
(2003) 01 KL CK 0054
In the High Court Of Kerala
Case No : W.A. No. 1216 of 2002

Union of India (UOI)

APPELLANT

Vs

Peter Devassia

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Swatantrata Sainik Samman Pension Scheme, 1980 — Clause 4

Citation : AIR 2003 Ker 147 : (2003) 1 ILR (Ker) 484 : (2003) 1 KLT 467

Hon'ble Judges : Jawahar Lal Gupta, C.J.;K.K. Denesan, J;G. Sivarajan, J

Bench : Full Bench

Advocate : N. Nagaresh, A.C.G.S.C, for the Appellant; S. Sudhish Kumar and K.K. Satheesh, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Denesan, J.—When this Writ Appeal came up for admission before the Division Bench, it was submitted by the appellant's counsel that in view of the decision of the Supreme Court in Union of India and Ors. v. Manohar Lal Azad and Anr. (Civil Appeal No. 6210 of 2000), the decision of this Court in Union of India v. Lonan Benjamin (2002 (1) KLT 46 DB) was not correct. The Bench presided over by Srikrishna, C.J. as His Lordship then was, felt that the matter be heard by a Full Bench and passed the order of reference which reads:

"Appeal admitted. Respondents waive service through learned counsel. A Division Bench of this Court in Union of India v. Lonan Benjamin, 2002 (1) KLT 46 has taken the view that the expression "minimum imprisonment of six months" used in paragraph 4(a) of the Freedom Fighters Pension Scheme, despite the explanation attached to Paragraph 4(a), would be fulfilled if the under trial imprisonment period is more than six months even in a case not ending in conviction. Learned counsel for the Union of India brought to our notice the judgment of the Supreme Court in CA. No. 6210 of 2000 decided on November 2, 2000 (per Justice Syed Shah Mohammed Quadri and Justice S.N, Phukan) which seems to suggest that it is not open to the Court to change the eligibility

criterion by reading something into a criterion which was not there. Since there is already a Division Bench Judgment holding the field, it is therefore necessary that the matter be heard by a Full Bench so as to give a quietus to the controversy. Pending further hearing of the appeal, there shall be an interim stay of the judgment of the learned Single Judge."

2. Union of India is the appellant, Respondents 2 to 9 are the legal heirs of respondent No. 1, Peter Devassia who filed O.P. No. 12091 praying, among other, to quash the order of the Central Government rejecting his application for the grant of the freedom fighters' pension. Writ petitioner was detained in prison for nine months as an under trial prisoner in connection with "Punnapra Vayalar Struggle" recognised as freedom struggle. That trial ended in the acquittal and discharge of the writ petitioner. Learned Single Judge allowed the O.P. by judgment dated 17.8.2001 holding that the petitioner was a freedom fighter coming within the purview of the relevant scheme. On 14.10.2001, the writ petitioner passed away, and therefore his wife and children have come on record in this appeal.

3. The point arising for consideration before us is whether detention of a person as under trial prisoner for participation in the freedom struggle gives him the right for freedom fighters' pension under the scheme even if the trial did not end in conviction. Both sides agree, and in our view rightly, that the answer to the above question has to be found out within the frame work of the relevant scheme. Hence a brief reference to that scheme.

4. During Twenty Fifth Anniversary (Silver Jubilee Year) of Independence, a Central Scheme for the grant of pension to freedom fighters and their families from Central Revenues was introduced by the Government of India. The Scheme commenced from 15th August, 1972 and provided for the grant of pension to living freedom fighters and their families if they are no more alive, and to the families, of martyrs. From 1.8.1980, the benefit of the said Scheme called Swatantrata Sainik Samman Pension Scheme (for short the Scheme only) has been extended to all freedom fighters as a token of Samman to them.

5. Clause 4 of the scheme says that for the purpose of grant of Samman pension a freedom fighter is:

(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

(b) The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1.8.1980.

EXPLANATION

1. Detention under the orders of the competent authority will be considered as imprisonment.

2. Period of normal remission upto one month will be treated as pan of actual imprisonment

3. In the case of a trial ending in conviction, under trial period will be counted towards actual imprisonment suffered.

4. Broken period of imprisonment will be totaled up for computing the qualifying period.

(b) A person who remained underground for more than six months provided he was:

1. a proclaimed offender; or

2. one on whom an award for arrest/head was announced; or

3. one for whose detention order was issued but not served.

(c) A person interned in his home or externed from his district provided the period of internment/externment was six months or more

(d) A person whose property was confiscated or attached and sold due to participation in the freedom struggle.

