsel for the petitioner - vehemently argues that while Ext.P7 order was issued on 29.04.2002, the Government ought to have included all the categories of

the Central Armed Police Forces as defined in Ext.P9 and that such non-inclusion is illegal and unconstitutional. I am afraid that I cannot find immediate favour with this contention because the Government did not issue Ext.P7 for the first time in the year 2002, but was only following the 1979 order, by which the Scheme for Compassionate Appointment was introduced. Through Ext.P7, the Government had only relaxed the criteria for granting compassionate appointment, by reckoning even disability of 50% to be one of the applicable ones; but for all other purposes, the manner and tenor of the 1979 order was maintained.

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Therefore, I cannot find the non-exclusion of the Assam Rifles in Ext.P7 to be perverse or unconscionable, particularly when there is nothing before me to show that the Government had been approached by any person at that relevant time for such inclusion. Obviously, the Government continued the 1979 order, but relaxed it to the extent afore mentioned.

3. Learned counsel appearing on behalf of

the petitioners-appellants submitted that the Government was remiss in not including the wards of the Assam Rifles personnel for consideration of the compassionate employment, as the death of Mr.Radhakrishnan was in harness.

4. Ext.P5 application dated 09.08.2005 was rejected vide Ext.P8 order dated 27.09.2005. Even no

explanation had come forth in not challenging the order

Ext.P8 for almost fifteen(15) years and had woken up from the slumber to challenge it only in the year 2020. Compassionate employment cannot be granted at the drop of the hat, it has to be in very rare cases where parties are not able to meet both the ends. No material has been placed on record to satisfy that requirement in WA NO. 830 OF 2021 -8- giving slightest ray of hope in the mind of

the Court for directing the Government to incorporate the wards of the employees working in the Assam Rifles. However, in paragraph No.21, while dismissing the writ petition following findings have been given:

21. However, I do not think that the Government is so incapacitated and it will be certainly up to them to decide if cases like this have to be given the importance it deserves, by offering support to the dependents of such personnel, who have offered the ultimate sacrifice in service of the country.

We are of the view that the finding of fact and law arrived at by the learned Single Bench do not suffer from any non-exercise of judicial review. Writ appeal is bereft of the merit, dismissed. Sd/- AMIT RAWAL JUDGE Sd/- K. V. JAYAKUMAR JUDGE vv WA NO. 830 OF 2021 -9- APPENDIX OF WA 830/2021 PETITIONER ANNEXURES ANNEXURE 1 A TRUE COPY OF THE INFORMATION ABOUT

THE ASSAM RIFLES OBTAINED FROM
HTTPS://INDIANARMY.NIC.IN/WRITEREADDAT A/DOCUMENTS/CLAWS
06011119.PDF.

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