

(2014) 08 KL CK 0137
In the High Court Of Kerala
Case No : Writ Appeal No. 813 of 2014

Philomina K.A.

APPELLANT

Vs

The District Collector, Alappuzha

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 ILR 512 : (2014) 3 KHC 599 : (2014) 3 KLT 812

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : K.K. Satheesh, Advocate for the Appellant; Padmaraj, Government Pleader, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. This Writ Appeal has been filed by the appellant challenging the judgment dated 31.3.2014 passed by the learned Single Judge in W.P.(C).No. 24646/13 filed by the appellant (hereinafter referred to as "the writ petitioner").

2. The brief facts, which are giving rise to the appeal, are: Father of the appellant, late Sri. Anthrayose, Kariyadiparambu was a freedom fighter getting the Freedom Fighters" Pension under the Kerala Freedom Fighters" Pension Rules, 1971 (hereinafter referred to as "the 1971 Rules"). Father of the petitioner died on 11.7.1985. Thereafter, petitioner"s mother Smt. Stella Anthrayose was granted the benefit of family pension. Petitioner"s mother also died on 13.9.2012. After death of petitioner"s mother, the writ petitioner submitted a representation dated 8.10.2012 claiming continuation of pension under the 1971 Rules. A report was submitted by Tahsildar on the representation of the writ petitioner that although she is not legally married, but she has a son aged 25 years. It was reported that the writ petitioner was living with her nephew. The District Collector, vide letter dated 11.3.2013, rejected her claim for continuous Freedom Fighters" Pension. The District Collector observed that the writ petitioner cannot be treated to be dependent of her mother Stella

Anthrayose, since she has a son of aged 25 years. The writ petitioner filed the Writ Petition praying for the following reliefs:

"i) declare that the petitioner being the unmarried dependent daughter of her late mother is entitled to get the benefit of "continuous pension under the Kerala Freedom Fighters" Pension Rules.

ii) call for the records leading to the issue of Exhibit P6 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 respondents to grant the benefit of continuous Pension under the Kerala Freedom Fighters" Pension Rules to the petitioner with the actual arrears due to her i.e. from the date of death of her mother (13-9-2012), within a stipulated time.

3. Learned counsel for the writ petitioner, in support of the Writ Appeal, submitted that the writ petitioner being unmarried daughter is fully entitled to continuous Freedom Fighters" Pension. He submitted that as per 1971 Rules as also by order dated 2.5.2012 inserting Rule 11A, by which rule, now dependent widowed daughters/divorced daughters are also entitled for continuous pension, the pension be continued to the writ petitioner.

4. Learned Government Pleader, refuting the submission of learned counsel for the writ petitioner, submitted that the District Collector has rightly rejected the claim. He submitted that the writ petitioner, who has a 25 years old son, cannot be said to be a dependent unmarried daughter. The District Collector having found that the writ petitioner is not dependent of her late mother, no error has been committed in rejecting the claim. The learned Government Pleader further submitted that under Rule 10 of the 1971 Rules, the widow, i.e., late mother of the writ petitioner was already getting benefit of continuous pension, hence after death of mother, the writ petitioner is not entitled as per Rule 10. Continuance of pension can be granted only to one eligible person mentioned therein.

5. We have considered the contentions of learned counsel for the parties and perused the records.

6. The provisions of the 1971 Rules need to be examined before considering the rival submissions made by learned counsel for the parties. The Rule as initially framed provided for grant of pension per mensem to each freedom fighter, of his widow or minor children, whose income from all source, including help from near relatives does not exceed 300/- per mensem. Rules 10 and 11 were substituted in 1971 Rules. Rules 10 and 11, which are relevant for the present case, are quoted as below:

"10. The widow/minor sons/unmarried daughters who have not otherwise become independent of a Freedom Fighter who has been sanctioned a pension under rule 6 shall be eligible to the continuance of the pension.

