

Union of India vs K.Gomathy

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Court : Kerala

Decided On : Nov-15-2022

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WA/743/2019

Appellant : Union of India

Respondent : K.Gomathy

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY TUESDAY, THE 15TH DAY OF NOVEMBER 2022 / 24TH KARTHIKA, 1944 WA NO. 743 OF 2019 AGAINST THE ORDER/JUDGMENT DATED 25.05.2018 IN WP(C) 2692/2013 OF HIGH COURT OF KERALA APPELLANT/RESPONDENT: UNION OF INDIA REPRESENTED BY ITS DEPUTY SECRETARY TO GOVT. MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS DIVISION (FFR DIVISION), 2ND FLOOR, NDCC-2 BUILDING, PARLIAMENT STREET, NEW DELHI - 110 003. BY ADV SRI.JAISHANKAR V.NAIR, CGC

RESPONDENT/WRIT PETITIONER: K.GOMATHY W/O LATE C K MADHAVAN @ KUTTAN MADHAVAN PUTHUSSERY VELIYIL, S L PURAM P O CHERTHALA TALUK, ALAPPUZHA DT, PIN - 688 523. BY ADV K.K.SATHEESH(B/O) THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

JUDGMENT

S. MANIKUMAR, CJ Instant writ appeal has been filed by the Union of India, Represented by is Deputy Secretary to Government, Ministry of Home Affairs, Freedom fighters Division (FFR Division), New Delhi, challenging the judgment dated 25.05.2018 in W.P.(C) No.2692 of 2013, by which, the writ court allowed the writ petition directing the appellant herein to grant pension to the writ petitioner, in accordance with scheme, within a period of three months.

2. Impugned judgment reads as under:

The petitioner is the widow of late C.K. Madhavan. The petitioner's application for Swatantrata Sainik Samman Pension was rejected stating that the petitioner had not produced any primary evidence.

2. The petitioner's case is that the petitioner's

deceased husband was a holder of 'Thamrapathra'. The petitioner has also produced certificate of imprisonment as per Ext.P1. The State Government examined the certificate and found that it was genuine. The State Government recommended the petitioner's case.

3. The Union Government rejected the request

stating that there are no records for clarifying the nature of Act 1 of 1122 to refer that the petitioner's husband had participated in the Punnapra-Vayalar struggle. -3-

4. Learned counsel for the petitioner made

available a copy of Act 1 of 1122. On perusal of the Act would show that rejection of the petitioner's request was on account of the reason that the Act was not placed before the Union Government.

5. A reading of Sections 9(1) and 9(5) of the Act

would clearly show that the imprisonment therein was for three years. In such situation, I am of the view that the application was proper and the petitioner's claim for pension ought to have been allowed. If that be so, this writ petition is only to be allowed. Accordingly, this writ petition is allowed. The Union Government is directed to grant pension to the petitioner in accordance with the Scheme within a period of three months.

3. Brief facts leading to the filing of the writ petition are

that; petitioner/respondent herein has filed the writ petition challenging Exhibit-P9 order dated 2.1.2013 issued by the appellant herein and seeking for a declaration that she is entitled to get the benefit of Swatantrata Sainik Samman Pension (SSS Pension), due to her late husband.

4. Writ petitioner has stated that her husband was a

freedom fighter, who had actively participated in Punnapra- Vayalar Movement. On account of his participation, he was convicted and sentenced to undergo simple imprisonment for six months under Section 9(5) r/w. 9(1)(a) of Act 1 of 1122 ME, in connection with a case in C.C No.3/1124 ME by the learned -4- Judicial First Class Magistrates Court, Cherthala. Thereupon, he was admitted in the Central Prison, Thiruvananthapuram on 1st Vrichikam 1124 ME as Convict No.9780 and was released on 26-08-1124 ME, on expiry of sentence, as evidenced by Exhibit- P1 Jail Certificate issued by the Superintendent of Central Prison, Thiruvananthapuram dated 11.04.2011. Therefore, he was entitled to the benefit of SSS Pension.

5. Writ petitioner has further stated that her husband was

the holder of Thamarapathra and also the recipient of State Pension. He expired on 26-08-1983. Pursuant to the recognition of Punnapara-Vayalar Movement, writ petitioner made an application dated 24.07.1998, wherein she claimed about the sufferings undergone by her husband late Sri. C.K.Madhavan at the time of imprisonment.

