

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944

WP(C) NO. 14751 OF 2020

PETITIONER:

A. SAUDAMINI
AGED 55 YEARS
D/O. SANKARAN NAIR (LATE),
M.S.P.I. BN,
MADRAS BN,
ARIKKAT HOUSE,
P.O. TRIKKALANGODE,
KARIKKAD,
MANJERI,
MALAPPURAM DISTRICT-676127.

BY ADVS.
LAKSHMI RAMADAS
SREEDHAR RAVINDRAN

RESPONDENTS:

- 1 UNION OF INDIA
MINISTRY OF PERSONNEL,
P.G. AND PENSION DEPARTMENT OF PENSION
AND PENSIONER'S WELFARE LOK NAYAK BHAWAN,
KHAN MARKET,
NEW DELHI,
REPRESENTED BY ITS DIRECTOR.
- 2 THE DIRECTOR GENERAL OF C.R.P.F.,
R.K.PURAM,
CENTRAL RESERVE POLICE FORCE BLOCK NO.1,
C.G.O.COMPLEX,
LODHI ROAD,
NEW DELHI-110003.
- 3 THE SECRETARY (HOME),
ARUNACHAL PRADESH ADMINISTRATION,
ITANAGAR (ARUNACHAL PRADESH), PIN-791111.
- 4 THE PRINCIPAL ACCOUNTANT GENERAL (A AND E),
KERALA, M.G.ROAD,
P.B.NO.5607,
THIRUVANANTHAPURAM-695001.

W.P.(C) No.14751/2020

: 2 :

*5 THE DISTRICT TREASURY OFFICER,
MANJERI, MALAPPURAM.
[ADDL.R5 IS SUO MOTU IMPEADED AS PER ORDER
DATED 19.11.2020 IN WP(C) 14751/2020]

BY ADVS.
SRI.N.S.DAYA SINDHU SREEHARI FOR R1 TO R3
SMT.ANIMA M., GOVERNMENT PLEADER
SMT.M.R.SREELATHA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 28.02.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

CR

N. NAGARESH, J.

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W.P.(C) No.14751 of 2020
.....

Dated this the 28th day of February, 2023

J U D G M E N T

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The petitioner, who is the daughter of late Sankaran Nair who was employed in Malabar Special Police I Battalion, has approached this Court aggrieved by denial of family pension benefits to the petitioner.

2. The petitioner states that she is the daughter of late Sankaran Nair who was a Last Grade Servant (Barber) in Malabar Special Police I Battalion. The petitioner's father died in harness on 23.07.1968 while on deputation with the Arunachal Pradesh Administration, Itanagar. The petitioner's

mother died on 24.10.2002. The petitioner and her younger sister alone are the legal heirs of late Sankaran Nair. The petitioner is unemployed and unmarried. She has no regular source of income.

3. As per Ext.P3 OM dated 06.09.2007, family pension is payable to unmarried daughter of a person who dies while in service. The petitioner therefore submitted Ext.P4 application dated 22.02.2008 to the Director General of Police, Tamil Nadu seeking family pension. Ext.P5 letter dated 21.06.2008 was sent to the Director General of Police, CRPF, New Delhi also. By Ext.P6 dated 16.08.2008, the Accountant General of Arunachal Pradesh was also requested to arrange payment of family pension to the petitioner.

4. By Ext.P7 communication dated 02.09.2008, the Accountant General, Chennai required the Accountant General, Arunachal Pradesh to examine the claim of the petitioner for CCS (EOP). The grievance raised before the Grievance Cell Department of Pension and Pensioners'

Welfare was disposed of as per Ext.P8 stating that the petitioner has to approach the concerned State Government.

5. The petitioner submitted application to the Grievance Cell again. Thereupon, the Director General of CRPF addressed Ext.P10 communication to the Secretary (Home), Arunachal Pradesh Administration wherein it was stated that the petitioner's grievance has to be considered by the Arunachal Pradesh Administration and not by the CRPF.

