

(1998) 06 KL CK 0049
In the High Court Of Kerala
Case No : W.A. No. 1182 of 1998

Union of India (UOI) and Others

APPELLANT

Vs

Alex Varghese

RESPONDENT

Date of Decision : 25-06-1998

Acts Referred:

Citation : (1999) 3 LLJ 1638

Hon'ble Judges : D. Sreedevi, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Sudhi Vasudevan, for the Appellant;

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, J.—By consent of both parties, the main writ appeal itself is taken up for final hearing. Heard Mr. A. Sudhi Vasudevan, Additional Central Government Standing Counsel for the appellants and Mr. M.R. Rajendran Nair for the respondent.

2. The Union of India has filed this writ appeal against the order of the learned single Judge allowing O.P No. 4772 of 1997 filed by the respondent herein, directing the appellants herein to grant disability pension to the respondent. The appellants (the respondents in the Original Petition) were directed to pass orders within a month from the date of receipt of a copy of the judgment. The case put forward by the respondent herein was that after having put in seven years 11 months and 20 days of service in the CRPF, he was discharged from service on being assessed to be completely and permanently incapacitated for further service of any kind in the department. It was certified that the incapacity did not appear to have been caused by irregular or intemperate habits. The respondent contended that he did not have any disability at the time of entry in service and that on account of the stress and strain caused due to the service rendered by him under the CRPF he was assessed to be disabled. Hence, it was contended that the requirement of 10 years service was not necessary while claiming for

disability pension. The appellant herein filed counter-affidavit in the Original Petition. It is specifically stated in the counter-affidavit that the decease of the respondent, viz. "chproiditis" was not attributable to conditions of service and that there was no causal connection between the disablement and Government service. It was also stated that the disease of the respondent herein, "choroiditis" was not covered as per list and classification of disease which can be contracted by service as envisaged in Schedule I-A of Central Civil Services (Extra ordinary Pension) Rules.

Rajan, J.

3. By judgment dated March 2, 1998, directed the appellants to grant disability pension to the petitioner. Orders in that respect was directed to be passed within one month from the date of receipt of a copy of the judgment. Aggrieved by the said judgment, the appellants have filed this writ appeal.

4. Learned counsel for the appellant submitted that the learned Judge is not correct in saying that the burden is upon the appellant to prove that the disease which the respondent was suffering from was not attributable to or aggravated by Government service. On the other hand, it was contended that the learned single Judge ought to have found that when a person claims an extraordinary benefit, it is upon him to prove that the disability is on account of or aggravated due to service conditions. According to counsel, the burden is upon the claimant to prove that there is causal connection between the disability and the Government service. It is submitted that merely because the disease which the respondent is suffering was detected after his entry in service it will not make the respondent eligible for disability pension, and that the disability contracted by him is not attributable to service.

5. Learned counsel for the respondent reiterated the contentions raised in the Original Petition and submitted that the respondent is suffering for the last 20 years without the disability pension being paid and that the judgment of the learned single Judge issuing directions to pay the pension is perfectly in order and not liable to be interfered with.

6. The Original Petition was filed challenging Ext. P1 order. It is stated in Ext. P-1 in paragraphs 6 and 7 as follows :

"6. As per CCS(EOP) Rules, disablement shall be accepted as due to Government service provided that, it is certified that it is due to disease (as mentioned in Schedule I-A) which is attributable to Government service or existed before or arose during Government service and has been aggravated thereby. Further there should be causal connection between disablement and Government service and for attributability or aggravation to be conceded.

7. The case of EX-CT Alex Varghese was examined in this office with rules position as well as opinion of Chief Medical Officer, GC, Hospital, Gandhinagar and found that the disease of individual "Choroiditis (Both eyes)" is not covered

as per list and classification of disease which can be contracted by service and in Schedule 1- A of CCA (EOF) Rules. The CMO, GC Hospital, Gandhinagar has also confirmed vide his letter No. M. III. 1/96-Hosp. dated December 4, 1996 that the disease "Choroiditis (Both eyes)" of individual is not covered in the list of diseases which can be contracted by service."

It is seen from the above order that the claim of the respondent for disability pension had been turned down by the authorities. Learned counsel for the respondent relied on Ext. P-3 certificate issued by the Senior Ophthalmologist, General Hospital, Imphal, which reads as follows:

"Certified that I have carefully examined No. 710370315 Constable Alex Varghese son of Sri E.J. Varghese 37th Bn. C.R.P.F. His age is by his own statement 28 years and by appearance about 25 years. I consider Constable Sri Alex Varghese to be completely and permanently incapacitated for further service of any kind in the department to which he belongs in consequences of Choroiditis (both eyes). His incapacity does not appear to me to have been caused by irregular or intemperate habits. He may be invalidated from service."

It is clearly mentioned in the above certificate that the respondent's incapacity does not appear to have been caused by irregular or intemperate habits, and recommended that he may be invalidated from service. It is also the case of the respondent that inspite of the directions given earlier by this Court in Ext. P-7 judgment directing the 2nd appellant herein to pass fresh orders after affording the respondent herein an opportunity to place his grievances and to support his claim for disability pension and also, if necessary, to conduct a medical survey of his case with reference to the records available at the time of his discharge before passing appropriate orders, no enquiry whatsoever has ever been conducted. The order of this Court under Ext. P-7 has not been complied with at all. A reading of Ext. P-1 will not show that any further enquiry has been conducted as directed by this Court earlier. We have already referred to the certificate issued under Ext. P-3 wherein the finding is that the incapacity did not appear to have been caused by irregular or intemperate habits of the respondent.

7. The next submission of learned counsel for the respondent is that the appellants have not discharged their burden in proving that the respondent is not entitled for disability pension. A Division Bench of this Court in the decision reported in *Revi v. Union of India*, 1998 Ker LT 56 held that it is the duty of the appellants to affirmatively establish that the disease is not attributable to the service or has not been aggravated by it and that the burden of establishing the same lies on the authorities, namely the appellants herein.

8. This is a case where the respondent was recruited and enrolled after finding him physically and mentally fit and while in service, after so many years of service, he contracted the illness leading to the disability. Ext. P-3 certificate states that the incapacity did not appear to have been caused by irregular or intemperate habits. Therefore, no extraneous cause can be shown for the

respondent having contracted the disease at a later stage. The appellants have not affirmatively established that the disease is not attributable or has not been aggravated by it. The burden of establishing it lies on the appellants.

9. When the appellants have miserably failed to establish that the disability is not attributable to Government service, they are bound to pay the disability pension as per the schedule to the pension rules. Under the circumstances, we are of the opinion that the learned single Judge is right in granting relief as prayed for to the respondent herein. The arguments advanced by the learned counsel for the appellants has no merits.

The writ appeal, therefore, fails and is hereby dismissed. The respondent shall pass orders within one month from the date of receipt of a copy of this judgment and disburse the disability pension within one month thereafter. There will be no order as to costs.