

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

THURSDAY, THE 31ST DAY OF MAY 2012/10TH JYAISHTA 1934

WP(C).No. 26801 of 2010 (A)

PETITIONER(S) :

**PUSHPAVALLI SATHYAVRUTHAN,
W/O.K.K.SATHYAVRUTHAN, KORASSERY HOUSE, CHERAI P.O.,
COCHIN-683 514.**

**BY ADVS.SRI.T.M.MOHAMMED YOUSUFF(SR.)
SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SMT.RABIA BEEGOM T.K.
SRI.JOBI.A.THAMPI
SMT.M.KABANI DINESH
SMT.ASHIFA TALIB
SMT.ASHIYA YOUSEFF**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL ADMINISTRATIVE DEPARTMENT,
THIRUVANANTHAPURAM - 688 001.**
- 2. SECRETARY TO GOVERNMENT,
GENERAL ADMINISTRATION (FFP-B),
GOVERNMENT SECRETARIAT, TRIVANDRUM - 688 001.**
- 3. DISTRICT COLLECTOR,
COLLECTORATE, ERNAKULAM.**

BY SMT.P.MAYA, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-05-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Contd...2/-

AMV

WP(C).No. 26801 of 2010 (A)

APPENDIX

PETITIONER(S) EXHIBITS :

- P1. : COPY OF THE APPLICATION DTD.10.02.2009 SUBMITTED BY PETITIONER IN THE PRESCRIBED FORM.**
- P1(A) : COPY OF THE AFFIDAVIT ALONG WITH ATTESTED BY THE JUDICIAL FIRST CLASS MAGISTRATE, ERNAKULAM, DTD.03.02.2009.**
- P1(B) : COPY OF THE LETTER FROM THE FORMER MINISTER FOR FINANCE, STATE OF KERALA, SHRI V.VISWANATHA MENON.**
- P1(C) : COPY OF THE CERTIFICATE DTD.16.01.2009 OF SRI.K.C.PRABHAKARAN.**
- P1(D) : COPY OF THE CERTIFICATE DTD.16.01.2009 OF SHRI.K.C.MATHEW**
- P1(E) : COPY OF THE LETTER DTD.16.01.2009 FROM K.C.PRABHAKARAN.**
- P1(F) : COPY OF THE LETTER DTD.20.01.2009 FROM SHRI K.C.MATHEW**
- P1(G) : COPY OF THE CERTIFICATE DTD.21.01.2009 ISSUED BY THE SUB INSPECTOR OF POLICE, KALAMASSERY.**
- P1(H) : COPY OF THE NOTICE NO.A.2054/22 DTD.21.08.1947 SHOWING A LIST OF STUDENTS WHO WERE EXPELLED FROM THE MAHARAJAS COLLEGE.**
- P1(I) : COPY OF ABSTRACT FROM THE ADMISSION REGISTER OF RAMA VARMA UNION HIGH SCHOOL, CHERAI.**
- P1(J) : COPY OF THE NEWS PUBLISHED BY THE MANGALAM DAILY DTD.31.10.2008 REGARDING THE DEMISE OF SHRI.K.K.SATHYAVRUTHAN.**

Contd....3/-

AMV

WP(C).No. 26801 of 2010 (A)

- P2. : COPY OF THE LETTER FROM THE 2ND RESPONDENT VIDE NO.14643/FFP.B.3/09 DTD.28.11.2009.
- P3. : COPY OF THE LETTER NO.A2 17693 DTD.17.06.2010 ISSUED BY THE DISTRICT COLLECTOR TO THE REVENUE DIVISIONAL OFFICER, FORT KOCHI.
- P4. : COPY OF THE JUDGMENT DTD.10.06.2009 IN WP(C) 39646/2003.
- P5. : COPY OF THE C.M.APPLICATION NO.1227/2010 IN WP(C) NO.39646 OF 2003 FILED BY THE STATE.
- P6. : COPY OF THE JUDGMENT DTD.08.09.2005 IN WP(C) NO.29910/02.
- P7. : COPY OF THE LETTER DTD.11.08.2010 FROM ONE KRISHNAN.
- P8. : COPY OF THE REPRESENTATION DTD.12.08.2010 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

P.N.RAVINDRAN, J.