6. The petitioner urged that the service rendered by the petitioner's father is not in dispute and the eligibility of the petitioner to receive pension is also so far not questioned. The respondents are only trying to avoid their liability. In these exchanges of communications, the petitioner who is unemployed and unmarried is made to suffer, by effectively denying family pension to which she is legally entitled.

7. The Sub Treasury Officer, Manjeri filed a Statement in the writ petition. In the Statement, it is admitted that Central Family Pension was paid to Smt. Devaki Amma, wife of late Sankaran Nair. Central Family Pension due to the

petitioner was paid through Smt. Devaki Amma, as per Pension Payment Order dated 30.05.1973 till 31.08.1984. Devaki Amma received pension till 30.09.2002. Smt. Devaki Amma passed away on 24.10.2002. The petitioner and her sister A. Devayani are the legal heirs entitled to family pension. As per request and consent of the legal heirs, life time arrears of Smt. Devaki Amma was paid to the petitioner.

8. The additional 5th respondent-District Treasury Officer filed a counter affidavit. The District Treasury Officer has informed that there is no available information as to the Pension Sanctioning Authority.

9. A Statement was filed on behalf of the 2nd respondent-Director General of CRPF. It was stated that on the eve of re-organisation of State on linguistic basis, the Malabar Special Police was divided into two, one for Kerala and the other for Madras State. The HQ of MSP (Madras State) Tamil Nadu was shifted to Trichy for maintaining the law and order situation as per G.O. No.4112 (Home) Department dated 07.11.1947.

10. The erstwhile Madras State came to be called as 'Tamil Nadu' as per GO (MS) N0.2051 dated 03.08.1972. The MSP and SAP Battalions of this State were renamed as TSP I Battalion. Since the record of late Sankaran Nair is available with 1st Battalion Tamil Nadu Armed Police and Arunachal Government, there is no pivotal role for CRPF to get sanction of dependent pension to the petitioner.

11. As per Ext.P1, the EOP was sanctioned by the Secretary (Home), Arunachal Pradesh Administration as per order No.DIGP(C) 4/71 dated 14.09.1972. Ext.P10 is a letter of Welfare Directorate, CRPF addressed to the Secretary (Home), Arunachal Pradesh Administration forwarding therewith application dated 21.08.2019 and connected documents for taking further action as late Sankaran Nair, Ex-Barber was sanctioned pension under Rule 10 of CCS (EOP) Rules by the Secretary (Home), Arunachal Pradesh Administration. Based on the above, the 2nd respondent as per signal dated 29.07.2020 had sought details of the case if any and in response the Welfare Directorate, CRPF

communicated that details of the case are not available with them. They forwarded the application of the petitioner to the Secretary (Home), Arunachal Pradesh Administration as a Welfare measure.

12. The 3rd respondent-Secretary (Home), Arunachal Pradesh Administration filed Affidavit in Opposition. The 3rd respondent stated that late father of the petitioner was an employee of the Central Government and all the service benefits, if any, would be borne by the Central Government only. The late father of the petitioner was working in the then NEFA (Arunachal Pradesh) on deputation basis. During that time, the Arunachal Pradesh was known as NEFA and was under the administrative control of the Assam Government and the petitioner's father died prior to creation of NEFA (North Eastern Frontier Agency) as Union Territory in the year 1972. The Police Department was properly established only after creation of NEFA as Union Territory of India in 1972. The late father of the petitioner died in 1968 and during that time, the Arunachal Pradesh was known as NEFA

(North Eastern Frontier Agency) and was under Administrative of the Central Government through Government of Assam. In the year 1972, the name of NEFA was rechristened as Arunachal Pradesh and given the status of union territory. In view of the same, the records pertaining to the late father of the petitioner is not available in the records of Police Establishment, Government of Arunachal Pradesh. Further, the annexures in the writ petition in connection with State of Arunachal Pradesh do not bear any proper references and hence the records of the late father of the petitioner could not be found out in spite of all attempts.

