

The Union of India vs a.V.Devaki

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Court : Kerala

Decided On : Nov-21-2022

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

Appeal No. : WA/2094/2017

Appellant : The Union of India

Respondent : A.V.Devaki

Judgement :

W.A No.2094 of 2017 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY MONDAY, THE 21ST DAY OF NOVEMBER 2022 / 30TH KARTHIKA, 1944 WA NO. 2094 OF 2017 AGAINST THE JUDGMENT IN WPC 12376/2010 OF HIGH COURT OF KERALA APPELLANTS/RESPONDENTS 1 & 2: 1 THE UNION OF INDIA REPRESENTED BY THE UNDER SECRETARY TO GOVERNMENT,MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTER'S DIVISION,LOK NAYAK BHAVAN, NEW DELHI. 2 THE

UNDER SECRETARY TO GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTER'S DIVISION, LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI. BY ADVS. SRI.JAISHANKAR V.NAIR, CGC RESPONDENTS/PETITIONER/3RD RESPONDENT: 1 A.V.DEVAKI W/O K.KUNHIRAMAN NAMBIAR, KUNJUMBIDUKKA HOUSE, KANCHILERY, CHERIKODE, SREEKANDAPURAM, KANNUR - 670631 2 THE PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA GENERAL ADMINISTRATION (FFP,B) DEPARTMENT, THIRUVANANTHAPURAM - ADV.SRI.O.D.SIVADAS FOR R1 SHRI.K.P.HARISH, SENIOR GOVERNMENT PLEADER THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.A No.2094 of 2017 2

JUDGMENT

Dated this the 21st day of November, 2022 SHAJI P.CHALY, J Captioned writ appeal is filed by the Union of India and one of its officials, who are respondent Nos.1 & 2 in W.P. No.12376 of 2010, challenging the

judgement of a learned Single Judge dated 16th December, 2016.

2. The subject issue relates to non-payment of Swatantrata Sainik Samman

Pension Scheme, 1980 (SSSP Scheme) to the writ petitioner/1st respondent w.e.f.21.12.1974. In fact, the said pension was granted with effect from the said date, however, that was withdrawn as per Exhibit P3 order dated 25.5.1976, on the ground that the participation in Kavumbhai struggle was not recognised for Swatantrata Sainik Samman Pension.

3. The case projected by the writ petitioner was that on the basis of the

freedom struggle participation, petitioner's husband was granted freedom fighters pension under the State Government Scheme as per Exhibit P4 order dated 16.1.1974, however, the Central Government issued Exhibit P5 order on

20.1.1998 declining Kavumbai Movement as one of the movements taken in Kerala during the freedom struggle, for the purpose of grant of SSS Pension. It is

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also an admitted fact that while recognising the same, the Central Government requested the State Government to call for applications from the participants of the movements after verification of documents produced in support of the claimed sufferings along with suitable recommendation of the State Government about the entitlement of the pension in accordance with the provisions of the SSSP Scheme, 1980. Petitioner's husband had submitted an application and it was forwarded by the Government as per Exhibit P6 dated 20.7.1999 along with Exhibit P1 extract of Under Trial Prisoner Register of Central Prison, Cannanore. The application was duly forwarded by the Secretary to Government, General Administration Department of the State of Kerala. Since no action was taken, the petitioner has approached this Court and by Exhibit P7 judgement dated 13.8.2009 in W.P. No.23184/2009, this Court directed the respondents to take a decision on the application submitted by the petitioner's husband. Thereafter, Exhibit P8 order was passed by the Government on 4.2.2010 rejecting the application. The objection of the State Government was that the primary evidence furnished by the petitioner was not acceptable on account of the discrepancies and further that, there was no record based secondary evidence along with a valid Non-availability of Records Certificate from the State Government.

4. Yet another objection was that the recommendation of the State Government did not appear authentic and further objections were also raised W.A No.2094 of 2017 4

regarding the difference in the name of the petitioner in the application of her husband and in the application submitted by her in order to reject the application. It is thus challenging Exhibit P8 order that the writ petition was filed.

5. The State Government has filed a detailed counter affidavit stating that

petitioner's husband was granted Kerala Freedom Fighters pension on the basis of the recommendation of the District Advisory Committee. Government had also stated that the original of the jail certificate viz., Exhibit P1 could not be verified by the District Collector since the original register was not traceable. However, the Union Government has filed a counter affidavit supporting the order passed by it.

