
(2010) 09 KL CK 0411

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11741 of 2009 (K)

N.K. Raghavan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Citation : (2010) 09 KL CK 0411

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : K.K. Satheesh, for the Appellant; P. Parameswaran Nair, Asst. Solicitor, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The limited question herein is whether the respondent is right in denying the arrears of pension under the "Swatantrata Sainik Samman Pension Scheme" from the date of receipt of the application.

2. The deceased original petitioner was a freedom fighter who had actively participated in the Punnapra-Vayalar Movement during the freedom struggle. On account of his participation in the freedom struggle, he was detained as an under trial prisoner in the defunct Sub Jail, Alappuzha in connection with Case No. 7/1122 ME for more than six months. After he was released, he was arrested by the police in the year 1124 ME in connection with Case No. CC. 280 of 1124 ME on the file of Divisional First Class Magistrate's Court wherein he was convicted and sentenced to undergo rigorous imprisonment for a period of two years, as per judgment dated 6.2.1125 ME. Thereupon he had undergone imprisonment in the Central Prison, Trivandrum for a period of one year and eight months from 8.2.1125 ME to 21.5.1951 after earning a remission of four months. The deceased petitioner was a recipient under the Kerala Freedom Fighter's Pension Scheme also.

3. Exhibit P1 is the application dated 30.4.1998 filed by the deceased petitioner

for grant of pension under the SSS Scheme. Since the application was kept pending without any action, he approached this Court by filing W.P.(C) No. 11859/04, during the pendency of which the State Government produced Exhibit R1(a), an order refusing to recommend the application. This was quashed by this Court as per Exhibit P3 judgment. Since the State Government did not recommend it again, the respondent herein rejected the claim as per proceedings dated 12.9.2007, which compelled the original petitioner to file W.P.(C) No. 29732/07. This was allowed by Exhibit P4 judgment. Thereafter, in compliance of the directions, Exhibit P5 order has been passed granting pension; but only with effect from 14.8.2007. The deceased petitioner claimed that the pension is liable to be granted from the date of receipt of the application, Exhibit P1. Exhibit P6 is the acknowledgment card produced to show that the application was received on 7.6.1998.

4. Exhibit P7 is the communication issued by the Central Government rejecting the claim for arrears. It is mentioned therein that the original petitioner's representation dated 29.5.1998 was received in the Ministry on 14.8.2007 from the State Government and therefore the liability to pay pension is only from that date.

5. The learned Counsel for the additional petitioner submitted that the deceased petitioner was entitled for grant of pension from the date of receipt of the application and the fact that the application was kept pending by the State Government or by the Central Government and the time taken for taking decision as such will not result in denial of arrears from the date of receipt of the application. Reliance is placed on a decision of the Division Bench of this Court in Union of India (UOI) Vs. Radhamony, wherein it was held that the relevant date is the date of on which the application was received by the authorities.

6. Respondent has filed a counter affidavit in support of Exhibit P7 order reiterating the very same contentions. The petitioner had approached this Court earlier by filing W.P.(C) No. 11859/2004. It was disposed of by Exhibit P3 judgment dated 26.6.2007. The second writ petition, W.P.(C) No. 29732/2007 was allowed as per judgment dated 11.4.2008 as per Exhibit P4. Therein, after considering various aspects, directions have been issued to forward a fresh verification-cum-entitlement report by the 2nd respondent, recommending the application in the light of Exhibit P1, true copy of the Convict Register. It was also directed that entitlement of the petitioner for arrears of pension from the date of receipt of the application for SSS pension (Exhibit P4) therein will also be considered while sanctioning pension.

7. Evidently, the stand appears to be that only when the application along with all the Annexures and other reports are received by the Central Government, the pension can be granted and therefore, there is no eligibility for claiming arrears of pension prior to the date of receipt of the copy of the application along with all the relevant documents, from the State Government.

8. The very same aspect was considered by the Division Bench in Radhamoni's case (supra). A reading of the judgment shows that Their Lordships relied upon the principles stated in Mukund Lal Bhandari and others Vs. Union of India and others, and ultimately in the light of the directions of the Apex Court, Their Lordships held that the pension shall be paid from the date of receipt of the application irrespective of the question whether it was accompanied by other documents. Paragraphs 4 and 5 of the judgment is extracted below:

4. Learned Counsel appearing for the appellant Union of India however brought to our knowledge the decision of the Apex Court in Mukund Lal Bhandari and others Vs. Union of India and others, , wherein the Apex Court has examined the question regarding the eligibility for Central Pension. While disposing of the matter, the Apex Court gave the following directions:

(a) The respondents should accept the applications of the petitioners irrespective of the date on which they are made. The applications received hereafter should also be entertained without raising the plea that they are beyond the prescribed date.

(b) The respondents should scrutinise every application and the evidence produced in support of the claim and dispose it of as expeditiously as possible and in any case within three months of the date of receipt of the application, keeping in view the laudable and sacrosanct object of the Scheme.

(c) The pension should be paid to the applicant from the date on which the original application is received whether, the application is filed with or without requisite evidence. The sanction of the pension would, however, be subject to the requisite proof in support of the claim.

It is evident from the above mentioned directions given by the Apex Court that pension should be given to the applicant from the date on which the original application is received irrespective of whether the application is filed with or without requisite evidence. It is also opined that the sanction of pension would however be subject to the requisite proof in support of the claim. The Apex Court has already held that the relevant date is the date on which the application was received by the authorities. Judgment of the learned Single Judge in Krishnankutty's case is therefore not good law.

5. In such circumstances we are inclined to allow this appeal. The judgment of the learned Single Judge is set aside. We hold that the writ petitioner is entitled to get pension under the Swatantrata Sainik Samman Pension Scheme only from 20.4.1998, the date of receipt of his application.

9. It cannot be disputed that the said dictum squarely applies to the facts of this case also. The contention that the liability to pay the amount of pension arises only from the date of receipt of the recommendation from the State Government along with other documents cannot therefore be supported. A freedom fighter is entitled for grant of pension as held by the Division Bench from the date of

receipt of the application, even though the supporting documents were received later.

10. This is a case where direct evidence was available in the form of a true copy of the extract of the Convict Register, which is clear from the facts stated in the Writ Petition as well as from the judgment Exhibit P4. Therefore, delay, if any from the part of the Central or State Governments cannot be at the peril of the petitioner.

Hence, the Writ Petition is allowed. Exhibit P7 is quashed. There will be a direction to the respondent to disburse the arrears of pension to the petitioner from the date of receipt of Exhibit P1 application, i.e., from 7.6.1998 to 14.8.2007. The arrears will be quantified and payment will be effected within three months from the date of receipt of a copy of this judgment. No costs.