11. The pension shall be payable till death if the grantee is the Freedom Fighter. If the grantee is the wife of a Freedom Fighter, the pension shall be payable till her death or remarriage. If the grantee is a minor, in the case of son the pension shall cease on his attaining the age of 18 and in the case of daughters, until they are married or otherwise become independent."

7. Before insertion of Rules 10 and 11, Rule 7 governed the field, which was to the following effect:

"7. A pension of 50 per mensem shall be payable to each Freedom Fighter or his widow or minor children whose income from all sources including help from near relatives does not exceed 300 per mensem."

8. The Scheme as envisaged by the 1971 Rules indicates that although in the beginning it was contemplated to be given only to widow or minor children, but subsequently by amendment, unmarried daughters, who have not otherwise become independent, have also been included. Another amendment made in the rule was by Government Order dated 2.5.2012, by which Rule 11A has been inserted by adding few more categories or heirs of freedom fighters entitled for. Rule 11A is to the following effect:

"Rule 11A: Government shall have the power to sanction Kerala Freedom Fighters" Continuance Pension based on merit in most deserving cases to dependent widowed daughters/divorced daughters till their remarriage/death and to the physically/mentally disabled dependent sons/daughters who suffer severe physical or mental disability which is certified by a duly constituted Medical Board, subject to the stipulations in Rule 10 and 11."

9. From the facts of the present case, as noted above, it is clear that the writ petitioner has been claiming continuance of pension as unmarried daughter. Thus, it is not a case where any benefit of Rule 11A of the 1971 Rules can be taken.

10. Rule 10 as noted above indicates that entitlement of unmarried daughters to the continuance of pension is with the condition that unmarried daughters have not otherwise become independent. The writ petitioner although not unmarried, but from the report of Tahsildar, which has been filed as Exhibit P5 dated 30.11.2012, it is clear that the writ petitioner has a 25 years old son in her extra marital relationship. The District Collector, while rejecting the claim of the writ petitioner, has observed that the writ petitioner cannot be treated to be dependent of her mother, Stella Anthrayose, as she has a son of aged 25 years.

11. The District Collector, before taking a decision, has obtained necessary reports, which are matters of record. The scope of judicial review to a decision taken by the District Collector refusing to grant or continuance of Freedom Fighters" Pension is not to reappreciate the materials and come to another conclusion. The High Court, while exercising power of judicial review, does not sit in appeal over the decision of the administrative authority. The Apex Court in

Union of India (UOI) Vs. Mohan Singh and Others, has held in paragraph 5 as follows:

"5. It is seen that the High Court had directed the Government, in the earlier writ petition, and in compliance thereof the Government of India had considered the documents relied upon by the respondents and came to the conclusion, as a fact, that these documents are not sufficient to conclude that the respondents had suffered imprisonment. The High Court found it, on appreciation of evidence, to be sufficient, which the High Court cannot embark upon."

12. The Apex Court in State of Maharashtra and Others Vs. Raghunath Gajanan Waingankar, , has laid down the following in paragraph 7 as follows:

"7. It is true that in Gurdial Singh's case (supra) this Court has emphasized the need for dealing with the claim of freedom fighters with sympathy dispensing with the need for standard of proof based on the test of "beyond reasonable doubt" and the approach should be to uphold the entitlement by applying the principle of probability so as to honour, and to mitigate the sufferings of the freedom fighters. However, the observations of this Court in Mukund Lal Bhandari's case (supra) cannot be lost sight of and given a complete go by wherein this Court has very clearly directed that:(SCC pp. 5-6, para 6)

"6. As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly."

The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an appellate authority. Ordinarily, the High Court exercising writ jurisdiction cannot enter into re-appreciation of evidence and reverse the findings arrived at by the State Government unless they be perverse or be such as no reasonable man acting reasonably could have arrived at. If the High Court found that the decision arrived at by the State Government was flawed in any way then the High Court should have, after laying down the necessary principles or guidelines or issuing directions, directed the State Government to reconsider the case of the respondent. In no case, the High Court could have in exercise of its writ jurisdiction relaxed the need for full satisfaction of the necessary requirements on the fulfillment of which alone the respondent's entitlement to the release of freedom fighters" pension depended."

