

(2016) 04 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 674 of 2010

State of Kerala and Others

APPELLANT

Vs

K. Prabhakaran and Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Citation : (2016) 04 KL CK 0012

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

Bench : Division Bench

Advocate : P.I. Davis, Sr. Government Pleader, for the Appellant; K.K. Sathish, Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.M. Shaffique, J.—1. This appeal is filed by the respondents in the writ petition challenging judgment dated 1/12/2008 in WP(C) No. 17075/2007 and the order dated 7/12/2009 in RP No. 202/2009.

2. The writ petition was filed by Sri. K. Prabhakaran claiming to be a freedom fighter who had sought for pension under the Kerala Freedom Fighters' Pension Scheme (hereinafter referred to as the Scheme). During the pendency of the appeal, the writ petitioner died and his wife has been impleaded as additional 2nd respondent in the appeal.

3. Petitioner claimed to have participated in the Punnapra-Vayalar Movement and according to him, he had gone underground for more than one year from 27/10/1946 to 9/12/1947. Though he claimed pension under the Scheme, the same was not granted and ultimately he filed the above writ petition. In the writ petition, petitioner challenged Exts.P8 and P13 and sought for a direction to grant him pension. By Ext. P8, petitioner was informed that there was no evidence to indicate that the petitioner has gone underground during the relevant time. By Ext. P13, the District Collector considered his application based on directions issued in WP(C) No. 27416/2004 and formed an opinion that

petitioner was unable to furnish reliable evidence in proof of his participation in the freedom movement and that he had gone underground. It was observed that he had not produced any records as per the existing rules and therefore, pension could not be granted.

4. In WP(C) No. 27416/2004, petitioner had relied upon certain documents. The learned Single Judge observed that though direction was issued to the District Collector to reconsider the application based on such documents, without taking those into consideration, the same was rejected in terms of Ext. P8. Further, it was mentioned that the Non Availability of Records Certificate (NARC) from the Chief Judicial Magistrate Court, Alappuzha and the personal knowledge certificates issued by prominent freedom fighters which were produced as Exts.P10 to P12 were also not considered while giving a reply in Ext. P13. Learned Single Judge therefore proceeded to consider the claim on merits and on the basis of Ext. P4 report of the Tahsildar, it was observed that the claim has to be allowed. The learned Single Judge also observed that the personal knowledge certificates issued by competent certifiers as well as NARC indicates the genuineness of the claim. Accordingly, the writ petition was allowed. Exts.P8 and P13 were quashed and direction was issued to pass orders sanctioning pension to the petitioner under the Scheme.

5. Appellants filed a review as RP No. 202/2009 wherein they have referred to Clause 23 of the Scheme by which the rules have been amended incorporating a provision that in respect of applications received after 31/3/1994, the same will be considered only on production of official records such as warrant for arrest, jail records etc. The review petition was therefore dismissed directing the appellant authorities to consider the claim of the petitioner on merits.

6. While impugning the aforesaid judgment and order in the review, it is contended that the petitioner's claim cannot be considered as the petitioner did not satisfy the requirements under the Kerala Freedom Fighters' Pension Rules, 1971. As per the Rules, though a person is entitled for pension if he had remained underground for more than six months, the same has to be consequent on a warrant for arrest issued against him. It is argued that in the absence of any material to indicate that a warrant for arrest had been issued against him, the learned Single Judge was not justified in directing payment of pension purely based on Ext. P4. It is submitted that Ext. P4 is only an enquiry report wherein there is no basis on which it could be found out that the petitioner was underground for more than six months, pursuant to a warrant of arrest. Ext. P4 is prepared by the Tahsildar who had not verified any records whereas he had only referred to the information received by him. It is submitted that it is for the District Collector to consider the claim based on the materials made available including the report and in so far as the District Collector had rejected the claim clearly indicating that there was no document to substantiate that the petitioner had gone underground in the freedom movement of Punnapra-Vayalar, there was no justification for directing grant of pension.

7. Learned Government Pleader also relied upon Rule 23 which was brought in by way of an amendment which indicates that "applications/review/appeal petitions received after 31/3/1994 will be considered only on production of documentary evidences from official records such as a warrant for arrest, court records, jail records clearly showing the applicant's suffering in connection with the freedom struggle". It is their contention that the petitioner had submitted the application only on 11/8/1998 and therefore, the application was rightly rejected by the District Collector.

