

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 8070 of 2015 (G)

PETITIONER(S):

**MR.V.M. RADHAKRISHNAN,
PROPRIETOR, HOTEL SOORYA RESIDENCY
BRANCH OF SHIFA MEDICALS (TIN 32100703334),
PERINTHALMANNA.**

**BY SRI.K.ANAND, SENIOR ADVOCATE.
ADV. SMT.LATHA KRISHNAN.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY, TAXES,
THIRUVANANTHAPURAM - 695 001.**
- 2. ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
SPECIAL CIRCLE, MALAPPURAM - 676 505.**

BY GOVT. PLEADER SRI.LIJU V.STEPHEN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: TRUE COPY OF THE NOTICE DATED 02/02/2015 ISSUED BY
THE 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2010 - 2011.
- EXT.P2: TRUE COPY OF NOTICE UNDER SEC. 17(3) DATED 02/02/2015 OF
THE 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2011 - 2012.
- EXT.P3: TRUE COPY OF NOTICE UNDER SEC. 17(3) DATED 02/02/2015 OF
THE 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2012 - 2013.
- EXT.P4: TRUE COPY OF REPLY SUBMITTED BY THE PETITIONER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.8070 of 2015

Dated this the 10th day of March, 2015

JUDGMENT

The petitioner is the nominee in the service records of the deceased Abdulla, who was working as a Full Time Menial in the JNM Girls High School, Puthuppanam. The case of the petitioner is that, the petitioner is the legally wedded wife of late Abdulla and two female children were borne in the said wedlock. Abdulla took his last breath on 06.08.2009 as borne by Ext.P1 Death Certificate. Pursuant to the demise of the deceased husband, the petitioner and the children submitted Ext.P2 application before the 3rd respondent for granting family pension. The deceased had clearly shown the name of the petitioner as the nominee to obtain family pension in the relevant proceedings, but the fate of the proceedings, as to the claim put forth for granting the family pension, was never considered or let known to the petitioner. Finally, on filing a petition as borne by Ext.P3 under the Right to Information Act, the petitioner was let known as per Ext.P4 that

the petitioner was only the 'second wife' and that the marriage with the first wife by name 'M. Jameela', was still subsisting and as such, the petitioner was not legally entitled to have the benefit of family pension. It is also made a mention therein that, a claim was already put up by the first wife, who stands included in the party array as the 4th respondent.

2. Heard the learned counsel for the petitioner, the learned Government Pleader and also the learned counsel appearing for the 4th respondent as well.

3. The learned Government Pleader submits with reference to the contents of the Counter Affidavit filed, that earlier, both the petitioner and the 4th respondent had agreed to share the benefit and accordingly, an order was passed. But, it was pursuant to the objection raised by the Accountant General, to the effect that family pension was admissible only to the legally wedded first wife, that Ext.P4 came to be passed.

4. The learned counsel for the petitioner points out that the factual position with regard to the rights and liberties of the parties concerned could not be substantiated before the

concerned authority, as no opportunity of hearing was given to the petitioner. This Court finds considerable force in the said submission.

5. In the above circumstances, the 3rd respondent is directed to reconsider Ext.P2 application preferred by the petitioner and the subsequent applications, if any, in the light of the relevant provisions of law and the materials on record, with liberty to the parties to adduce evidence. Opportunity of hearing shall be given to the petitioner as well as the 4th respondent in this regard, at the earliest and it shall be finalized at any rate within 'three months' from the date of receipt of a copy of this judgment.

Petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the 3rd respondent, for further steps.

The writ petition is disposed of.

Sd/-

**P.R. RAMACHANDRA MENON,
JUDGE**

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