

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

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

WP(C).No. 26183 of 2003 (P)  
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PETITIONER(S):  
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K.K.LAKSHMY,  
W/O.LATE P.A.NARAYANAN,  
AGED 82 YEARS, RESIDING AT POYYARA HOUSE,  
P.O.MATHILAKAM, THRISSUR DISTRICT. (DIED)

Addl. 2\*. P.N.SARALA  
W/O.KUMARAN, AGED 73 YEARS,  
RESIDING AT KADHALIKKATTIL HOUSE,  
KADUPASSERRY VILLAGE, MUKUNDAPURAM TALUK,  
THRISSUR DISTRICT.

\*ADDL. PETITIONER IS IMPEADED AS PER ORDER DATED 19/08/2014 IN IA  
9274/2014.

BY ADVS.SRI.G.SUKUMARA MENON  
SMT.DEEPTHI S.MENON

RESPONDENT(S):  
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1. THE SECRETARY TO GOVERNMENT,  
GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF EDUCATION  
THRISSUR.

BY SPL. GOVERNMENT PLEADER, SRI.NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.06.2015, THE  
COURT ON 26.06.2015 DELIVERED THE FOLLOWING:

P.T.O.

W.P.(C)NO.26183 OF 2003

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF G.O.(MS) NO.292/97/GE DATED 28.07.1997 OF THE 1ST RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 29.07.2002 OF THIS HONOURABLE COURT IN O.P.NO.11857/93.
- EXHIBIT P3 TRUE COPY OF G.O.(RT)NO.1174/03/G.EDN. DATED 26.03.2003 OF THE 1ST RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE DEATH CERTIFICATE

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**SHAJI P. CHALY, J.**

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**W.P.(C) No.26183 OF 2003**  
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**Dated this the 26<sup>th</sup> day of June, 2015**

**JUDGMENT**

This writ petition is filed by the petitioner seeking to quash Ext.P3 order passed by the 1<sup>st</sup> Respondent bearing No. G.O.(Rt) No.1174/03/G.Edn. dated 26.03.2003, by which the Government has refused to grant arrears of pension to the petitioner allegedly on account of the dues to her husband who was missing from 06.09.1970. Brief facts for the disposal of the writ petition are as follows:

2. Petitioner is the wife of a pensioner namely Sri. P.A.Narayanan, who retired from service as a teacher on 31.03.1967 and was drawing pension from 01.04.1967 onwards. The said Narayanan received pension till 31.08.1970. He was found missing from 06.09.1970 and in that circumstances, petitioner submitted an application dated 12.10.1989 requesting the Accountant General, Kerala to grant family pension to the petitioner with effect from 01.09.1978. Thereafter, petitioner had also filed an application before the 2<sup>nd</sup> Respondent seeking to sanction family pension to her as

per the request dated 16.04.1990. In spite of the said request, the 2<sup>nd</sup> Respondent did not take any action, consequent to which the petitioner had preferred O.P.No.11857/1993 before this Court, seeking a writ mandamus to the 2<sup>nd</sup> respondent to sanction family pension to her with effect from September, 1970 and to pay arrears thereof.

3. It is the further case of the petitioner that during the pendency of the above Original Petition, Government have issued order dated 28.07.1997 sanctioning payment of family pension with arrears thereto with effect from 30.12.1990, which is evidenced by Ext.P1. From the records, it is seen that consequent to the issuance of Ext.P1, the Original Petition referred to *supra* was amended and sought direction for payment of arrears of pension due to her husband Sri. Narayanan from 01.09.1970 to 30.12.1990, i.e. for the period from which Sri. Narayanan was found missing and to the date of sanctioning of family pension. The Original Petition was disposed of on 29.07.2002, directing the respondent therein to consider the claims of the petitioner for arrears of pension due to her husband who is missing from 01.09.1970 and till the

date of sanction of the family pension that is 29.12.1990 and take a decision within a period of two months from the date of receipt of a copy of the judgment. It is the further case of the petitioner that the 1<sup>st</sup> Respondent has passed Ext.P3 order declining to grant arrears of pension due to her husband Narayanan for the period from 01.09.1970 to 29.12.1990 for the reason that the claim of the petitioner is belated as per the prohibition contained under Rule 135 of Part-III Kerala Service Rules (for short, "K.S.R."). It is thus challenging the said order, petitioner has filed the writ petition seeking to set aside Ext.P3 order and for other related reliefs.

