
(2003) 10 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 1448 of 2003

Union of India and Another	Vs	APPELLANT
Bhavani Ramakrishnan		RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 60

Citation : (2004) 1 KLJ 161

Hon'ble Judges : K.K. Denesan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Muraleedhara Kaimal Addl. CGSC, for the Appellant; J. Om Prakash, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—This appeal is against the judgment in O.P. No. 6801/2002. The appellants are the respondents in the Original Petition and the respondent is the petitioner in the original petition. The respondent Bhavani Ramakrishnan is the wife of Sri. Ramakrishnan who is stated to have actively participated in the Punnapra - Vayalar Struggle which has been recognized as part of the Freedom Struggle. She filed an application for Swatantrata Sainik Samman Pension (hereinafter referred to as "S.S.S. Pension.") under the Swatantrata Sainik Samman Pension Scheme. The, said application was rejected by the Government of India as per Ext. P3 letter dated 12th February, 2002. In Ext. P3 though the Government of India found that late Ramakrishnan was in lockup as an undertrial it was held that such undertrial imprisonment would not qualify for Freedom Fighter's Pension under the Swatantrata Sainik Samman Pension Scheme. According to the Government, the respondent's husband had not undergone any imprisonment as defined in Section 60 of the Indian Penal Code. Under the S.S.S. Pension Scheme undertrials except the one which led to conviction is not treated as suffering. It was also pointed out that bringing the undertrial which did not lead to conviction would be a substitution of new eligible criteria for the

Scheme enlarging its scope which was impermissible. Hence the application was rejected holding that the applicant's claim was not eligible for S.S.S. Pension. Challenging Ext. P3, the respondent Smt. Bhavani Rarhakrishnann filed the Original Petition praying for a direction to the first respondent Union of India to pay Freedom Fighter's Pension to the petitioner from the date of Ext. P1 application with 18% interest. The learned Single Judge relying on the decision of the Full Bench of this court in Union of India (UOI) Vs. Peter Devassia, held that the petitioner was entitled to pension as a widow of the freedom fighter and directed the Government to pass further orders on the petitioner's application within a period of two months from the date of receipt of a copy of the judgment. Aggrieved by the said judgment of the learned Single Judge, the Union of India has filed this writ appeal.

2. It is not disputed by the learned counsel for the appellants that in Ext. P3 the Government of India found that late Ramakrishnan was in lockup as an undertrial. It is also not disputed that the respondent's application for freedom Fighter's Pension was rejected by the Government only on the ground that imprisonment as an undertrial did not qualify for Freedom Fighters Pension under the S.S.S. Pension Scheme. It is also not disputed that in the Full Bench decision mentioned above, it was held that actual jail suffering during the trial of the case is an imprisonment for the purpose of the Scheme and it is immaterial whether the trial ended in conviction or acquittal. In the light of the above undisputed facts, the learned Single Judge was right in holding that the petitioner in the original petition was entitled to pension as a widow of the freedom fighter.

3. The learned counsel appearing for the appellants submits that the learned Single Judge did not consider Ext. R2 letter dated 11.06.2002 by which the respondent was informed by the Government of India that her application for pension was rejected. Ext. R2 reads as follows:

In continuation of this Ministry's letter of even number dated 12.02.2002 with respect to the subject cited above regarding ejection of your claim. I am directed to say that the Government of Kerala vide their letter No. 48569/FFP. A2/2001/GAD dated 24.04.2002 has also not recommended your case due to the absence of acceptable documents and adequate evidence stipulated under the Swatantrata Sainik Samman Pension Scheme, 1980.

2. Therefore, in further compliance of the Hon''ble High Court's judgment mentioned above, it is regretted again that your claim for pension, is hereby rejected.

The contention of the learned counsel for the appellants is that during the pendency of the original petition Ext. R2 letter was received by the petitioner but she did not challenge the same by amending the original petition and hence she is bound by the decision communicated through Ext. R2. In other words, according to the learned counsel, apart from Ext. P3 letter there was a subsequent letter dated 11.06.2002 (Annexure R2) rejecting the claim of the

respondent but it was not challenged by the respondent. It is also pointed out that the Government of Kerala in their letter dated 24.04.2003 had not recommended the respondent's case due to absence of acceptable documents and adequate evidence stipulated under Swatantrata Sainik Samman Pension Scheme, 1980.

4. It is true that during the pendency of the original petition Ext. R2 letter was issued by the Government rejecting the claim of the respondent on the ground that the Government of Kerala had not recommended her case. But in Ext. P3, Government of India categorically held that the respondent's husband late Ramakrishnan was in lockup as an undertrial. Her application was rejected only on the ground that imprisonment as an undertrial did not qualify for freedom fighters pension under the S.S.S. Pension Scheme. Therefore, the essential question is whether the respondent was eligible for S.S.S. Pension on the ground that her late husband has suffered imprisonment as an undertrial which fact was accepted by the Central Government in Ext. P3. The question whether imprisonment as an undertrial will qualify for S.S.S. Pension was considered by the Full Bench of this Court in the above mentioned decision and it was held that imprisonment as an undertrial also would qualify for S.S.S. Pension. Hence in view of the admitted fact that late Ramakrishnan was an undertrial, the absence of recommendation by the State Government cannot stand in the way of granting S.S.S. Pension to the respondent.

5. We are not impressed by the technical objections raised by the learned counsel appearing for the appellants that Ext. R2 letter was not challenged by amending the original petition and that the State Government did not recommend the case of the respondent for pension. When the Government of India, itself had found in Ext. P3 that the petitioner's husband had been in lockup as an undertrial it cannot be said that there is any need for further recommendation from the Government of Kerala in the matter. In the Full Bench decision mentioned above, it was pointed out that in appreciating the scheme what is required is a rational and not a technical approach. For taking such a view, the Full Bench relied on the judgment of the supreme Court in *Gurdial Singh Vs. Union of India and Others*, . Therefore we reject the technical objections pointed out by the learned counsel for the appellants. In the above circumstances, there is no merit in the appeal and the appeal is dismissed.