(e) A person who became permanently incapacitated during firing or lathi charge.

(f) A person who lost his job (Central or State Government) and thus means of livelihood for participation in national movement."

6. It is not disputed that the respondent is a Thamra Pathra holder. He was getting freedom fighters pension from the Govt. of Kerala. He had participated in the Punnapra-Vayalar struggle. On 20.8.1998 the Central Government declared that Punnapra-Vayalar struggle was also part of the freedom struggle. Thus freedom fighters who participated in that struggle became eligible for Swatanthrata Sainik Samman Pension, for short, "S.S.S. Pension." As per Clause 4 of the Scheme extracted above, those who had suffered imprisonment in mainland jails for a period of more than six months are eligible to get S.S.S. Pension. Extract of the register of under trial prisoners (Ext. P1) issued by the Superintendent of Central Prison, Trivandrum, shows that the 1st respondent was involved in case No. P.E. 9/1122 M.E. in connection with Punnapra-Vayalar struggle and he had suffered undertrial imprisonment at the Central Prison, Trivandrum from 27.4.1123 M.E. till 25.1.1124 M.E. i.e., till he was acquitted and discharged by the Additional Sessions Judge, Trivandrum, on 25.1.1124 M.E. Ext. P2 shows that the State Government had recommended the case of the respondent for S.S.S. Pension, after verification. But the application submitted by respondent No. 1 for S.S.S. Pension was rejected by the appellant-Union of India as per Ext. P3 on the ground that he was released from the prison on being acquitted and discharged by the Additional Sessions Judge, Trivandrum.

7. It was contended by the petitioner in the O.P. that the period spent by him in prison during the trial of the case, though ending in acquittal would justify the

claim for S.S.S. Pension. But according to the Union of India, Clause 4(a) read along with Explanation 3 of that Clause shows the intention of the framers of the scheme that under trial period will be counted towards imprisonment only if the trial ended in conviction. The learned single Judge rejected the interpretation sought to be placed on Clause 4(a) by the Union of India and held that nothing stated in the "Explanation" can be understood as restricting the scope of the main clause unless the plain words used therein indicate a contrary intention. The Original Petition was allowed granting the reliefs prayed for by the petitioner. In the judgment under appeal, the learned single Judge has referred to another judgment rendered by His Lordship in O.P. No. 3146/99 wherein a detailed analysis of the scheme has been made. Union of India had filed Writ Appeal against that judgment also. That appeal along with another appeal was dismissed by the Division Bench by the judgment referred to in the order of reference, ie. Union of India v. Lonan Benjamin (supra).

8. In Lonan Benjamin's case the learned Judges of the Division Bench (Radhakrishnan & Balakrishnan Nair, JJ.) held that Clause 4(a) which is the main part speaks of imprisonment only and does not specify whether it should be as a convict or as an under trial prisoner. It was further held that a person who has suffered a minimum imprisonment of six months in the mainland jails before Independence is a freedom fighter eligible for S.S.S. Pension. It did not matter whether he languished in jail as an under trial prisoner or as a convicted prisoner. The main clause does not draw any distinction between imprisonment during trial which ends in conviction and that which ends in acquittal or discharge. In paragraph 4 of the judgment in Lonan Benjamin's case the Division Bench stated as follows:

"..... Explanation 3 only says that in cases ending in conviction the imprisonment as under trial prisoner and as convict, can be clubbed together to reckon the total period of six months. It does not mean that if the entire detention is as under trial prisoner, the same has to be excluded. If that was the intention, the same would have been explicitly stated. The interpretation adopted by the appellants cannot be correct, in view of Clause 4(b) of the Explanation. The said provision says that if a freedom fighter was one who remained underground as a proclaimed offender or against whom an award for arrest was pending, then he will also be eligible for pension. It means that if an accused absent himself and goes underground to escape the process of law like arrest, he will be eligible in view of this clause irrespective of the final fate of the criminal case against him. But, if he was actually arrested and remanded and while so, faced the trial which ultimately ended in his acquittal, he will not be eligible, if the Government's contention is accepted. Further, in view of Clause 4(c) of the Explanation, a person interned in his house for six months is also eligible for pension. It means, a person even without any criminal case against him when prevented from moving out for six months from his house becomes eligible for pension. But, a person who is actually involved in a criminal case in connection with the freedom struggle and who was imprisoned for more than six months as

under trial prisoner will be denied pension depending on the outcome of the criminal case against him, if the view of the Government is accepted."