4. The 1<sup>st</sup> Respondent has filed a counter affidavit controverting the claims raised by the petitioner in the writ petition, basically contending that the petitioner is a missing pensioner and if the pension remains undrawn for more than one year (presently, the time limit is enhanced to three years), the pension ceases to be payable under Rule 135 of Part-III K.S.R. It is further contended that taking into account the circumstances, the Government have accorded sanction for payment of family pension with arrears thereto to the petitioner with effect from 30.12.1990 and in that

circumstances, the petitioner is not entitled to get arrears of pension due to her husband from 01.09.1970 to 30.12.1990.

5. Since the petitioner died during the pendency of the writ petition, her daughter was impleaded as petitioner No.2 as per order dated 19.08.2014 in I.A.No.9274 of 2014.

6. Heard the learned counsel for the 2<sup>nd</sup> petitioner and the learned Special Government Pleader appearing for the Respondents.

7. The learned counsel for the 2<sup>nd</sup> petitioner contended that since Sri. Narayanan has not drawn pension from 01.09.1970 onwards, and since he was found missing from 06.09.1970 onwards, the legal-heirs of Sri. Narayanan was entitled to get arrears of pension that would have been drawn by Narayanan till according sanction for family pension in the year 1990. On the other hand, the learned Government Pleader contended that even though the petitioner has contended that Sri. Narayanan was missing from the year 1970 onwards, no complaint is filed before the police nor the police has registered any case for man missing. The only contention advanced by the petitioner to support missing of Narayanan is the report of the police dated 30.12.1990, by

which family pension was sanctioned to the petitioner and the learned counsel further contended that same is to be treated as a conclusive proof for the missing of Sri. Narayanan from 1970 onwards.

8. On evaluation of the rival contentions and submissions made by the counsel for the 2<sup>nd</sup> petitioner and the learned Special Government Pleader and perusal of the pleadings and documents, it has come to my notice that on record, there is no proof at all to show that Sri. Narayanan was missing from the year 1970 onwards. It is a mystery that no complaint is seen filed before the police by the petitioner or anyone else complaining the missing of Sri. Narayanan. Therefore, there is no evidence at all before me, to consider the question whether Sri. Narayanan was missing from the year 1970, enabling the petitioner to seek arrears of pension from the year 1970 onwards to the date on which family pension was sanctioned to the family of missing Narayanan.

9. Learned counsel for the petitioner has submitted that since Sri. Narayanan has not drawn pension from 1970 onwards and therefore it is to be presumed that he is missing from that date.

10. I am unable to comprehend the contention so raised by the petitioner. Under normal circumstances, a prudent person would have filed a complaint before the police immediately or any succeeding days regarding the missing of that person and in this case, the same was not done by the petitioner or the additional petitioner or anyone else regarding the missing of Sri. Narayanan. In the said circumstances, it creates a reasonable doubt in my mind as to whether Sri. Narayanan was actually missing from the date pointed out by the petitioner in the writ petition. The sole document to show that Sri. Narayanan was missing is the report of the police dated 30.12.1990 which can never be considered as a conclusive proof to testify missing of Sri. Narayanan from the year 1970 or any subsequent dates and therefore, I am unable to conclude that arrears of pension to the legal-heirs of Sri. Narayanan is due from 01.09.1970 to the date of grant of family pension with effect from 30.12.1990.

11. So also, Rule 135 of Part-III K.S.R provides for forfeiture of the pension exceeding one year and therefore taking into account the entire factual situations and law involved, I am of the opinion that the reliefs sought for by the

petitioner in the writ petition is unable to be granted by me.

Writ Petition fails and accordingly same is dismissed. In the facts and circumstances of the case, no order as to costs.

Sd/-  
**SHAJI P. CHALY**  
**JUDGE**

//true copy//

P.S. to Judge

St/-