W.P(C).No.26801 of 2010

Dated this the 31st day of May, 2012

JUDGMENT

The petitioner is the wife of late K.K.Sathyavruthan, who was born on 1.1.1103 ME and passed away on 30.10.2008, at the age of 81 years. It is stated that he had participated in the Quit India Movement during the period 9.8.1942 to 14.8.1947, that a warrant of arrest was issued against him on 9.8.1944 as a result of which, he went underground for a period of seven months from 19.8.1944 to 3.3.1945. Late K.K.Sathyavruthan did not however, apply for freedom fighter's pension. After he expired, the petitioner filed Ext.P1 application dated 10.2.2009 before the District Collector, Ernakulam for Kerala Freedom Fighter's Pension. Along with the said application she produced Ext.P1(c) certificate and Ext.P1(e) letter issued by Sri.K.C.Prabhakaran, a former freedom fighter who had undergone imprisonment during the period from April 1943 to May 1944 and was the recipient of Central Freedom Fighter's Pension, Ext.P1(d) certificate and Ext.P1(f) letter from Sri.K.C.Mathew, another freedom fighter,

who was receiving Central Freedom Fighter's Pension to the effect that the petitioner's husband late K.K.Sathyavvruthan was deeply involved in the freedom struggle and had gone underground for a period of seven months from 19.8.1944 to 3.3.1945. The petitioner had, along with the application also, produced Ext.P1(b) letter from Sri.V.Viswanatha Menon, former Minister for Finance and Member of Parliament to prove her claim that her husband was a freedom fighter. She had also produced various other documents in support of her claim. By Ext.P2 letter dated 28.11.2009 the Government informed the petitioner that her application cannot be considered for want of evidence to prove that her husband had gone underground after a warrant of arrest was issued against him in connection with the freedom struggle.

2. About seven months after Ext.P2 letter was sent, the District Collector, Ernakulam, sent Ext.P3 letter dated 17.6.2010 to the Revenue Divisional Officer, Fort Kochi, with copy to the petitioner, calling upon the Revenue Divisional Officer to submit a report explaining the circumstances in which he had sent the report dated 29.10.2009 to the Government to the effect that the petitioner's husband had gone underground for a period of seven months. The petitioner thereupon submitted Ext.P8 representation dated 12.8.2010 to the Secretary to Government, General

Administration Department seeking payment of Kerala Freedom Fighters' Pension. In that representation she placed reliance on Ext.P4 judgment of this Court in W.P.(C) No.39646 of 2003 and Ext.P6 judgment of this Court in O.P.No.29910 of 2002 and stated that pursuant to the directions issued by this Court in the aforesaid judgments, Freedom Fighter's Pension was sanctioned to the petitioners therein, namely Sri.A.S.Narayanan Pillai and Sri.C.N.Krishnan, who had also gone underground along with the petitioner's husband. She also stated that her husband was a contemporary of Sri.C.N.Krishnan, the petitioner in O.P.No.29910 of 2002 and had gone underground along with him pursuant to the warrant of arrest issued in the year 1944. She also relied on Ext.P7 letter dated 11.8.2010 given by Sri.C.N.Krishnan. The instant writ petition was thereafter filed on 20.8.2010 challenging Ext.P2 and seeking the following reliefs:

- (i) *To call for the records leading to Ext.P2 and quash the same by issuance of a writ of certiorari.*
- (ii) *To issue an appropriate writ, order or direction directing the respondents to grant Kerala Freedom Fighters Pension to the petitioner from the date of Ext.P1 application treating the Ext.P1(c) & P1(d) certificates as valid documents in support of the claim of the petitioner and in the light of the observations, findings and directions in Ext.P4 judgment and such other documents produced along with Ext.P1 and Ext.P8.*
- (iii) *To declare that the petitioner is eligible and*

entitled to get the Kerala Freedom Fighters Pension from the date of her application advertig to the Ext.P1(c) & P1(d) certificates and other valid documents produced along with the application in support of the claim of the petitioner and in the light of the observations, findings and directions in Ext.P4 judgment and proceedings No.M5-22179/2007 dtd. 27.1.2010 sated in Ext.P5 and other documents produced along with Ext.P1 application and Ext.P8 representation.

- (iv) *To issue an appropriate writ order or direction commanding the 2nd respondent to consider and pass orders on Ext.P8 representation taking into account the documents produced along with Ext.P1 and other relevant documents including P4 judgment and other documents including Ext.P4 judgment, after affording an opportunity of hearing to the petitioner within a time stipulated by this Hon'ble Court.*

3. One of the reliefs sought is a direction to the second respondent to consider Ext.P8 representation and pass orders thereon in the light of the documents produced along with Ext.P1 application and Exts.P4 and P6 judgments of this Court. The first respondent has filed a counter affidavit dated 26.3.2012 justifying the rejection of the petitioner's application for Kerala Freedom Fighters Pension.

4. When the writ petition came up for hearing today, Smt.Molly Jacob, learned counsel appearing for the petitioner submitted that after the writ petition was filed, the Secretary to Government, General Administration Department had sent a letter

No.14270/FFP.B3/2010/GAD dated 17.2.2012 requesting the petitioner to furnish the originals Ext.P1, Ext.P1(a) Ext.P1(b), Ext.P1(c), Ext.P1(d), Ext.P1(e), Ext.P1(f), Ext.P1(g), Ext.P1(h) Ext.P1(i) and Ext.P6 produced in this case, that the petitioner thereupon sent a letter dated 23.2.2012 stating that the documents produced as Ext.P1(a) to Ext.P1(i) along with this writ petition have already been produced along with Ext.P1 application for Kerala Freedom Fighters Pension but a copy of Ext.P6 judgment in O.P. No.29910 of 2002 was not furnished along with the application, that she is taking steps to obtain a copy of Ext.P6 judgment and will forward it to the Government within a short time. The learned counsel for the petitioner submitted that as the Government are considering Ext.P8 representation, this writ petition may be disposed of with a direction to the Government to pass appropriate orders on Ext.P8 representation after affording the petitioner an opportunity of being heard and to produce a certified copy of Ext.P6 judgment and a copy of O.P. No.29910 of 2002 and the documents accompanying it. It is evident from the letter dated 17.2.2012 sent by the Secretary to Government, General Administration Department that the Government are considering Ext.P8 representation issued by the petitioner. In such circumstances, I am of the opinion that the petitioner should

await the outcome of Ext.P8.

I accordingly dispose of the writ petition with a direction to the State Government to consider Ext.P8 representation filed by the petitioner in the light of the documents made available by her and take an appropriate decision thereon after affording her an opportunity of being heard. The needful in the matter shall be done and a final decision taken expeditiously and in any event within a period of four months from the date on which the petitioner produces a certified copy of this judgment before the Secretary to Government, General Administration Department. It will be open to the petitioner to produce before the Secretary to Government along with a certified copy of this judgment, a certified copy of O.P. No.29910 of 2002 with the accompanying documents and such other materials she may chose to rely on. The Government shall pass an order giving reasons and shall after orders are passed, communicate a copy thereof to the petitioner. The contentions of the petitioner on the merits are kept open.

**P.N.RAVINDRAN,
Judge.**

ahg.

P.N.RAVINDRAN, J.

W.P(C).No.26801 of 2010

JUDGMENT

31st May, 2012