6. The learned Single Judge, after assimilating the rival contentions, has allowed the writ petition holding as follows:

8. The petitioner has produced Ext.P1 extract issued from the Central Prison, Kannur which is the extract of under trial Prisoner register relating to the imprisonment under went by her husband during the period from 28.01.1947 to 29.10.1947, after the case was committed to Sessions Judge, North Malabar. The discrepancy pointed out with respect to this extract is regarding the date of conviction entered as 29- X-47 saying that there was over writing with respect to the month of conviction shown in digit written there. When the extract of the register maintained in the jail is certified by the Superintendent of Prisons and it is produced, that cannot be rejected saying that it is secondary evidence and the respondents were not right in seeking further

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evidence to support secondary evidence. It is a case where respondents themselves had sanctioned pension to the petitioner's husband in the year 1974 and withdrawn in the year 1978. The fact that the said pension was withdrawn on the ground that the Kavumbaii movement was not recognised for SSS pension itself shows that the respondents were already convinced of the eligibility of the petitioner's husband for pension.

9. Moreover the learned counsel for the petitioner furnished for the

photocopy of the judgment of the Court of Sessions, North Malabar Division in S.C.No.21 of 1947 dated 21.10.1947, in which the petitioner's husband Late.K.Kunhiraman Nambiar was the accused No.33. This judgment is handed over to the learned counsel appearing for the respondents also and they have also verified the genuineness of the inclusion of the petitioner's husband as 33 rd accused in the judgment. The date of conviction referred to in Ext.P1 is the date of the

judgment appearing in this judgment in the sessions case.

10. Under the above circumstances, I find that the doubts expressed by the respondents on the genuineness of Ext.P1, on the basis of the overwritings and the rejection of the application are absolutely baseless.

11. Now that this Court as well as the counsel for the respondents have

seen the judgment by which the petitioner's husband was convicted, I do not think that the petitioner should be again directed to approach the respondents along with the copy of that judgment or to direct the respondents to reconsider the matter on the basis of that judgment. In the above circumstances, I quash Ext.P8 and direct the respondents to sanction family pension under the SSS Pension scheme to the petitioner on the basis of the application submitted and

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7. We have heard learned counsel for appellants - Sri.Jaisankar V Nair,

learned counsel Sri.O.D.Sivadas for the 1 st respondent, learned Senior Government Pleader Sri.K.P.Harish for the Principal Secretary to Government of Kerala, General Administration (FFP,B) Department, Thiruvananthapuram and perused the pleadings and materials on record.

8. The sole question to be considered is whether any manner of interference

is warranted to the judgment of the learned Single Judge ? In fact after verifying the pleadings and the documents produced by the rival parties, the learned Single Judge has found that there is clear cut evidence to show that petitioner's husband was a participant in the freedom struggle, which was later recognised by the Union Government in the year 1999. It was also found by the learned Single Judge that the State Government has already recognised it as a freedom struggle and the petitioner's husband was provided with the pension by the State Government. So also the learned Single Judge has found that the judgment of the Sessions Court, North Malabar Division in S.C.No.21 of 1947 dated 21.10.1947 would show that petitioner's husband - Late. K.Kunhiraman Nambiar was the accused No.33, which was produced before the learned Single Judge during the course of hearing. In fact, it is discernible

W.A No.2094 of 2017 7 from the judgment of the learned Single Judge that the copy of the said

judgment was handed over to the counsel for respondents and they have also

verified the genuineness of the inclusion of the petitioner's husband as 33 rd accused in the judgment. It was taking into account the facts and circumstances and the available documents that the learned Single Judge arrived at the conclusions. In fact, even though various contentions are raised in the writ petition that petitioner's husband was not entitled to get the SSS Pension, we are of the view that in view of the relevant and appropriate documents relied upon by the writ petitioner and accepted by the learned Single Judge, we have no hesitation to say that the appellants have not made out a case of jurisdictional error or other legal infirmities, justifying our interference in the judgment of the learned

Single Judge. Needless to say, writ appeal fails, accordingly it is dismissed.

Sd/- S.MANIKUMAR CHIEF JUSTICE Sd/- SHAJI P.CHALY smv JUDGE

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