9. After going through the judgment of the Supreme Court in C.A. No. 6210 of 2000 we find that the facts as also the points arose for consideration in that case are different from those in Lonan Benjamin's case. Respondent No. 1 in the above Civil Appeal was sentenced to imprisonment. However, he was released from the jail without completing the minimum period of six months. When such a person claimed the benefit of the Scheme, Supreme Court held that he cannot be considered as "freedom fighter". Evidently he did not satisfy the eligibility criteria laid down in the scheme. Under such circumstances, it was further held that if such a person has to be declared eligible for the pension, it will amount to enlarging the scope of the scheme and substituting a new eligibility criteria. We find that the application of the above dictum of the Apex Court does not arise in the facts and circumstances of this case. There is absolutely no conflict between the ratio of the decision of the Supreme Court in C.A. No. 6210 of 2000 and the decision of the Division Bench of this Court in Union of India v. Lonan Benjamin (*supra*).

10. Counsel for the appellant raised another contention also. According to him, the scope of the Scheme has to be understood in the light of Ext. R1(a) captioned "Salient Features of S.S.S. Pension Scheme, 1980" which was subsequently issued by the Central Government. Paragraph 2.2 of Ext. R1(a) is relied on to contend that the imprisonment referred to in Clause 4(a) is correlated to the sentence awarded after trial. We are not able to agree with the above contention for two reasons. Firstly, Ext. R1(a) which only highlights the salient features of the Scheme cannot be used as an aid to understand or interpret the provisions of the Scheme. At any rate, Ext. R1(a) cannot modify the scheme or vary the meaning of the provisions of that scheme, which is a public document issued and published by the Central Government. Secondly, there is nothing in Ext. R1(a) which runs counter to the beneficial provisions contained in the scheme.

11. Nowhere in the scheme we find any provision to the effect that the period of detention or imprisonment or suffering in jail could be counted towards the minimum period of six months imprisonment if only the trial ends in conviction. We are clearly of the view that actual jail suffering during the trial of the case is imprisonment for the purpose of the scheme and it is immaterial whether the trial ended in conviction or acquittal, Reading the scheme as a whole, particularly Clause 4 in its entirety, we cannot agree with the contention of the appellant that the judgment in Lonan Benjamin's case (*supra*) has either enlarged the scope of the scheme or substituted any new eligibility criteria.

12. The appellant has dealt with the issue on the wrong assumption that under Explanation 3 detention or imprisonment during the trial of the case can be counted towards actual imprisonment suffered, if the trial ends in conviction. We notice from the language used in that explanation that there is no basis for the

above argument at all. At the risk of repetition we extract once again Explanation 3 which reads:

"In the case of a trial ending in conviction under trial period will be counted towards actual imprisonment suffered."

The provision speaks of under trial period. The purpose of Explanation 3 and the benefit intended to be conferred by that Explanation are quite evident from the words used therein. On the strength of the above Explanation, a freedom fighter who was convicted for participation in freedom struggle, is entitled to count his under trial period towards actual suffering, without undergoing jail suffering during the period of trial even for a day. It is immaterial whether he was under detention or on bail or otherwise during the trial period. But in a case where the trial did not end in conviction, the under trial period (not imprisonment) will not be counted towards imprisonment. Thus by fiction certain period which in reality cannot be counted towards actual imprisonment is deemed as imprisonment by virtue of Explanation 3. We are of the view that such a provision cannot be made use of or called in aid to contend that a certain period which, in fact, is detention or imprisonment or jail suffering, shall be understood as something other than actual imprisonment by the mere factum of acquittal. The scheme does not make any attempt to denude the term imprisonment or jail suffering or detention its plain and natural meaning by drawing a distinction between jail suffering as under trial prisoner and as convicted prisoner.

13. The basic purpose of the Scheme is to honour a person who suffered for the freedom of India. The imprisonment for the prescribed period is one of the requirements. The respondent, who is unfortunately no more, fulfilled this condition.

14. During the days of the English, false cases were foisted against those who actively participated in the freedom movement. The case of a person who was falsely implicated in a case and imprisoned cannot be at a level lower than that in which the charge was proved. The suffering of the innocent is severer than that of the person who is ultimately found to be guilty.

15. Supreme Court in *Gurdial Singh Vs. Union of India and Others*, has made it clear that in appreciating the Scheme what is required is a rational and not a technical approach. We extract the following passage from the aforesaid decision:

"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. It has also to be kept in mind that the claimants of (he Scheme are supposed to be such persons who had given the best part of their life for the country."

16. The judgment of the learned single Judge under appeal does not call for any interference. The Writ Appeal is accordingly dismissed.