

CASE NO.:
Appeal (civil) 7336 of 2002

PETITIONER:
Union of India

RESPONDENT:
M.S. Mohammed Rawther

DATE OF JUDGMENT: 16/08/2007

BENCH:
A.K. Mathur & Markandey Katju

JUDGMENT:
JUDGMENT

O R D E R

Heard learned counsel for the parties.

This appeal is directed against the order of the Division Bench of the High Court of Kerala whereby the Division Bench of the Kerala High Court has directed the Union of India to grant Swatentrata Samman Sainik Pension (for short 'SSS Pension\022) to the petitioner (respondent herein) as claimed by him in his Original Petition with effect from 09.09.1989 and the amount should be paid within a period of two months.

Aggrieved against this order, the present appeal has been filed by the Union of India.

We have heard learned counsel for the parties and perused the record.

The Division Bench was hearing an appeal against the order passed by the learned Single Judge whereby the learned Single Judge had given a direction to the Union of India to consider and pass an appropriate order on the petitioner\022s application for grant of SSS Pension to the writ petitioner. The learned Single Judge quashed Exh.P-6 and Exh.P-8 (the orders passed by the Union of India rejecting the petitioner\022s prayer for pension) and remitted the matter back to the Union of India to consider the matter afresh after providing a necessary opportunity to the respondent for considering his prayer for grant of the SSS pension. Aggrieved by this order, the matter was taken up by the appellant before the Division Bench on which the Division Bench passed the impugned order. Hence the present appeal by the Union of India.

We have heard learned counsel for the parties and perused the record. We are of the opinion that the course adopted by the learned Single Judge was the correct course and the matter should have been remitted back to the Union of India to decide the question of grant of freedom fighter\022s pension afresh. It required necessary investigation of facts as to whether the incumbent was entitled to SSS pension or not. The courts cannot encroach into the executive or legislative domain, and cannot assume the role of investigation of facts. It is the duty of the State and the Union of India to have considered all the material on the subject and consider whether it is a case worth granting pension as per the SSS Pension Scheme, 1980. The court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate to itself the power of the executive. If the order passed by the Union of India is not justifiable on Wednesbury principles the court can only set it aside and remit the matter back to the executive for a fresh decision, but the court cannot assume the power of the

Union of India. The court must exercise judicial restraint in such matters. There is broad separation of powers under the Constitution, and one organ of the State should not ordinarily encroach into the domain of another. Montesquieu's theory broadly applies in India too.

Accordingly, we set aside the order of the Division Bench and remit the matter back to the Union of India. The Union of India shall consider and pass an appropriate order in accordance with law preferably within a period of six months from today.

We have been informed that the respondent herein has already expired. In case it is found that he was entitled to pension then all his arrears should be worked out and shall be given to his legal heirs.

The appeal is disposed of accordingly.

JUDIS