8. On the other hand, learned counsel appearing on behalf of the additional 2nd respondent, the legal heir of the writ petitioner submits that on very many occasions, the pension had been granted to several persons without insisting for any such documents and there is no reason why a different view should be taken in the matter. Learned counsel submits that the materials made available clearly indicate that the petitioner was a freedom fighter. He also relied upon Rules 16 and 17 of the Rules, which read as under:

"16. On receipt of application form a Freedom Fighter for the grant of pension, the District Collector should cause enquiries regarding the eligibility through the Tahsildar."

"17. On receipt of the report of enquiry from the Tahsildar in the Form as in Annexure III attached and on satisfying himself about the eligibility of the applicant for the pension, the Collector shall make an order on each application either sanctioning pension or rejecting the same. A specimen of the order sanctioning the pension is attached to this as Annexure IV."

It is therefore contended that learned Single Judge was justified in directing the grant of pension.

9. Having heard the learned counsel on either side and on perusal of the records, the short question to be considered is whether the direction of the learned Single Judge to grant pension to the petitioner is legally justified or not.

10. Learned Single Judge relied upon the earlier judgments in OP No. 13139/2003 and WP(C) No. 27416/2004 in arriving at a conclusion that none of the directions issued by this Court have been complied. Further, referring to Ext. P4 report of the Tahsildar, it was observed that the petitioner is entitled for pension. In OP 13139/2003, the learned Single Judge had only directed consideration of a representation submitted by the petitioner. It is after considering the said representation that Ext. P6 order had been passed rejecting the claim. It is indicated that there is no evidence to prove that the petitioner had gone underground in connection with freedom struggle. Ext. P6 order came to be challenged by filing WP(C) No. 27416/2004, which was disposed of on 5/10/2006. The learned Single Judge observed that the District Collector has to reconsider the matter based on Exts. P3, P3(a), P3(b), P3(c), P4, P7 and P14 and to pass orders relating to the eligibility of the petitioner for pension. This again was disposed of as per Ext. P8 order stating that no documents are produced

evidencing that the petitioner had gone underground during the freedom struggle. Petitioner submitted Ext. P9 dated 3/5/2007 to the District Collector producing NARC from the Chief Judicial Magistrate Court, Alappuzha and personal knowledge certificate issued by two prominent freedom fighters and the documents to evidence that they are recipients of pension. Ext. P10 is the NARC wherein the document sought for was "attested copy of arrest warrant in case No. P.E.10/1122 M.E." The endorsement made in the copy application was "on the verification of the relevant and available register, no such case is seen in it. Hence, the records are not available in this Court. Hence, the application is rejected." Exts. P11 and P12 are personal knowledge certificates. It was certified that petitioner was a bonafide freedom fighter who remained underground and on whom an award of arrest was announced, but he evaded arrest. He participated in the Punnapra-Vayalar Freedom Movement. By another communication dated 18/5/2007, petitioner was informed that though the petitioner was personally heard on 23/12/2006, he was unable to produce relevant records to prove his claim.

11. In the counter affidavit filed in the case, it is stated that the petitioner had not produced any documentary evidence from the official records along with the application as envisaged in the Rules and the personal knowledge certificate issued by the Sri. V.K. Viswanathan was not acceptable as the same was not appended with document to prove his eligibility to issue a certificate as per rules. The Tahsildar's report Ext. P4 was placed before the District Advisory Committee and as per directions issued by the Court in OP No. 13139/2003, petitioner was heard on 23/6/2004. At the time of hearing, in the petitioner's statement there was no clarity regarding the issuance of arrest warrant in connection with Punnapra-Vayalar struggle. Hence, it was observed that there was failure to establish his involvement in the struggle with documentary evidence. Pursuant to the judgment in WP(C) No. 27416/2004, petitioner was again heard on 23/12/2006. It is stated that the personal knowledge certificates issued by both the certifiers were not acceptable as the period of underground suffering is different from the claim of the petitioner. It was stated that the certificate issued by Sri. S. Damodaran Ex. MLA was also not in the prescribed form and therefore the certificates produced by the petitioner were not acceptable for grant of pension and accordingly his application was rejected as per order dated 28/12/2006. Later, a review petition was submitted by producing NARC from Chief Judicial Magistrate Court, Alappuzha and personal knowledge certificate issued by two certifiers. It was stated that no documentary evidence was available from the official records to prove his eligibility, in the absence of which, no action could be taken in the matter. It is further stated that Scheme had come into effect on 01/04/1971 and the last date for receipt of the application was 15/8/1985. Later, the cut off date was extended upto 31/3/1994 as per Government circular dated 31/12/1993. It was specifically mentioned in the circular that application received after 31/3/1994 will be considered only on production of documentary evidence such as warrant for arrest, jail records etc.

