

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WA.No. 434 of 2010 IN WP(C).11879/2004

AGAINST THE JUDGMENT IN WP(C) 11879/2004 DATED 26/09/2009

APPELLANTS/RESPONDENTS IN THE WPC :

1. UNION OF INDIA
ITS SECRETARY, MINISTRY OF FINANCE, NEW DELHI.
2. THE CHIEF CONTROLLER OF DEFENSE
ACCOUNTS (PENSION), ALLAHABAD.
3. THE OFFICER-IN-CHARGE OF RECORDS,
MADRAS REGIMENT RECORDS, WILLINGTON, NILGIRIS-643 231.
4. THE DEFENSE PENSION DISBURSING OFFICER,
OFFICE OF THE DEFENSE PENSION DISBURSING OFFICER
ERNAKULAM, KERALA.

BY ADVS.SRI.T.P.M.IBRAHIM KHAN,ASST.S.G OF INDI
SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

RESPONDENTS/PETITIONER & 5TH RESPONDENT IN THE WPC :

1. C.THANKAMMA
PARUTHYPALLY VEEDU, VELLAKINAR WARD, ALAPPUZHA
KERALA STATE.
2. THE KERALA STATE ROAD TRANSPORT
CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR
TRANSPORT BHAVAN, FORT P.O.
THIRUVANANTHAPURAM-682 023.

R1 BY ADV. SRI.B.ASHOK SHENOY
SRI.K.P.MEHABOOB SHERIFF
SRI.P.S.GIREESH
SRI.P.N.RAJAGOPALAN NAIR

R2 BY SRI.A.ANANDA RAJAN, SC, KSRTC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 434 OF 2010

Dated this the 22nd day of July, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard Sri.N.Nagaresh, learned Assistant Solicitor General appearing for the appellants and learned Standing Counsel appearing for 2nd respondent.

2. This Writ Appeal has been filed against the judgment dated 26.09.2009 passed in W.P.(C) No. 11879 of 2004. The 1st respondent to this appeal was the petitioner in the writ petition. She was in receipt of family pension on account of the death of her husband on 14.12.1992, who had served the Indian Military. Ext.P6 was issued by which the restoration of family pension sanctioned to the writ petitioner had been cancelled and she was allowed to draw only 50% of the family pension. Challenging the said order, the writ petition was filed praying for the following reliefs:

- "i. to call for the records of this case,
- ii. To issue a writ of certiorari or any other appropriate writ, order or direction, quashing Exhibit P6

order to the extent it effects the petitioner and restoring Exhibit P4 order to pay full family pension to the petitioner from 02.12.1996 and arrears thereon, immediately.”

3. By Ext.P4 the petitioner was already sanctioned full family pension on account of the the marriage of the daughter of the second wife of the pensioner. The effect of Ext.P6 is that Ext.P4 order stands cancelled and pension reduced to 50%. The learned Single Judge by the impugned judgment set aside Ext.P6 and directed payment of arrears to the petitioner within three months from the date of receipt of a copy of the judgment.

4. Sri.N. Nagaresh appearing for the appellants submits that the second wife was in receipt of pension from Kerala State Road Transport Corporation (for short 'KSRTC') on account of pensioner after retirement from the Military service had joined the KSRTC. He submits that as per Sub-rule 13(B) of Rule 54 of the Central Civil Services (Pension Rules), 1972, the pension was not permissible in the event the family pensioner is in receipt of any other pension under the State and/or Public Sector Undertaking/Autonomous Body/Local Fund. It would be

useful to quote sub-rule (13-B) of Rule 54 which is to the following effect:

“(13-B) Family Pension admissible under this rule shall not be granted to a person who is already in receipt of Family Pension or is eligible therefor under any other rules of the Central Government or a State Government and/or Public Sector Undertaking/Autonomous Body/Local Fund under the Central or a State Government:

Provided that a person who is otherwise eligible for family pension under this rule may opt to receive family pension under this rule if he forgoes family pension admissible from any other source.

Provided further that family pension admissible under the Employees Pension Scheme, 1995 and the Family Pension Scheme, 1971, shall, however, be allowed in addition to the family pension admissible under these rules.”

5. A Division Bench judgment has also been referred to by learned Single Judge passed in W.A. No.1445 of 2003 dated 22.10.2003(Union of India v. Subhadramma and another) where the writ appeal filed by Union of India was dismissed in which the issue was receipt of family pension from KSRTC. Sri.Nagaresh submits that the said judgment is distinguishable since no rule

could be cited before the Bench in spite of the Bench having asked the Rule which dis-entitles the family pensioner who is in receipt of any other pension under the State.

6. Be that as it may, the said judgment has no application in the present case nor sub-rule (13-B) of Rule 54, relied by the counsel for the appellants, due to the reason that the writ petitioner was not in receipt of any pension from KSRTC. It is the case of appellants that the writ petitioner was in receipt of another pension from KSRTC. The order Ext.P6 itself indicates that it was the second wife of the pensioner who was in receipt of the pension from KSRTC. Thus with regard to the petitioner, who was the first wife, was eligible for Full family pension from the Central Government. The payment of pension can not be denied on the aforesaid ground. It appears that the appellants have sanctioned 50% of the family pension to the petitioner and 50% to the second wife's daughter. After the marriage of the daughter of second wife, the Family Pension was restored by Ext.P4 order.

We thus do not find any error in the judgment of learned Single Judge in setting aside Ext.P6. Sub-rule (13-B) of Rule 54 has no application in the present case. The Writ Appeal is dismissed. Learned counsel for the appellants seeks two months time to comply with the directions of learned Single Judge directing payment of arrears along with interest.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**