
(2000) 08 KL CK 0004
In the High Court Of Kerala
Case No : W.A. No. 619 of 1994

Kuttan Pillai

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-08-2000

Acts Referred:

Constitution of India, 1950 — Article 2(e)

Citation : (2000) 2 KLJ 588

Hon'ble Judges : M. Ramachandran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : N. Venkatarama Iyer, for the Appellant; K. Ramakumar (S.C.G.S.C.), for the Respondent

Final Decision : Allowed

Judgement

Koshy, J.—Appellant/petitioner served in the Artillery Regiment of the Indian Army from 5th May, 1942 to 14th January, 1947 (4 years and 254 days), as an Instructor in the Lok Sahayak Sena from 12th May, 1955 to 12 th October, 1964 (9 years and 234 days) and in the Defence Security Corps (D.S.C.) from 17th March, 1965 to 7th May, 1970 (5 years and 57 days). The total service rendered by him is therefore 19 years and 180 days, of which 9 years and 234 days he was working as an Instructor in the L.S.S.. In order to receive pension under Army Pension Regulations, a soldier has to serve a minimum of 15 yearRs. The dates of service in the Army as stated above is not disputed. But pension was denied on the ground that the service he rendered while he was continuing as an Instructor in the L.S.S cannot be counted. If the above 9 years and 234 days are excluded, he is not entitled for military pension. The question now to be considered is whether the service he has rendered as an Instructor in L.S.S, can be counted for military pension. Lok Sahayak Sena is constituted under the Lok Sahayak Sena Act. A member of the L.S.S, is not governed by the Army Act. It is a voluntary force not named as one of the forces in Army Act. Any citizen of India not below the, age of 17 years and not above the age of 40 years can offer

themselves for enrolment as a Volunteer. A Volunteer is defined u/s 2(e) of the above Act as it means a person enrolled in the Force under the Act. Duties of a Volunteer are mentioned in Section 6 which are as follows:

6. Duties of volunteers:- No person shall, on the ground only of being a volunteer be liable for military service, but subject thereto a volunteer may be called upon to undergo such training as may be prescribed, and while undergoing such training shall perform such duties and discharge such obligations as the prescribed authority may, by general or special order, direct.

Therefore, it can be seen that a volunteer is not a member of the military service. He is only bound to undergo training as may be prescribed. The Act itself has provided for Lok Sahayak Sena for imparting military training for citizens of India and merely because he got training he is not even compulsorily liable for military service as can be seen from Section 6. A volunteer has to get training as per Section 6 once he is enrolled as a member. The learned judge in the impugned judgment rightly held that service as a volunteer in L.S.S, cannot be taken for military pension. But here" contention of the appellant is that he was not a volunteer, but a member of the Army and he was sent as a trainer or Instructor for giving training to the volunteerRs.

2. Ext. PI is the Discharge Certificate. It shows that he was working in the Artillery Regiment of the Indian Army and thereafter he was re-enrolled. The Discharge Certificate was issued after his completion of 9 years and 185 days in the Army signed by the Commandant of JAT Regimental Centre. The Army Number was 6267900 and Rank given was "Paid Acting Havildar". See page 18 of the original petition which shows that appellant was re-enrolled in 1955 and sent for training as an Instructor in the L.S.S. As already stated u/s 6 of the L.S.S. Act, a volunteer has to get training for military service "Superior Officer" is defined u/s 2(d) of the above Act is as follows:

2. Definitions:- In this Act, unless the context otherwise requires,-

(d). Superior Officer" means any officer, junior Commissioned Officer, warrant officer or non-commissioned officer of the regular Army or of the Territorial Army;

The duties of the volunteers are only to get training and not to give the training. In the counter affidavit in paragraph 13 it has been stated as follows:

The petitioner was enrolled in National Volunteer Force (LSS) as per terms and conditions of LSS and discharged from LSS under LSS Act, 1956. The petitioner was promoted to the rank of Paid Acting Havildar on 21 April, 1955 after his enrolment in LSS.

A volunteer will not get promotion and therefore there is no provision in the Act for giving promotion. But here the appellant was promoted to the rank "Paid Acting Havildar, on 21st April, 1955. Apart from volunteers and Superior Officers there was no other officers mentioned in the Act. A Superior Officer is required in the army for giving instructions. Further, if he was merely a volunteer there was

no chance for JAT Commandant, to issue the discharge certificate or to allow an Army number to him and there is no question of re-enrolment in the JAT service. Here the appellant was given re-enrolment as provided under the Defence Service Rules dealing with matters of re-enrolment and re-attestation and training of different batches of volunteers and therefore it can be seen that he became a regular member of the army and then sent for training in the LSS and trained the VolunteerRs. After the discharge from his service from LSS he was again enrolled in the Defence Security Force within a short period of time of his discharge as a Havildar and therefore we have no hesitation to hold that appellant was not a volunteer under the L.S.S. but was in army service and he was served in the L.S.S. as Havildar being an army personal and this period is entitled to be counted for military service and he is entitled to get pension..

3. In this connection we also refer to the Lok Sahayak Sena Rules, 1957 (for short "Rules"). Eligibility for enrolment in Lok Sahayak Sena is mentioned in Rule 3 which is as follows:

3. Eligibility for enrolment: - No person shall be eligible for enrolment-

(a) unless he is a male citizen;

(b) if he is below the age of 18 years or above the age of 40 years;

(c) if he belongs to or had previously served in the Regular Army, Navy, Air Force or any of its reserves, the forces of former Indian States, the Territorial Army, the National Cadet Corps, the Auxiliary Cadet Corps, the Auxiliary Force (India), the Indian Territorial Force, the Militia or the Scouts or other Armed Forces other than in a civilian capacity, or is or had been a member of any police force;

(d) unless he is of good character;

(e) if he does not satisfy such standards or physical fitness in height, chest measurements and other respects as may be specified by the Ministry of Defence, Government of India:

(f) if he has at any time been convicted of an offence involving moral turpitude and a sentence other than one of fine or of imprisonment in default of payment of fine has been passed in respect of such offence, such sentence not having been subsequently set aside;

(g) if he has been ordered to give security for good behaviour under the Code of Criminal Procedure, 1898;

(h) if he has been previously rejected for enrolment;

(i) if he has been previously enrolled, until the expiration of a period of five years from the date of his discharge from the force:

Provided that the Officer Commanding the Area may in any particular case, relax the provisions of CI. (h):

(Provided further that the Officer Commanding the Camp may relax the time-limit of five years prescribed in Cl.(I) in any particular case to complete the deficiencies up to 25 per cent, of the authorised strength of the Camp.)

This shows that a person who was previously served in Regular Army cannot get himself enrolled in the Lok Sahayak Sena. Hence appellant's posting in Lok Sahayak Sena as an instructor Havildar is not as a member of that Sena. He cannot be enrolled there. He was giving training to the members of that force as a member of the Army. Unfortunately he was treated as a member/volunteer in that force for the period appellant was giving training to enrolled members of that force as an instructor (Paid Acting Havildar) and that period was wrongly not taken into account for the military service for calculating eligibility to military pension. Therefore, we direct that the period of his service as instructor with the rank of "Paid Acting Havildar" should be counted for military service. Appellant was finally discharged from service in 1970 and now he reached an* age of 80. In the above circumstances, respondents are directed to fix the pension and pay pension due to the appellant. Arrears of pension should be paid within three months from the date of receipt of a copy of this judgment and he should also be paid the pension regularly from month to month. If arrears of pension is not paid within three months from the date of receipt of a copy of this judgment as directed, it will carry 10% interest from the date when the pension became due.

The Writ Appeal is allowed to the above extent.