

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 7237 of 2015 (D)

PETITIONER :

**NAMBIYATHAYIL AHAMMU ABUBACKER (CORPORAL EX NO. 224194)
AGED 77 YEARS, S/O. NAMBIYATHAYIL AHAMMU
RESIDING AT NAMBIYATHAYIL HOUSE, "NASEEMA MANZIL"
KALLINGAL, VADAKKEKKAD P.O., CHAVAKKAD TALUK
THRISSUR DISTRICT, KERALA – 679 562.**

**BY ADVS.SRI.B.HARISH KUMAR
SHEEBA FAISAL**

RESPONDENT(S) :

- 1. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO GOVERNMENT (DEFENCE)
MINISTRY OF DEFENCE, NEW DELHI – 110 011.**
- 2. THE DEPUTY DIRECTOR OF AIR VETERANS
DIRECTORATE OF AIR VETERANS
SUBROTO PARK, NEW DELHI
PIN – 110 066.**
- 3. THE DIRECTOR GENERAL
PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS
(PENSION) ALLAHABAD, UTTAR PRADESH
PIN – 700 001.**

R1 TO R3 BY ADV. SRI.N.NAGARESH, ASGI

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE COMMUNICATION DATED 6/8/2013 ISSUED BY THE 2ND RESPONDENT.
- EXT.P2 COPY OF THE RELEVANT PAGE OF THE SERVICE BOOK OF THE PETITIONER.
- EXT.P3 COPY OF THE RELEVANT PAGE OF PENSION CERTIFICATE OF THE PETITIONER.
- EXT.P4 COPY OF THE DIVORCE CERTIFICATE 20/5/98 ISSUED BY THE VADAKKEKKAD PARAYANGATTIL JUMA-ATH COMMITTEE, VADAKKEKKAD, THRISSUR.
- EXT.P5 COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE VADAKKEKKAD PARAYANGATTIL JUMA-ATH COMMITTEE, VADAKKEKKAD, THRISSUR.
- EXT.P6 COPY OF THE REPRESENTATION ALONG WITH NOTARIZED AFFIDAVIT DATED 19/2/2013 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 7237 of 2015

Dated this the 6th day of March, 2015

J U D G M E N T

The petitioner is a 77 year old retired person from Indian Air Force. The petitioner was discharged from service on 23.9.1971. In the service records, the name of the nominee was shown as C.T.Kunhimmu, the then wife of the petitioner. The petitioner submits that he has divorced the said C.T.Kunhimmu on 8.3.1974. The petitioner relies on the divorce certificate issued by the Vadakkekka Parayanagattil Juma-ath Committee. The petitioner sought to change the name of the nominee in the service records including in the pension certificate. This was rejected by the 2nd respondent as per Ext.P1, stating that without accompanying divorce decree from the Court the request cannot be accepted.

2. The personal law that prevail in India for Muslims, does not warrant intervention of the Court for granting divorce. Therefore, based on relevant records, certificates etc. even issuing notice to the wife concerned, the request

can be accepted. It is impossible in such circumstances, to obtain a divorce decree from the Court as marriages have been annulled by act of parties.

3. The question in this case is whether the documents relied upon by the petitioner can be acted upon by the establishment for satisfaction of the petitioner's claim, whether the petitioner has divorced his wife whose name is shown in the service records. The petitioner relies on Ext.P4. The certificate issued by any Juma-ath Committee is not a conclusive evidence of divorce. Therefore, no legal sanctity can be attached to it. This certificate is only an hearsay evidence. The petitioner also relies on a marriage certificate produced as Ext.P5, his marriage with another person, namely Fathima. It is to be noted that the petitioner has crossed the age of 77. Though Exts.P4 and P5 cannot be accepted as conclusive evidence to prove the established divorce, nevertheless it can be relied as a piece of evidence for any enquiry to establish the claim of the divorce of the petitioner with his former wife.

4. Considering the age of the petitioner and affirmations produced before this Court, I am satisfied that petitioner has divorced the aforementioned Kunhimmu. Further right of his wife would arise only after his life time. Service records are sought to be corrected by the ex-defence personnel himself. The right of such employee to correct the records cannot be lost at hands of a person, who may have a future right. Thus, service records of the petitioner can be corrected as requested by him, provided if he is satisfied with other conditions. Therefore, treating that the petitioner divorced Kunhimmu, necessary steps shall be taken within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/
H/O