

(1994) 01 KL CK 0053
In the High Court Of Kerala
Case No : O.P. 9903 of 1991

Kuttan Pillai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-01-1994

Acts Referred:

Army Act, 1950 — Section 2(1)
Constitution of India, 1950 — Article 226
Lok Sahayak Sena Act, 1956 — Section 2, 6

Citation : (1994) 01 KL CK 0053

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : N. Venkatarama Iyer, for the Appellant; George Joseph, ACGSC, for the Respondent

Judgement

G.H. Guttal, J.—The question for consideration in this petition under Article 226 of the Constitution of India is whether the service rendered by a member of the Indian Army in the Lok Sahayak Sena, constitutes service in the Indian Army for the purpose of computation of pension.

2. The Petitioner served in the Artillery Regiment of the Indian Army from 5th May 1942 to 14th January 1947 (4 years and 254 days), in the Lok Sahayak Sena as Instructor from 12th May 1955 to 12th 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 19 years and 180 days, of which 9 years and 234 days were spent in serving in the Lok Sahayak Sena. In order to be entitled to receive pension under Army Pension Regulations, a soldier has to serve a minimum of 15 years. The Respondents, who are the Union of India, Adjutant General of the Army Headquarters, New Delhi, Senior Record Officer, Cannanore, and Director of Defence Security Corps have denied to the Petitioner pension on the ground that the service rendered in the Lok Sahayak Sena cannot be counted towards pension for the reason that such service was not the service in the Indian Army. If the service of 9 years and

234 days in the Lok Sahayak Sena is excluded, the Petitioner's service falls much below the requisite 15 years of service.

3. The persons subject to the Army Act, 1950 have been listed in Sub-section (1) of Section 2 of the Act. Officers and persons enrolled under the Act, members of the Indian Reserve Forces, Indian Supplementary Reserve Forces, called for service, officers of the territorial army and Ors. are included among the personnel to whom the Army Act applies. The word "forces" in the Act means the regular army or any part of it. Regular army means officers, junior commissioned officers, warrant officers or non-commissioned officers and Ors. who, by virtue of the terms of enrolment or otherwise, are liable to render continuous military service for the union in any part of the world including persons belonging to the territorial army when called out for permanent service. Members of the Lok Sahayak Sena, which is a voluntary force constituted under the Lok Sahayak Sena Act, 1956 have not been listed as persons subject to the Army Act. Therefore, it is clear that a member of the voluntary force known as Lok Sahayak Sena is not a person who is governed by the Army Act. It stands to reason therefore that the Petitioner while working in the Lok Sahayak Sena was not a member of the armed forces for the simple reason that Lok Sahayak Sena is not named as one of the forces to which the Army Act applies.

4. It will be useful to consider whether the Lok Sahayak Sena Act itself considers the officers working under the Act as members of the Indian Army. The expression "force" which is also used in the Army Act finds a place in the definition in Clause (b) of Section 2 of the Lok Sahayak Sena Act. While the expression "force" used in the Army Act means the regular army, the definition of the same expression in Clause (b) of Section 2 of the Lok Sahayak Sena Act, confines its meaning to "the Lok Sahayak Sena constituted under this Act". The Lok Sahayak Sena Act was enacted for the purpose of constituting voluntary force of citizens by imparting them military training. The Lok Sahayak Sena is trained in camps and is not a part of the Indian Army. The enrolment which is voluntary is open to citizens between the age of 18 years and 40 years. As Section 6 of the Lok Sahayak Sena Act reveals, no member of the Lok Sahayak Sena, is liable for military service. They are all volunteers.

5. But, learned Counsel for the Petitioner relies upon the definition of "superior officer" in Clause (d) of Section 2 of the Lok Sahayak Sena Act. "Superior officer" means any officer junior commissioner officer, warrant officer or non-commissioned officer of the regular army or of the territorial army. The Petitioner fits into this description. But, the question is whether by virtue of being a superior officer of the Lok Sahayak Sena, he becomes a member of the Indian Army. The Petitioner while he was enrolled and worked in the Lok Sahayak Sena was subject to the same discipline such as wearing of uniforms. He was chosen because he was a member of the Indian Army. But, in the very nature of things, a person who is appointed to train volunteers has to be from the Indian Army or from the territorial army. This fact by itself does not make the Petitioner a soldier

in the service of the Army. He was appointed in the Lok Sahayak Sena, after his service with the Army was terminated. He served the Lok Sahayak Sena and not the Army.

6. In my opinion, a member of the Lok Sahayak Sena even though drawn from the armed forces, is not a person who is in the service of the army. His service during such period is in the Lok Sahayak Sena which, is a voluntary force and not the Indian Army. I hold that the Petitioner's service from 12th May 1955 to 12th October 1964 was not service in the Indian Army.

7. For all these reasons, the Original Petition is dismissed. No costs.