6. The grievance of the writ petitioner is that though the

State Government as per Exhibit-P7 judgment dated 16.03.2012 in W.P.(C) No.16748/2011 has recommended her claim for SSS Pension vide Exhibit-P8 letter dated 20.07.2012, appellant has rejected the same and passed Exhibit-P9 order dated 2.1.2013, completely ignoring the basic principles/objectives of the SSS -5- Pension Scheme. In such circumstances, respondent herein has filed W.P.(C) No.2692 of 2013 for the following reliefs:

(i) Declare that the petitioner is entitled to get the benefit of Swatantrata Sainik Samman Pension (SSS Pension) due to her late husband;

(ii) Call for the records leading to the issue of Exhibit-P9 and quash its original by issuance of a writ of certiorari.

(iii) Issue a writ of mandamus or other appropriate writ,

direction or order, compelling the respondent to grant the benefit of dependent family pension under the SSS Pension Scheme to the petitioner on the basis of Exhibit-P8 recommendation report of the State Government, with the actual arrears due to her, within a stipulated time.

(iv) Issue any other appropriate writ, direction or order

as this Court deems fit and proper in the nature and circumstances of the case.

7. Refuting the averments in the writ petition, appellant herein has filed a counter affidavit.

8. After considering the facts, submissions and the statutory

provisions of Act, 1 of 1122, viz., Travancore Emergency Powers Act, 1122 (ME), vide the impugned judgment, writ court has allowed the writ petition, as extracted above.

9. Being aggrieved, instant writ appeal has been filed by the respondent before the writ court. -6-

10. Heard the learned counsel for the parties and perused the material on record.

11. The issues raised in the writ appeal have been decided by us in the judgment dated 25.08.2022 in W.A. Nos.122 & 1691 of 2019. Operative portion of the said judgment is reproduced:

48. As regards the first ground for rejecting the claim of the respondent, as rightly observed by the writ court, there was no dispute as regards the authenticity and correctness of the jail certificate issued by the Superintendent of Central Prison, Thiruvananthapuram, produced as Exhibit-P1 in W.P.(C) No.36191/2018 dated 20.07.1972. Perusal of ExhibitP1 extract of convict register shows that the case in which the husband of the respondent was convicted and sentenced is the one in relation to C.C. No.238/1124 ME on the file of the Divisional First Class magistrate's Court, Alappuzha for offenses under Section 9(5) of the Travancore Emergency powers Act, 1122. That apart, going through the letter dated 4.3.2014, produced as Exhibit-P8, it could be deduced that the State Government has verified the genuineness of the extract of Exhibit-P1 convict register through the Superintendent, Central Prison, Thiruvananthapuram, and he had certified it to be genuine.

49. Further, it is evident from Exhibit-P8 letter that, to

substantiate the claim of the respondent, she has produced the true extract of the convict register, in original, wherein the date of admission of Mr. Bava Haridas, her husband, date of expiry of sentence; that he was released on 26.01.1950 under the order of Government; though the

period of imprisonment is below six months, he was sentenced for six months; that remission of a period upto 30 days in a sentence of six months should be taken into consideration, etc., were stated. In fact, the husband of the respondent was also awarded Thamrapathra by the Union Government, based on the recommendation of the State Government, on account of participation in the Punnapra-Vayalar movement. -7-

50. Though it is stated in the letter dated 17.03.2015

by the State Government that on verification of the available convict judgment registers, the details regarding C.C. No.238/1124 ME are not available, and therefore, it is unable to mention that CC. No.238/1124 ME is pertinent to Punnapra Vayalar struggle, the said letter does not contain a specific verification and entitlement report. However, in Exhibit-P8 letter dated 4.3.2014, the State Government has stated that the primary evidence and jail certificate/convict register, relied on by the respondent are genuine and hence, his case is positively recommended for grant of SSS Pension. As rightly observed by the learned single Judge, merely because the State Government has not reiterated the factual aspects in Exhibit-P12, cannot be a sole ground for rejecting the claim of the respondent.

51. In *Gurdial Singh v. Union of India*, [(2001) 8

SCC 8], the Honble Supreme Court had occasion to consider a case where, for determination of eligibility, standard of proof is required for, and held that since the object of the Scheme is to honour and to mitigate the sufferings of the freedom fighters, a liberal and not a technical approach should be adopted and hence, a claim under the Scheme should be determined on the basis of probabilities and not by applying the test of beyond

reasonable doubt. Relevant portion of the said judgment

reads thus:

6. The Scheme was introduced with the object of providing grants of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Keeping in mind the object of the Scheme, the authorities concerned are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is -8-

required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukund Lal Bhandari case [1993 Supp (3) SCC 2] observed: (SCC pp. 7-8, para 9)

The object in making the said relaxation was not to reward or compensate for the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It

should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the Scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now.

