

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

WEDNESDAY, THE 9TH DAY OF MARCH 2022 / 18TH PHALGUNA, 1943

WP(C) NO. 29894 OF 2008

PETITIONER:

- 1 EDADAN CHINDAN NAIR, EX.INA
S/O. LATE CHINDAN NAIR,, VADASSERY, KANKOL VILLAGE,,
P.O.MATHIL, KANNUR DIST.(DECEASED)
- *2 THEKKADAVAN PARVATHY,AGED 95 YEARS
AGED 95 YEARS, RESIDING AT THEKKADAVAN HOUSE,
VADASSERI, MATHIL.P.O., KANNUR DISTRICT, PIN-670 307.
- *3 THEKKADAVAN VENURAJAN,
AGED 60 YEARS
RESIDING AT THEKKADAVAN HOUSE, VADASSERI,
MATHIL.P.O., KANNUR DISTRICT-670 307.

*(ARE IMPEADED AS ADDL.PETITIONERS 2 AND 3 AS PER
ORDER DATED 29-10-2021 IN IA.1/2021.)

BY ADV SRI.KALEESWARAM RAJ

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW
DELHI.
- 2 STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, DEPARTMENT OF P & ARD
SECRETARIAT, THIRUVANANTHAPURAM.

SRI.S.MANU,ASGI
GOVERNMENT PLEADER SRI.K.M.FAISAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
23.12.2021, THE COURT ON 09.03.2022 DELIVERED THE FOLLOWING:

JUDGMENT

As a token of samman (respect) for the great contributions and sacrifices of the freedom fighters, who had given the best part of their life for the Country, the Central Government had launched a pension scheme called 'Swathantra Sainik Samman Pension Scheme'.

2. We remember and honour the freedom fighters who fought for the independence of the Country. But, there are many unsung heroes of freedom struggle whose names and contributions we have not even heard of.

3. Ninety four year old Edadan Chindan Nair approached this Court in 2008 against Ext.P6 order passed by the Government of Kerala refusing to recommend his application to the Central Government for Swathantra Sainik Samman Pension (SSSP).

4. Sri. Edadan Chindan Nair claimed that he had served the Indian National Army (INA), led by Netaji Subash Chandra Bose. He has produced Ext. P1 certificate issued by the All India INA Committee to show that he was a member of the INA. Ext.P2 order dated 25.05.1974 would show that he has been granted Kerala Freedom Fighters' Pension (KFFP) by the Government of Kerala. He has also produced certain newspaper reports to show his association with INA and Netaji Subash Chandra Bose. He has no tall claims in the writ petition; but, only a prayer for grant of SSS pension.

5. Ext.P5 is the application of Sri. Edadan Chindan Nair for grant of pension from the Central Government. In Ext.P5, it is stated that he has joined the INA on 19.04.1943 in the Rank of Sepoy (No.35884) in the 4th Guerrilla Regiment III. With regard to the areas of operation he had served while in INA, he has

stated as follows:

“Before the war I was working as a fitter in the Alerstar PWD Jainant Moment from Alerstar and was got to Sarambar Training Camp. After 6 months training I was attached 4th Guralle Regt. and sent to Burma Minga desen camp. I went to war front upto Popra Hill and Mimb lead retired. I was caught a prisoner at Mandale on 07-5-45.”

The details of the Company and Commanders under whom he had served in the INA are also provided in Ext.P5 application.

With regard to the particulars of detention/imprisonment, he has stated as follows:

“I was captured as prisoner at Mandale and sent to Rangoon Central Jail. I was detained for 6 months. I was taken to ship way to Calcuta on 17-11-45”.

INA certificate was also attached along with Ext.P5 and all details available with him were given in the application for pension.

6. Ext.P5 application submitted by Sri. Edadan Chindan

Nair was not recommended by the Government of Kerala and was rejected as per Ext. P6 on the ground that only persons who had suffered imprisonment for a minimum period of six months are eligible for SSS pension and that the claimed suffering of the applicant is only three months and the eligibility of the certifier is not known in the absence of jail records. It is also stated therein that there was no documentary evidence during 43-45 in proof of his association with INA.

7. After approaching various authorities, he filed this writ petition seeking to quash Ext.P6 and for a direction to the 1st respondent to grant Central Government Pension under the SSS Pension scheme.

8. A counter affidavit is filed on behalf of the 2nd respondent reiterating the contents of Ext.P6 letter and contending that the State Government did not recommend the case of Sri. Edadan

Chindan Nair for SSS pension to the Central Government as there was no proof in support of his claim that he had suffered imprisonment/sufferings for a minimum period of six months and that Ext. P1 certificate issued to the petitioner by the All India INA Committee cannot be considered as the conclusive proof of his participation in the INA Movement. It is further stated that the criteria for grant of KFF Pension and SSS Pension are different and the eligibility to KFF Pension does not *ipso facto* make one eligible for SSS Pension. It is contended that Ext. P5 application was not accompanied by required documents and the applicant did not satisfy the eligibility criteria and evidentiary requirements prescribed in the SSSP Scheme.

