
(2011) 06 KL CK 0087

In the High Court Of Kerala

Case No : Writ Petition (C) No. 36896 of 2010

Thambayi Amma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 307, 332

Citation : (2011) 3 ILR (Ker) 50 : (2011) 3 KLT 105

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : K.R. Krishnakumari, for the Appellant; George Zacharia and S. Krishnamoorthy, C.G.S.C.'s, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.—The issue involved in this Writ Petition is whether the pension under the "Swatantrata Sainik Samman Pension Scheme" promulgated by the Central Government is payable with effect from the date of receipt of the application or with effect from the date of passing the order or the Judgment, as the case may be.

2. The factual matrix is as follows:

The husband of the Petitioner was a participant in the "Kavumbai Movement" which was declared as a freedom struggle only on 20.1.1998. In connection with the freedom struggle as above, the Petitioner's husband happened to undergo confinement for a period of more than 6 months. As a matter of fact, the husband of the Petitioner who took the last breath on 29.08.1982, was infact charge sheeted for various offences i.e., Under Sections 147, 148, 332 & 307, I.P.C. and was remanded to jail on 28.1.1947. He was convicted by the Special First Class Magistrate's Court, Tell cherry on 14.6.1947. The confinement continued till 16.8.1948 and it was in different jails (Central Jail, Cannanore and Central Prison, Vellore). The factual aspects regarding the confinement, as

certified by the concerned jail authorities and as discussed in the opening paragraph of Ext.P4 judgment dated 9.3.2010 in W.P.(C) No. 33069/2009 do not stand disputed.

3. Taking note of the sufferings of the husband of the Petitioner and considering the eligibility to obtain pension under the Kerala Freedom Fighter's Pension Rules, 1971, the same was granted to him till 29.8.1982; after which the pension was granted to his widows as per Ext.P3 order dated 27.10.1983. One of the two widows expired on 29.4.2000 and thereupon, the State Government granted pension to the Petitioner, the surviving widow.

4. The fact that the Central Government had declared "Kavumbai Movement" as a part of the freedom struggle, as per order dated 20.1.1998 for the purpose of granting pension under Ext.P1 Scheme stands admitted. Since the Petitioner's husband satisfied the conditions prescribed under the Scheme, Ext.P2 application was preferred in April 1998, but since nothing transpired for 11 years, the Petitioner approached this Court by filing W.P.(C) No. 33069/2009 which culminated in Ext.P4 Judgment declaring the eligibility of the Petitioner to receive the pension under the Central Scheme. However, taking note of the submission that the State Government was still to forward recommendation to the Central Government, appropriate directions were given in this regard and the matter was disposed of to have it finalized as specified, within the prescribed time.

5. In spite of the specific direction, it was not complied by the State, which compelled the Petitioner who is an octogenarian to approach this Court again by filing a contempt petition, which was closed by this Court as per judgment dated 12.8.2010, on reporting compliance. But then it was the turn of the Central Government, who also chose to sleep over the same, when the Petitioner filed another contempt petition against the authorities of the Central Government. During the pendency of the said proceedings, Ext.P6 order dated 3.11.2010 was passed granting pension with effect from the date of the judgment and the factual position was brought to the notice of the Court. The Petitioner also agitated the matter stating that the pension was granted only with effect from the date of the judgment and not with effect from the date of receipt of the application; which contention was not analysed or dealt with by the Court and the contempt petition was closed as per order dated 9.11.2010, holding that, if the Petitioner was aggrieved of Ext.P6 order, it was to be challenged separately. Hence this Writ Petition.

6. The 1st Respondent has filed a counter affidavit referring to various provisions of the Scheme: It is contended that, by virtue of the relevant provisions of the Scheme and also the judgments rendered by this Court and also by the Apex Court, the Petitioner is not entitled to get any relief in this Writ Petition. The Petitioner have virtually reiterated the contentions in the Writ Petition, by filing reply affidavit, however producing two more documents as Exts.P11 and P12. The learned Counsel for the Petitioner submits that the stand taken by the Respondents, confining the pension as payable only with effect from the date of

Ext.P4 judgment, is not correct or proper. Reliance is placed on the judgment passed by the Apex Court in Mukund Lal Bhandari and others Vs. Union of India and others, and also a decision rendered by the Division Bench of this Court in Union of India (UOI) Vs. Radhamony, , in support thereof.

