

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C). No.17010 of 2013 (A)

PETITIONER(S):

**AMINA ALIYAR,
W/O.LATE SRI.ALIYAR, PADIKKAMATTOM HOUSE
PAREEKANNI P.O, PIN 686 693**

**BY ADVS.SRI.M.A.ABDUL HAKHIM
SRI.M.G.ANON**

RESPONDENT(S):

- 1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY OF HOME AFFAIRS,
NEW DELHI -110001.**
- 2. THE CHIEF ADMINISTRATIVE OFFIER,
CENTRAL ACCOUNTS OFFICE,
INDIAN TIBETAN BORDER POLICE FORCE,
R.K.PURAM, NEW DELHI - 110004.**
- 3. COMMANDANT,
SS BATTALION, INDO TIBETAN BORDER POLICE,
MINISTRY OF HOME AFFAIRD, SABOLI CAMP, NATHUPUR P.O,
SONEPAT, HARIYANA, PIN 131001.**

ADDITIONAL 4TH RESPONDENT IMPLEADED:

- 4. JESEENA C. M., W/O. SHOUKATH K. A.,
KUMBASSERY HOUSE, POOVATHUR,
NELLIKUZHI P.O., KOTHAMANGALAM.
(ADDITIONAL 4TH RESPONDENT IMPLEADED AS PER ORDER DATED 19.11.2013
IN I.A NO.15230 OF 2013.)**

**R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R1 TO R 3 BY ADV. SRI.T.SANJAY, CGC
ADDL.R4 BY ADV. SRI.E.C.BINEESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:-

- P1:- A PHOTOSTAT COPY OF THE AFFIDAVIT CUM DECLARATION EXECUTED BY SMT JESEEMA DATED 11/2008.**
- P2:- A PHOTOSTAT COPY OF ORDER SANCTIONING PENSION TO THE PETITIONER DATED 3/9/2009.**
- P3:- A PHOTOSTAT COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT ALONG WITH ENGLISH TRANSLATION DATED 14/6/2011.**
- P4:- A PHOTOSTAT COPY OF THE COVERING LETTER SENT BY THE PETITIONER TO THE 3RD RESPONDENT DATED 31/7/2012.**
- P5:- A PHOTOSTAT COPY OF THE MARRIAGE CERTIFICATE OF SMT JESEENA DATED 25/7/2012.**
- P6:- A PHOTOSTAT COPY OF THE EMPLOYMENT CERTIFICATE OF SMT JESEENA DATED 31/7/2012.**
- P7:- A PHOTOSTAT COPY OF THE DEATH CERTIFICATE OF THE HUSBAND OF THE PETITIONER DATED 23/4/2012.**
- P8:- A PHOTOSTAT COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION DATED 30/8/2012.**
- P9:- A PHOTOSTAT COPY OF THE REMINDER SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 3/9/2012.**
- P10:- A PHOTOSTAT COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER ALONG WITH ENGLISH TRANSLATION DATED 5/10/2012.**
- P11:- A PHOTOSTAT COPY OF THE EMPLOYMENT CERTIFICATE OF SMT.JESEENA DATED 29/10/2012.**
- P12:- A PHOTOSTAT COPY OF THE 2ND REMINDER SENT TO THE PETITIONER TO THE 3RD RESPONDENT DATED 10/2/2013.**
- P13:- A PHOTOSTAT COPY OF THE CERTIFICATE ISSUED BY THE ERNAKULAM DISTRICT CO-OPERATIVE BANK LTD DATED 6/2/2013.**
- P14:- A PHOTOSTAT COPY OF THE CERTIFICATE ISSUED BY THE OONUKAL SERVICE CO-OPERATIVE BANK LTD DATED 6/2/2013.**

RESPONDENT(S)' EXHIBITS:- NIL

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.17010 of 2013

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Dated this the 9th day of February, 2015

JUDGMENT

This writ petition is filed praying to quash the proceedings initiated as per Ext.P3 to review pension sanctioned to the petitioner and for a direction to make continued payment of monthly pension sanctioned to him as per Ext.P2 with effect from June, 2011.

2. Petitioner is the mother of one Ansar P. A, who died in harness on 10.11.2008 while working as constable under the third respondent in Indo-Tibetan Border Police due to heart attack at the age of 27 years. He joined the service on 26.2.2003. He had nominated the petitioner as his nominee for his retirement benefits.

3. Deceased Ansar had married one Jeseena, who is the additional fourth respondent. However, the marriage subsisted for only 14 days due to the death of Ansar. No children were born in that wedlock. The petitioner alleges that after the death of Ansar, Jeseena

started to reside permanently with her parents. The petitioner further alleges that Jeseena executed Ext.P1 affidavit-cum-declaration declaring that there is no claim over the benefits and the pension to be received consequent to the death of her husband. On the basis of Ext.P1, Ext.P2 was passed sanctioning pension @ ₹3,500/- to the petitioner w.e.f 11.11.2008 and the petitioner had been receiving pension till May, 2011.

4. The pension rules were amended in the year 2011 by which family pension was liable to be paid to a childless widow even after remarriage if the income from all other sources are less than the minimum family pension and dearness relief admissible thereof. Therefore, the respondents initiated the present proceedings as per Ext.P3 on 14.6.2011 to withhold family pension granted to the petitioner in view of the Central Civil Services (Pension) Amendment Rules, 2011. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by the respondents, they have justified their action in the light of the amended provision.

6. Arguments have been heard.

7. Admittedly, the petitioner is the mother of the deceased. As per un-amended Rule 54(6) of the Central Civil Services (Pension) Rules, 1972, which stood as on the date of Ext.P2 order, a widow is entitled to get family pension upto the date of death or remarriage, whichever is earlier. The aforesaid rules were amended in the year 2011 i.e., precisely on 8.6.2011 which provides that family pension shall continue to be payable to a childless widow on remarriage if her income from all other sources is less than the minimum family pension and dearness relief admissible thereon.

8. It was argued by the learned standing counsel for the respondents that since the fourth respondent, who is the wife of the deceased is alive, the said benefits cannot be passed on to the mother who is the petitioner under the new provision. It is crucial to note

that the amended rule has no retrospective operation. As per the law existing on the date of Ext.P2 order dated 3.9.2009, pension @ ₹3,500/- was granted w.e.f 11.11.2008 and it has been received by the petitioner till May, 2011.

9. Ext.P2 was issued in accordance with law, after necessary enquiry and satisfaction by the respondents that the widow of the deceased has no claim over the family pension in view of Ext.P1 and the petitioner was wholly dependent on the deceased. Since family pension had not been paid to the widow, there is no question of continuation of family pension even as per the amended rules, assuming that the said rule is applicable. The respondents have no right or authority to reopen the concluded proceedings on the basis of the subsequent change in law. Therefore, the petitioner is entitled to succeed.

In the result, the writ petition is allowed. The proceedings initiated as per Ext.P3 is quashed. Respondents are directed to

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-:5:-

continue payment of monthly pension sanctioned to the petitioner as
per Ext.P2 w.e.f June, 2011.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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