9. During the pendency of the writ petition, Sri.Edadan Chindan Nair expired on 23.05.2009. When the writ petition came up for consideration on 01.09.2021, it was submitted that

Sri.Edadan Chindan Nair is no more and by order dated 29.10.2021 in I.A. No.1 of 2021, his widow and son were impleaded as additional petitioners 2 and 3 in the writ petition.

10. Sri. K.M. Faisal, the learned Government Pleader resisted the writ petition. However, he made a submission on 15.12.2021 that he had occasion to search for the personality 'Edadan Chindan Nair' on Google and found that there are several news items and writings about 'Edadan Chindan Nair' and his association with INA and Netaji Subhash Chandra Bose.

11. The news regarding the death of Sri.Edadan Chindan Nair in the website of 'India Today' reads as under:-

“Died: INA veteran Edadan Chindan Nair, 96, who had been Netaji Subhash Chandra Bose"s driver in Rangoon. He was part of the INA group which fought for Japan against Britain during World War II.”

12. There are biographical as well other news items of

Sri.Edadan Chindan Nair. The news items and the web contents cannot be substitute for documents in support of claim for SSS Pension. However, these articles published in newspapers and websites show that, though lesser known, he was part of our freedom struggle.

13. As directed by this Court, the learned Government Pleader had made available the files relating to the KFFP application of Sri.Edadan Chindan Nair, which was sanctioned by the State Government as per Ext.P2. It is seen from the files that the District Advisory Committee under the KFFP scheme has recommended the case of the petitioner for grant of KFFP pension. For the said purpose, the District Advisory Committee has taken into consideration Ext.P1 certificate issued by the All India INA Committee. One of the eligibility criteria for pension under the SSSP Scheme is that a freedom fighter must have

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. In Ext. P5 application, the petitioner has specifically stated that he was caught as prisoner on 07.05.1945 and was sent to Rangoon Central Jail and detained for six months till 17.11.1945. The finding in Ext.P6 that the claimed suffering of the applicant is only three months is factually incorrect. Ext.P5 application was rejected mechanically without any application of mind. The Hon'ble Supreme Court, in **Gurdial Singh v. Union of India** [(2001) 8 SCC 8], analysing the objects of the SSSP Scheme, held as follows:-

“6. 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 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 the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukund Lal Bhandari case (supra) observed:

"The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made.

The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters of their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

The court categorically mentioned that the pension under the scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the

bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence. "

14. It is evident that, while considering Ext.P5 application for recommendation for SSS Pension to the Central Government, the 2nd respondent had not kept in mind the object of the Scheme. The authorities are required to adopt a rational and not a technical approach in considering the application for pension. Without proper application of mind, the 2nd respondent has issued Ext.P6 refusing to recommend the case of Sri.Edadan Chindan Nair for SSS Pension.

15.In **Augusthy Mathai v. Union of India** [2008 (1) KHC

977], this Court deprecated the hyper technical approach and insistence of minute details for considering application for grant of Freedom Fighters' pension.

16.The 2nd respondent has refused to recommend the application of Sri.Edadan Chindan Nair for reasons which are incorrect and hyper technical. Ext.P6 been passed without application of mind. Ext.P6 is, therefore, set aside. To meet the ends of justice, the 2nd respondent shall reconsider Ext.P5 application and take a decision, afresh. Since the applicant Sri.Edadan Chindan Nair is no more and it is not possible to get fresh records relating to his participation in INA movement or detention in prison, the application shall be considered on the basis of the probabilities as brought out by **Gurdial Singh** (supra). Fresh decision on Ext.P5 application shall be taken with notice to the additional petitioners within a period of four

months from the date of receipt of a copy of this judgment.

The writ petition is disposed of with the above directions.

No order as to costs.

Sd/-
MURALI PURUSHOTHAMAN
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE CERTIFICATE DATED 8.10.1971.

EXT.P2:TRUE COPY OF THE ORDER DATED 25.5.1974.

EXT.P3:TRUE COPIES OF THE NEWS REPORTS WHICH APPEARED IN THE
VERNACULAR

EXT.P4:TRUE COPY OF THE LETTER DATED 17.10.1984 ISSUED BY THE
GENERAL SECRETARY OF EX INA ASSOCIATION, KERALA TO THE
PETITIONER.

EXT.P5:TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER
TOGETHER WITH CERTIFICATES AND DOCUMENTS.

EXT.P6:TRUE COPY OF THE LETTER DATED 23.6.2001.

EXT.P7:TRUE COPY OF THE REPRESENTATION DATED 9.10.2007 FILED BY THE
PETITIONER.

EXT.P8:TRUE COPY OF THE REPRESENTATION DATED 8.9.2007 FILED BY THE
PETITIONER.

EXT.P9:TRUE COPY OF THE LETTER BY GOVERNMENT OF KERALA TOGETHER
WITH ACKNOWLEDGMENT CARD.

EXT.P10:TRUE COPY OF THE DEATH CERTIFICATE ISSUED BY THE KANKOLE
ALAPADAMBA GRAMA PANCHAYAT ON 04.06.2009.

EXT.P11:TRUE COPY OF THE LEGAL HEIR CERTIFICATE NO.K.DIS G1/14591/09
DATED 01.02.2010.

spc/