

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

W.P.(C).No.6137 of 2015 (N)

PETITIONER(S):-

DR. V.SARASWATI, AGED 85 YEARS,
WIFE OF LATE SHRI.E.GOPALAKRISHNAN MENON,
ROHINI TEMPLE ROAD, POOTHOLE P.O, THRISSUR 680 004.

BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.ANILA PETER
SRI.J.VIVEK GEORGE.

RESPONDENT(S):-

1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOME AFFAIRS (FREEDOM FIGHTERS DIVISION),
NEW DELHI - 110003.
2. STATE BANK OF TRAVANCORE,
REPRESENTED BY ITS CHIEF MANAGER (CPPC),
HEAD OFFICE, THIRUVANANTHAPURAM - 695 012.
3. THE BRANCH MANAGER,
STATE BANK OF TRAVANCORE,
THRISSUR ROUND SOUTH BRANCH, THRISSUR - 680 001.

R1 BY CENTRAL GOVERNMENT COUNSEL SRI.S.KRISHNAMOORTHY.
R2& R3 BY ADVS. SRI.T.SETHUMADHAVAN (SENIOR ADVOCATE)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:- -----

- EXT.P1 - TRUE COPY OF THE ORDER OF 1ST RESPONDENT SANCTIONING PENSION TO PETITIONER'S HUSBAND DATED 14-08-1989.
- EXT.P2 - TRUE COPY OF THE PENSION PAYMENT ORDER OF THE PETITIONER'S HUSBAND.
- EXT.P3 - TRUE COPY OF THE ORDER ENDORSING PETITIONER'S NAME IN THE PENSION PAYMENT ORDER.
- EXT.P4 - TRUE COPY OF THE COMMUNICATION OF 1ST RESPONDENT TO THE PETITIONER DATED 26-12-2014.
- EXT.P5 - TRUE COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 23-01-2015.
- EXT.P6 - TRUE COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT DATED 26-12-2014.
- EXT.P7 - TRUE COPY OF THE SCHEME AVAILABLE IN THE WEBSITE OF THE 1ST RESPONDENT.
- EXT.P8 - TRUE COPY OF THE GUIDELINES BROUGHT OUT IN 2014.

RESPONDENT(S)' EXHIBITS:- -----

- EXT.R1(a) TRUE COPY OF THE LETTER NO.8/2/98-FF(P) DATED 13.10.2000.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.6137 of 2015-N

Dated this the 26th day of June, 2015

JUDGMENT

The petitioner, the widow of a freedom fighter, is before this Court challenging Exhibits P4, P5 and P6.

2. The brief facts of the case are that, the petitioner's husband was granted pension under the Swatantrata Sainik Samman Pension Scheme [hereinafter referred to as "the Scheme"], being a freedom fighter, as is evidenced at Exhibit P1. Exhibit P1 was dated 14.08.1989 and pension was granted with retrospective effect from 20.03.1983. Exhibits P1 and P2 documents indicate that the pension was sanctioned and endorsed in favour of the petitioner's husband. The petitioner's husband expired in the year 1996. After the death of the petitioner's husband, as per the Scheme, the petitioner applied for 'family pension' and the petitioner's name was endorsed, as is evident from Exhibit P3. The petitioner admittedly had been getting family pension regularly after the death of the petitioner's husband through the 3rd respondent-Bank.

3. The petitioner, in the year 2014, was issued with an order cancelling the family pension, produced at Exhibit P4. The order referred to a policy guideline dated 06.08.2014, wherein it was provided that dependent family pension would not be admissible to spouse of a deceased freedom fighter if he or she is getting service pension or has any independent source of income. The 1st respondent also addressed the respondent-Bank to calculate the amount paid to the petitioner and recover it from her and remit it to the Government of India accounts, by Exhibit P6. In view of Exhibit P6, the 3rd respondent issued Exhibit P5 order seeking refund of Rs.18,49,181/-; which orders are challenged before this Court.

4. As has been pointed out by the learned counsel for the petitioner, the Scheme itself did not contain any provision by which the widow of a freedom fighter was disentitled to family pension on the ground that the widow has an independent income. As is evident from Exhibit P7 Scheme, either the mother, father, widower/widow, unmarried daughters is entitled to pension; but with the restriction of one eligible dependent being entitled. The petitioner also is seen to have been endorsed

with the entitlement to receive family pension and the petitioner, as per the Scheme and the endorsement made, has been receiving family pension after the death of the petitioner's husband. It was only in 2014, even going by Exhibit P4, that a policy guideline was issued to deny such family pension to a spouse of a deceased freedom fighter, if such spouse is drawing service pension or or has any other independent income.

5. The learned Central Government Counsel argues, on the basis of Exhibit R1(a), that as early as on 13.10.2000 the Government of India had disentitled spouses of freedom fighters from family pension if they had an independent income.

6. True, the Government of India had come out with a policy in 2000 and the policy referred to in 2014 may not be very relevant. However, the petitioner's family pension was endorsed prior to Exhibit R1(a). On Exhibit R1(a) being issued, the 1st respondent does not have a case that they had informed the Banks about the same and had sought for a declaration from those spouses who are getting family pension as sanctioned to them on the death of their freedom fighter-spouse. There is absolutely no possibility for the family pensioners knowing about

Exhibit R1(a) and in any event, the recitals in Exhibit R1(a) would show that the change in the Scheme was one to be **“adopted in all future cases”**. In such circumstances, neither the change of policy as per Exhibit R1(a) in 2000 nor the policy of 2014 could enable the Government to seek refund of the amounts already paid.

7. The learned Central Government Counsel would point out that the Scheme itself has a condition that any grant of pension made wrongfully would be liable for recovery. However, in the present case it cannot be said that a wrongful endorsement was made. The entitlement to family pension of the petitioner, on the death of her husband, cannot be disputed. At the time when it was made, the petitioner was eligible for family pension despite the petitioner having an independent income. Then subsequently even when the 2000 policy came, the same was only with respect to “future cases”. In such circumstances, it cannot at all be said that the pension disbursed to the petitioner was wrongful and without looking into the provisions of the Scheme.

8. Resultantly, it is ordered that any family pension paid prior to 06.08.2014 cannot be recovered from the petitioner and such pension paid after that, will be liable for recovery. Exhibits P4, P5 and P6 are set aside to that extent.

The writ petition would stand allowed with the above rider. There shall be no order as to costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]