The Court categorically mentioned that the -9- pension under the Scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

7. The standard of proof required in such cases

is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of beyond reasonable doubt. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to

be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

8. We have noticed with disgust that the

respondent authorities have adopted a hyper- technical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the Scheme intended to give the benefit to the sufferers in the freedom movement. The contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of -10-

law and the Scheme. The impugned order also appears to have been passed with a biased and closed mind, completely ignoring the verdict of this Court in Mukund Lal Bhandari's case [1993 Supp (3) SCC 2]. We further feel that after granting the pension to the appellant, the respondents were not justified in rejecting his claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High Court has completely ignored its earlier judgments in Mohan Singh v. Union of India [CWP No. 3790 of 1994 (HC)] decided on 1-6- 1995 and CWP No. 14442 of 1995 decided on 11-12-1995.

10. Accordingly the appeal is allowed by setting

aside the order of the High Court impugned in this appeal and the order of the respondents dated 1-11-2000 (Annexure P14). The appellant is held entitled to the grant of pension by the State of Punjab and the Union Government as determined vide Annexures P-9 and P-10 but with effect from March,1996. The arrears shall be calculated and paid to the

appellant positively within a period of six weeks from today, failing which he is held entitled to interest at the rate of 12% per annum from March 1996 till the date the arrears are actually paid. The appellant is also held entitled to the payment of costs quantified at Rs. 5000.

52. A Honble Division Bench of this Court in Union of

India v. Janakidas reported in 2010 (1) KLT SN 79 (C. No.95) held that no individual citizen can be denied pensionary benefits under the scheme on any ground referable to delay by the State Government in forwarded papers to the Union of India. Relevant portion of the said decision is extracted hereunder: 7. We may notice that even among the fundamental duties of citizens, enumerated in Article 51A of the Constitution, particularly Clauses (b) and (d) thereof, every citizen of India is duty bound to cherish and follow the noble ideals which inspired our national struggle for freedom; -11-

and to defend the country and render national service when called upon to do so. We are considering the case of a person who, though now no more, had done what is cherished in Article 51A of the Constitution, long before India became free. Therefore, in fact, there is no ground even for the Union of India to show that any delay that the State Government had committed in forwarding the papers should be considered against the interest of the petitioner for granting pension under the SSSP Scheme. The State Government and the Union Government are the executive limbs of the People of India as a Republican Nation and no individual citizen can be denied pensionary benefits referable to the SSSP Scheme, 1980 on any ground referable to the delay by the State Government in forwarding the papers to the Union of India. If such grounds were to be accepted, in our view, that will not serve, but defeat, the purpose sought to be achieved by the Scheme in question. We are also of the view that, what is indicative as the prime concept of the requirement of providing pension under the SSSP Scheme to the freedom fighter and family members, is part of the process by which the Nation follows the noble ideals which inspired those involved in the

struggle for freedom.

53. In Kamalbai Sinkar v. State of Maharashtra

reported in (2012) 11 SCC 754, after considering the decision in Gurdial Singh (cited supra), the Honble Supreme Court held as under: 6. Having perused the above materials on record, at the very outset, we wish to refer to the observations made by this Court in regard to the grant of freedom fighters' pension in the decision in Gurdial Singh v. Union of India [(2001) 8 SCC 8]. In para 7 of the judgment, this Court has highlighted the manner in which such claims are to be considered for grant of freedom fighters' pension. It will be worthwhile to make a reference to the said passage before expressing our conclusion with regard to the claim of the appellant's husband in the case on hand.

7. Para 7 reads as under: (Gurdial Singh case [(2001) 8 -12-

SCC 8] , SCC p. 14) 7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of beyond reasonable doubt. Once on the basis of the evidence it is

probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence. (emphasis added)

54. The entire aspect of the matter was considered by the learned single Judge while passing the impugned

judgment and directions were issued taking into account

the provisions of Scheme, 1980, as well as the parameters required for the grant of SSS Pension to the eligible persons.

55. In sum and substance, the issues were elaborately

considered by the learned single Judge, taking into account all the relevant materials, and we are of the clear opinion that there is no reason to interfere with the observations and findings made by the learned single Judge in the impugned judgments. 56. On a totality of the

facts and circumstances, we have no hesitation to hold

that the appellant has not made out a case of -13- jurisdictional error or other legal infirmities, justifying interference in the judgments under appeals, dated 9.7.2018 and 29.11.2018 of the learned single Judge. In the result, appeals fail and accordingly, they are dismissed. In view of the above, this writ appeal is dismissed. The findings and observations made in the judgment dated 25.08.2022 in W.A. Nos.122 & 1691 of 2019 would govern this writ appeal as well. Sd/- S.MANIKUMAR CHIEF JUSTICE Sd/- SHAJI P.CHALY JUDGE jg

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