

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 12TH DAY OF SEPTEMBER 2023 / 21ST BHADRA, 1945

WP(C) NO. 40155 OF 2022

PETITIONER:

NEENA T, AGED 46 YEARS,



BY ADV MANAS P. HAMEED

RESPONDENTS:

- 1 STATE OF KERALA,
GENERAL ADMINISTRATION (FFP) DEPARTMENT,
REPRESENTED BY THE PRINCIPAL SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 2 THE PRINCIPAL SECRETARY,
GENERAL ADMINISTRATION (FFP) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 3 THE DISTRICT COLLECTOR,
CIVIL STATION, KOZHIKODE, PIN - 673020.
- 4 THE TAHSILDAR, KOZHIKODE, PIN - 673020.
- 5 THE VILLAGE OFFICER, KACHERI VILLAGE OFFICE,
KOZHIKODE, PIN - 673005.

BY ADV. SRI.APPU P.S [GP]

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

The petitioner calls into question Ext.P5 order of the Government, whereby, her request for grant of Freedom Fighters Pension, on account of the fact that she is a dependent divorced daughter of late T.Achuthan, has been rejected solely on the ground that two of her brothers are well to do and that they will take care of her.

2. The petitioner asserts that the conclusions in Ext.P5 are conjectural as it can ever be, because there can be no justifiable assumption drawn that brothers are always expected to take care of their sisters, particularly when they have their own families to take care of. She thus prays that Ext.P5 be set aside and the competent Authority of the Government of Kerala be directed to reconsider her claim, based on the Statutory Scheme; thus

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leading to an appropriate fresh order, without any further delay.

3. Sri.P.S.Appu - learned Government Pleader, however, rose in support of Ext.P5, saying that an inquiry was conducted by the District Collector and it was found that the petitioner's brothers are all well placed and are earning well. He submitted that, therefore, it was justified for the Government to have presumed that they would take care of the petitioner; and hence that she would not fall into the "most deserving cases", as is required under Rule 11A of the Kerala Freedom Fighters Pension Rules, 1971 ('Rules', for short).

4. The learned Government Pleader concluded his submissions, saying that, it is only in cases where a person is left without any anchor in life, will the benefits of the 'Rules' apply and that petitioner is not deserving of the

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same, since both her brothers are, admittedly, financially very well.

5. I am afraid that the afore submissions of the learned Government Pleader - which are also reflected in Ext.P5 - smack archaic patriarchal notions. Merely because the petitioner has two brothers, an automatic assumption drawn that she would be taken care of by them for her life, can only be seen to be one solely on account of the afore notions and nothing else. In fact, the Report of the District Collector speaks to the contrary, particularly when it says her brothers were not then married; and hence, it can also be equally assumed that a stage may come in future, when the petitioner would be left without any succour in life, if they were to have their own families.

6. In any event, even assuming that the

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brothers remain unmarried, it would be of no consequence because the hypothesis now drawn by the Government, that she would be taken care of forever by them solely because she is their sister and therefore, expected to be depended upon them, can certainly not be countenanced by this Court in this age and era.

7. That said, the ambit of Rule 11A of the 'Rules' is unmistakable because, only in the "most deserving cases" can the benefit sought for by the petitioner be granted. This is a pure question of fact, which will have to be assessed on the edifice of all the relevant aspects, without relying upon conjectures and surmises, solely on the basis that the petitioner has two brothers.

In the afore circumstances, I order this writ petition and set aside Ext.P5; with a consequential direction to the Government to

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reconsider the claim of the petitioner, advertig to Ext.P4 Report of the District Collector, after affording her an opportunity of being heard; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than four months from the date of receipt of a copy of this judgment.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

akv

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APPENDIX OF WP(C) 40155/2022

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF JUDGMENT DATED 13.09.2018
IN W.P.(C).NO.17438 OF 2016 PASSED BY
THIS HONOURABLE COURT
- EXHIBIT P2 TRUE COPY OF G.O.(P).NO.92/2012/GAD
DATED 02.05.2012 ISSUED BY GENERAL
ADMINISTRATION DEPARTMENT, GOVERNMENT
OF KERALA
- EXHIBIT P3 TRUE COPY OF G.O.(P).NO.355/2010/GAD
DATED 08.11.2010 ISSUED BY GENERAL
ADMINISTRATION DEPARTMENT, GOVERNMENT
OF KERALA
- EXHIBIT P4 TRUE COPY OF REPORT DATED 14.01.2021
SUBMITTED BY THE 3RD RESPONDENT BEFORE
THE 2ND RESPONDENT, ALONG WITH ITS
ENGLISH TRANSLATION
- EXHIBIT P5 TRUE COPY OF ORDER BEARING NO. FFP-
B2/6/2021/G.A.D DATED 19.08.2022
PASSED BY THE 2ND RESPONDENT, ALONG
WITH ITS ENGLISH TRANSLATION
- EXHIBIT P6 TRUE COPY OF LETTER DATED 28.10.2022
COMMUNICATED BY THE 3RD RESPONDENT TO
THE PETITIONER, ALONG WITH ITS ENGLISH
TRANSLATION
- EXHIBIT P7 TRUE COPY OF JUDGMENT IN PHILOMINA
K.A. VS. DISTRICT COLLECTOR, ALAPPUZHA
& ORS, AIR 2016 SC 225