13. The District Collector, having recorded the finding that the writ petitioner cannot be treated to be dependent of her mother, we see no reason to take a different view in exercise of jurisdiction under Article 226 of the Constitution of India. The learned Single Judge, referring to the statement filed in the Writ Petition on behalf of the respondent that the writ petitioner cannot be treated to be dependent, has rightly dismissed the Writ Petition.

14. One of the submissions raised by the learned Government Pleader is that after death of petitioner's mother, the petitioner was not entitled to make application for continuance of pension. The submission is that after death of freedom fighter, continuance of pension can be prayed for only once by widow or any other heir. Once the continuance has been granted of the pension, there is no occasion to pray for another heir. The above submission of learned Government Pleader has been refuted by learned counsel for the writ petitioner. He submits that no restriction has been imposed in 1971 Rules and in fact the District Collector has not refused the application of the writ petitioner on the above ground.

15. Considering the above rival submissions of learned counsel for the parties, the object and purpose of the scheme as well as the various clauses of the rule have to be looked into. The 1971 Rules, when originally framed, only contained Rule 7, which provided for payment of Freedom Fighters' Pension to freedom fighter or his widow or minor children. By substitution of Rule 10, one more category was included, i.e., unmarried daughter, who was not otherwise become independent. The rule has further been amended by adding Rule 11A, as noted above. From Rule 7, Rule 10 and Rule 11A, it is clear that the intent of the rule is to grant sanction not only to the freedom fighter, but his widow and other heirs as per rule. Minor sons, minor daughters, including unmarried daughters are within the ambit of the scheme. By adding Rule 11A, dependent widowed daughters/divorced daughters till their remarriage or physically/mentally disabled dependents have also been included.

16. While interpreting a rule, which has been formulated for grant of Freedom Fighters' Pension, the observation of the Apex Court as made in *Gurdial Singh Vs. Union of India and Others*, needs to be taken note of, where the Apex Court has held that the object is to provide grant of pension to living freedom fighters and their families. Freedom fighters participated in the freedom struggle without any expectation of grant of any scheme. The Apex Court has held that while interpreting the scheme, not a technical but a rational approach is required to be adopted. Paragraph 6 of the said judgment is relevant, which reads as under:

"6. The Scheme was introduced with the object of providing grant 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 required to be adopted.... "

17. In the event the submission of learned Government Pleader is accepted that

after death of widow, the benefit cannot be availed by any other heir, including an unmarried minor daughter, then we have to necessarily read a limit that family pension can be granted only to one heir after death of a freedom fighter. No such restrictions have been envisaged in the 1971 Rules, nor there is any necessity to read any such restriction in the 1971 Rules. Several categories of heirs, including widow, minor son, unmarried daughter, divorced daughter, widowed daughter as well as physically handicapped son and daughters have been included. In case after the death of freedom fighter, only widow is given continuation of the pension and after death of widow, any such limitation is read, that will deny the benefit of continuance of the scheme to various eligible categories of heirs and shall neither advance the object and purpose of the scheme, nor shall be just and reasonable. The rules intended to extend the benefit of Freedom Fighters' Scheme to widow and other categories of children of the freedom fighters as mentioned in the 1971 Rules.

18. Thus, we are of the considered opinion that continuance of Freedom Fighters' Pension cannot be denied only on the ground that after death of freedom fighter, the widow of freedom fighter has been paid the pension till her life. Rule 11 of the 1971 Rules is only for the purpose of putting an outer limit for payment of pension to widow. The said clause cannot be read as any restriction for continuance of pension to other heirs of freedom fighters, if they are so entitled. The above submission of Government Pleader thus cannot be accepted. In view of the foregoing discussions, we do not find any merit in the Writ Appeal. The Writ Appeal is dismissed.