In so far as the petitioner has not produced any such records to prove his eligibility, the respondent is not under obligation to pay pension.

12. The question is whether the materials now placed on record were sufficient to grant pension to the petitioner. In the case of underground suffering, the document required for proof of the same is warrant for arrest as evidenced from Rule 4(h) itself which reads as under:

"(h) had remained underground for more than six months consequent on warrant for arrest having been issued against him."

13. When an application is submitted claiming pension, it is for the District Collector to make such enquiries regarding eligibility through Tahsildar which is provided under Rule 16. On receipt of the report of the Tahsildar and on satisfying himself about the eligibility of the applicant for pension, the Collector has to make an order either sanctioning the pension or rejecting the same. Therefore, satisfaction of the Collector regarding eligibility of the applicant is a must. Rule 20 relates to the instructions regarding the enquiry to be made for the grant of pension. While conducting enquiry, the Tahsildar shall also personally interview the freedom fighter or claimant to satisfy himself whether the conditions or the eligibility are satisfied. Though the nature of documents to be verified in respect of freedom fighters who had undergone imprisonment is mentioned, in regard to underground suffering, Rule does not indicate the nature of documents. As per circular dated 31/12/1993, the period for submission of application has been extended upto 31/3/1994.

14. In judgment dated 20/12/2012 in WA No. 1874/2010, a Division Bench of this Court had occasion to consider a similar issue. The following observations were made in para 8 and 9.

"8. The question to be considered in these cases is regarding the entitlement of the petitioner for the pension especially in view of Rule 23 of the Rules. It is clear from Rule 23 that, application submitted after 31/3/1994 will be considered only on obtaining the records mentioned in the said Rules. Admittedly, no such document had been produced. When there is a specific provision which prescribes the manner in which the pension has to be paid and the requirements of the documents in relation to the same, this Court cannot ignore such a provision and proceed to consider the factual materials and arrive at a conclusion. The manner of enquiry has been clearly indicated by the Supreme Court in *State of Orissa v. Choudhuri Nayak (D) Thr. L.Rs. and Ors.* (, AIR 2010 SC 3588) wherein the Supreme Court held as under:

"8. This Court in *Mukund Lal Bhandari v. Union of India* , [1993 Supp. (3) SCC 2] : (AIR 1993 SC 2127 : 1993 AIR SCW 2508), *Gurdial Singh v. Union of India* [, 2001 (8) SCC 8] : (AIR 2001 SC 3883 : 2001 AIR SCW 3843) and *State of M. P. v. Devkinandan Maheshwari* [, 2003 (3) SCC 183] : (AIR 2003 SC 1136 : 2003 AIR SCW 680) considered the object of the Freedom Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the

applications for pension under the scheme. We may summarize them as under :

(i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore they can not be expected to maintain and produce perfect records or documents about their participation in the freedom struggle.

(iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications are by old persons with no proper records.

(iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the scheme.

The above principles were spelled out to ensure that no genuine freedom fighter was denied pension under the scheme."

9. The judgment of the Supreme Court has been relied upon by this Court while considering the question of grant of pension under the Central Scheme in *Union of India v. Lennyamma and others* [ILR 2012(3) Kerala 649]. This Court had clearly indicated in the said judgment that compliance of the Rules for the grant of pension has to be properly analysed by the sanctioning authority and the authority has to satisfy itself about the genuineness of the claim."

15. Materials placed on record do not indicate that any document evidencing warrant for arrest had been issued against the petitioner whereas the only document is the NARC certificate. In so far as Rule 23 is very specific which permits the sanctioning authority to grant pension only on the basis of relevant materials being produced, viz., warrant of arrest, we do not think that the learned Single Judge was justified in placing reliance on the Tahsildar's report and personal knowledge certificates and directing grant of pension. Such a direction is contrary to the statutory provision.

In the result, we set aside the judgment of the learned Single Judge and dismiss the writ petition. Writ appeal is allowed.