13. The Government of Arunachal Pradesh has no role so far merit of the case is concerned as the late father of the present petitioner was an employee of the Central Government. And all the service benefits, if any, is entitled from the Central Government alone. During the time when late father of the petitioner died, the Arunachal Pradesh was under administration of Central Government and he was on deputation to NEFA (Arunachal Pradesh) whereas both the

Arunachal Pradesh and parent department of the petitioner's late father was the Central Government alone. In view of the above, no case is made out against the State of Arunachal Pradesh.

14. I have heard the learned counsel for the petitioner, the learned Central Government Counsel and the learned Government Pleader.

15. Admitted facts in this writ petition are that late Sankaran Nair was enrolled in Malabar Special Police, 1st Battalion. He died while in service when he was working in North Eastern Frontier Agency (NEFA), now known as Arunachal Pradesh. His wife, late Devaki Amma, was in receipt of family pension in respect of deceased Sankaran Nair. The petitioner is unmarried daughter of late Sankaran Nair and Devaki Amma and hence claims family pension after the demise of Devaki Amma. It has come out that after the demise of Devaki Amma, the arrears of pension was paid to the petitioner.

16. The dispute in this case is as to the Pension Payment Authority. On the eve of reorganisation of States, the Malabar Special Police was divided into two, one for Kerala and the other for Tamil Nadu. The petitioner was transferred to NEFA (Arunachal Pradesh) on deputation which was under the Central Government. Ext.P1 order would show that the Arunachal Pradesh Administration sanctioned monthly family pension to the mother of the petitioner on 14.09.1972, in which order the name of the petitioner is also endorsed as daughter of late Sankaran Nair.

17. In the year 1972, Arunachal Pradesh was a Union Territory under the control of the Central Government. The State of Arunachal Pradesh Act, 1986 made the Union Territory a State. The deceased Sankaran Nair served and passed away before the creation of Arunachal Pradesh State. Therefore, the 3rd respondent states that the Government of Arunachal Pradesh has no liability to pay pension to the petitioner.

18. Pension was originally sanctioned by the Secretary (Home), Arunachal Pradesh Administration, Government of India. The question is whether the pension liability is on the State of Arunachal Pradesh or on the Government of India.

19. Section 34 of the State of Arunachal Pradesh Act, 1986 is as follows:

34. Property, assets, rights, liabilities, obligations, etc. — (1) All such property and assets within the existing Union territory of Arunachal Pradesh as are held immediately before the appointed day by the Union for purposes of governance of that Union territory shall, on and from that day, pass to the State of Arunachal Pradesh unless the purposes for which such property and assets are so held are Union purposes:

Provided that the cash balances in the treasuries in the existing Union territory of Arunachal Pradesh before the appointed day shall, as from that day, vest in the State of Arunachal Pradesh.

(2) All rights, liabilities and obligations (other than those relatable to, or in connection with, a Union purpose), whether arising out of any contract or otherwise, which are, immediately before the appointed day,—

(a) the rights, liabilities and obligations of the Central Government arising out of, or in connection with, the governance of the existing Union territory of Arunachal Pradesh; or

(b) the rights, liabilities and obligations of the Administrator of the existing Union territory of Arunachal Pradesh in his capacity as such, or of the

Government of that Union territory, shall, on and from the appointed day, be the rights, liabilities and obligations of the Government of the State of Arunachal Pradesh.

(3) The right to recover arrears of—

(a) any tax or duty being a tax or duty enumerated in the State List in the Seventh Schedule to the Constitution; or

(b) any duty referred to in article 268; or

(c) any tax under the Central Sales Tax Act, 1956 (74 of 1956),

which have fallen due in the existing Union territory of Arunachal Pradesh, shall pass to the State of Arunachal Pradesh.

(4) The provisions of this section shall not apply to, or in relation to,—

(a) any institution, undertaking or project the expenditure in relation to which is, immediately before the appointed day, met from and out of the Consolidated Fund of India;

(b) any property which has been placed by the Union at the disposal of the administration of the existing Union territory of Arunachal Pradesh subject to the condition that the ownership thereof will continue to vest in the Union.