7. Paragraph 11 of the above decision rendered by the Apex Court is very relevant, which is extracted below for convenience of reference

11. We decline to go into the facts of the individual Petitioners in this petition and direct the Respondents as follows:

(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 receipt of the application, keeping in view of 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 the requisite evidence. The sanction of the pension would, however, be subject to the requisite proof in support of the claim.

8. It was based on the said verdict, that the judgment in Union of India (UOI) Vs. Radhamony, was rendered by the Division Bench of this Court, holding that the pension should be paid to the applicant from the date on which the original application was received, irrespective of the fact whether the application was filed with or without the requisite evidence. The learned Standing counsel appearing for the Respondents submits that the decision rendered by the Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others, is No. more good law, having substantially varied by the Supreme Court as per decision in Union of India (UOI) and Another Vs. Kaushalaya Devi, . This submission is sought to be controverted from the part of the Petitioner, stating that exactly similar issue has already been dealt with and held by this Court in favour of the Petitioner, holding that pension has to be paid with effect from the "date of application" and not otherwise.

9. In Mukund Lal Bhandari and others Vs. Union of India and others, it was held that the payment has to be effected under "Swatantrata Sainik Samman Pension Scheme", irrespective of whether the application was accompanied by necessary proof of eligibility or not and the same had to be effected from the date on which the original application was received. Law having been declared by the Apex Court was accordingly relied on by the Division Bench of this Court by allowing the Appeal as per judgment in Union of India (UOI) Vs. Radhamony, , overruling the judgment rendered earlier to the contrary, as reported in Krishnankutty Vs.

Union of India (UOI), .

10. The next question to be considered is whether the subsequent decision rendered by the Supreme Court cited on the part of the Respondents i.e., decision in Union of India (UOI) and Another Vs. Kaushalaya Devi, has tilted the balance in any manner. The pension under the Central Scheme was granted therein, confining the benefit only with effect from the date of granting pension, placing reliance on the decision rendered by the Supreme Court in Government of India represented by the Secretary Vs. K.V. Swaminathan, . It was held that, if the claim was allowed "on the basis of benefit of doubt", the pension should be granted not from the date of application, but from the date of order. In Union of India v. Kashiswar Jana 2008 (2) KLT SN 78 (C. No. 91) SC this aspect was noted very much as discernible from the facts discussed in paragraph 4, which is extracted below:

In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.

11. Coming to the case in hand, it is very much obvious that the sufferings of the deceased husband of the Petitioner/freedom fighter in the jail is authenticated by the "primary evidence" i.e., jail certificates issued by the concerned jail authorities in respect of the confinement for the period from 28.1.1947 to 16.8.1948. This factual position has been adverted to by this Court in the opening paragraph of Ext.P4 judgment. There is No. dispute on the factual position in the counter affidavit. This being the position, the pension that has been given under Ext.P1 Scheme, by passing Ext.P6 order, is on the basis of "primary evidence" i.e., jail certificate and not on the basis of any secondary evidence of "co-prisoner's certificate" (Code of Civil Procedure) and hence it is not by extending any benefit of doubt, so as to restrict the benefits by giving effect only from the date of the order/Judgment as stipulated by the Supreme Court in Union of India (UOI) and Another Vs. Kaushalaya Devi, . The said decision itself is an authority that, if the suffering is proved by "primary evidence" (as mentioned in paragraph 5), the claimant is entitled to have the benefit with effect from the date of the application itself, as held by the Apex court in Mukund Lal Bhandari and others Vs. Union of India and others,) cited supra.

12. In the above facts and circumstances, this Court finds that the Petitioner is entitled to succeed. Respondents are directed to disburse the pension payable pursuant to Ext.P6 order, with effect from the date of receipt of application. The impugned order will stand modified to the said extent. The payment as above shall be disbursed to the Petitioner, who is now nonagenarian, having crossed the age of 90 years, at the earliest, at any rate within "3 months" from the date of

receipt of a copy of the judgment.

13. Writ Petition is allowed. No. costs.