Explanation—For the purposes of this section,—

(a) “liability” includes liability in respect of any civil deposit, local fund deposit, charitable or other endowment, provident fund account, pension or actionable wrong;

(b) “Union purposes” means the purposes of Government relatable to any of the matters mentioned in the Union List.

From sub-section (2) of Section 34, it is evident that it is only the rights, liabilities and obligations other than those relatable

to or in connection with a Union purpose which are made the rights, liabilities and obligations of the Government of the State of Arunachal Pradesh.

20. In the case of the petitioner's father, his service was rendered and utilised when the Arunachal Pradesh (previously NEFA) was directly under the administration of the Government of India. Therefore, the service of late Sankaran Nair is relatable to Union purpose. The pension liability therefore cannot be fastened on the Government of the State of Arunachal Pradesh. The liability is entirely on the Union Government.

The writ petition is therefore disposed of directing the 1st respondent-Union of India and the competent Secretary/Department to sanction and disburse family pension to the petitioner along with arrears of family pension with effect from 01.10.2002. Orders in this regard shall be passed within a period of two months.

Sd/-

N. NAGARESH, JUDGE

aks/27.02.2023

APPENDIX OF WP (C) 14751/2020

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE ORDER ISSUED BY THE GOVT. OF INDIA ARUNACHAL PRADESH ADMINISTRATION NO.DIGP(C)4/71 DATED 14.09.1972.
- EXHIBIT P2 TRUE COPY OF THE CERTIFICATE OF DEATH ON 24.10.2002 OF PETITIONER'S MOTHER ISSUED BY THE MANJERI MUNICIPALITY DATED 08.11.2002.
- EXHIBIT P3 TRUE COPY OF THE OFFICIAL MEMORANDUM NO.1/19/03-P & PW(E) DATED 06.09.2007 ISSUED BY THE GOVERNMENT OF INDIA.
- EXHIBIT P4 TRUE COPY OF THE APPLICATION SUBMITTED TO THE DGP, TAMIL NADU DATED 22.02.2008.
- EXHIBIT P5 TRUE COPY OF THE REQUEST SUBMITTED TO THE DGP, CRPF, R.K.PURAM, NEW DELHI DATED 21.06.2008.
- EXHIBIT P6 TRUE COPY OF THE COMMUNICATION SENT TO THE ACCOUNTANT GENERAL ARUNACHAL PRADESH, ITANAGAR DATED 16.08.2008.
- EXHIBIT P7 TRUE COPY OF THE COMMUNICATION NO.PEN.05/PT.175/2008-2009 FROM THE ACCOUNTANT GENERAL, TAMIL NADU TO THE ACCOUNTANT GENERAL, ARUNACHAL PRADESH DATED 02.09.2008.
- EXHIBIT P8 TRUE COPY OF THE COMMUNICATION OF THE GRIEVANCE CELL DEPARTMENT DATED 30.05.2016.
- EXHIBIT P9 TRUE COPY OF THE COMMUNICATION NO.PEN5/1/PTNO.13099-13142/19-20 OF THE ACCOUNTANT GENERAL, TAMIL NADU TO THE COMMANDANT, TAMILNADU SPECIAL POLICE BATTALION, TRICHY DATED 01.08.2019.
- EXHIBIT P10 TRUE COPY OF THE COMMUNICATION NO.W.V-185/2019-WEL-2(GR-2) FROM THE DIRECTOR GENERAL OF CENTRAL RESERVE POLICE FORCE TO THE 3RD RESPONDENT DATED 05.12.2019.

EXHIBIT P11 TRUE COPY OF THE RELEVANT PAGES OF
PENSION PAYMENT ORDER NO.3517 DATED
1973 MAY.

EXHIBIT P12 TRUE COPY OF THE ENTRIES IN THE
PENSION BOOK EVIDENCING RECEIPT OF
PENSION.

EXHIBIT P13 TRUE COPY OF THE OFFICE MEMORANDUM
DATED 16.12.1985.

RESPONDENT'S EXTS:

ANNEXURE-1 COPY OF STATE OF ARUNACHAL PRADESH ACT,
1987.