

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

WP(C).No. 28573 of 2004 (B)

PETITIONER(S):

**SOWDHAMINI, AGED 62,
W/O. P.R. BABU (MISSING)
PATHIYASSERIL VEEDU,
CHERAI P.O., N. PARUR,
ERNAKULAM DIST.**

BY ADV. SRI.S.RAJEEV

RESPONDENT(S):

- 1. THE ASSISTANT GENERAL A & E,
INDIAN AUDIT & ACCOUNTS DEPT.,
M.G. ROAD, TRIVANDRUM.**
- 2. DIRECTOR OF EDUCATION,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.**
- 3. ASST. EDUCATIONAL OFFICER,
VYPIN, ERNAKULAM.**

BY GOVERNMENT PLEADER MR.RAMPRASAD UNNI T.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P.1: TRUE COPY OF THE G.O.(P) 1028/87/FIN. GRANTING FAMILY PENSION FROM 2.12.87.
- EXT. P.2: TRUE COPY OF THE COMMUNICATION DT.18.09.1997 FROM THE FIRST RESPONDENT OFFICE.
- EXT. P.3: TRUE COPY OF THE COMMUNICATION DT.15.01.2003 FROM THE 2ND RESPONDENT OFFICE.
- EXT. P.4: TRUE COPY OF THE CERTIFICATE ISSUED BY THE SUB TREASURY NAYARAMBALAM DT.16.06.2003.
- EXT. P.5: TRUE COPY OF THE COMMUNICATION DT. 26.09.2003 FROM THE OFFICE OF 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXT. R.2: COPY OF THE LETTER DATED 25.11.05 REPLY OF THE ACCOUNTANT GENERAL.

//TRUE COPY//

P.A. TO JUDGE

STK

A.M.SHAFFIQUE, J.

W.P.(C)No.28573 of 2004

Dated this the 24th day of June, 2015

JUDGMENT

This Writ Petition has been filed seeking for the following directions;

“(i) to issue a writ of mandamus or any other appropriate writ or order or direction, commanding the respondents to disburse the arrears of family pension to the petitioner with effect from 30.01.1975 from which date the husband of the Petitioner was found missing;

(ii) To issue such other writ or order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case.”

2. The facts involved in the above writ petition disclose that the petitioner's husband while he was working as a Teacher in Cherai Vigyana Vardhini School, was found missing since 30.01.1975. He joined service in the school on 22.11.1961. The petitioner submits that in terms of the Government order dated 05.02.1994, petitioner has received Family Pension from 25.05.1993 onwards as per pension payment Order No.SF-EKM-

3064. The petitioner submits that she was entitled to get pension from 1975 onwards, the date on which her husband was found missing. She also relies upon Ext.P1 Government Order G.O.(P) 1028/87/Fin in which it is stated that the pension is payable after the lapse of a period of one year from the date of disappearance of the employee concerned. She also relies upon Ext.P2 communication received from the Accountant General's Office by which she was informed that the Family Pension has been authorized with effect from 30.01.1975, the date on which her husband was found missing.

3. Counter affidavit has been filed by the second respondent inter alia stating that the proposal for authorization of Family Pension and the D.C.R.G. was forwarded by the Deputy Director of Education, Ernakulam during 1991-92 on the ground that the employee was missing from 30.01.1975. On receipt of copy of F.I.R. from the Sub Inspector of Police, Munambam and Government sanction as per G.O.(Rt) No.440/94.G.Edn. dated 05.02.1994 minimum Family Pension with effect from 25.05.1993 (i.e. one year after filing FIR) was paid. In paragraph 3 of the counter affidavit, it is stated that the pension was payable to the

family of missing employee in terms of Ext.P1 Government Order dated 02.12.1987, after one year from the date of his disappearance. However by Government Order G.O.(P) No.404/89/Fin dated 23.09.1989, it was clarified that Family Pension is to be sanctioned one year after the serving employee is reported missing and the period of one year is to be reckoned from the date of filing of F.I.R. with police. In the case on hand, the F.I.R. was registered on 25.05.1992 as evident from the certificate dated, 28.05.1992 issued by the Sub Inspector of Police, Munambam. In the said circumstances, Family Pension was sanctioned to the petitioner with effect from 25.05.1993. As far as the other contentions raised by the petitioner was concerned, it is stated that the second respondent's office had addressed the Accountant General regarding the genuineness of Ext.P2 letter dated 18.09.1997. The Accountant General in his reply dated 25.11.2005 had informed that he was unaware of such a letter. True copy of the said letter issued by the Accountant General on 25.11.2005 is also produced. It is therefore contended that there is every reason to think that, Ext.P2 letter of the Accountant General authorising arrears of

pension from 29.01.1975 is a fabricated one. In regard to Ext.P3 letter dated 15.01.2003 issued by the Director of Public Instruction is concerned, it was issued based on Ext.P2, which according to the respondent is not a genuine document. Further it is stated that on verification of the pension file it was seen that F.I.R. was lodged only on 24.05.1992. It is also mentioned that as per G.O.(P)No.687/96/Fin. dated 16.10.1996, Family Pension in man missing cases will be sanctioned and paid from the date of lodging of F.I.R. Hence arrears of Family Pension from 25.05.1992 to 24.05.1993 was authorised to the petitioner on 30.04.2004. Therefore, it is submitted that the petitioner was only entitled to Family Pension from the date of lodging of F.I.R. and not from any earlier date.

4. The learned counsel for the petitioner relied upon the judgment of this Court in **Indira v. Union of India [2005 KHC 1171]**. While considering the question of providing the service benefits to the family members in case of missing personnel in Army service referring to the statutory provisions under the Army Act, 1920 read with Section 108 of the Evidence Act, the learned Single Judge of this Court has held as follows;

“There may be cases where the missing person may be dead or permanently disabled mentally or physically which may not come to the notice of the Army or the family. Even in such cases also, the Army may be justified in declaring him a deserter but the position will continue only until expiry of seven years from the date of missing of the person when presumption of death is available under S.108 of the Evidence Act. Therefore, as and when presumption of death is available under S.108 of the Evidence Act, the whole position changes and the presumption of death supercedes the declaration of the person a deserter under S.106 of the Army Act. Consequently the family members can claim all benefits as if the man is dead on the date of his missing. Since it is admitted that the petitioner's husband has not surfaced and could not be traced after 05.10.1995 in spite of effort to trace him by the Police at the request by the Army, the presumption of his death as on 05.10.1995 is available under S.108 of the Evidence Act.”

In this case direction was given to provide all service benefits from the date of desertion/missing. It is submitted that based on the judgment in Indira's case, another learned Single Judge in W.P.(C)No.8107/2010 had occasion to consider the obligation of granting family pension wherein it was held that the registration or non-registration of FIR is not fatal to the case in which the claim for Family Pension was being made. The learned Single

Judge after referring to Indira's case (Supra) held as under;

“But, I do not think that registration or non-registration of a First Information Report will be fatal to the case of the petitioner.”

Further reference is made to the judgment in W.A.No.32 of 2013 dated 15.03.2013, which was an appeal against the judgment dated 22.05.2012 in W.P.(C)No.8107/2010 in which the Division Bench modified the judgment of the learned Single Judge and directed payment of interest at the rate of 9% per annum from March, 2010 till the date of payment.

5. Heard the learned counsel for the petitioner and the learned Government Pleader.

6. On a consideration of the factual and legal aspects involved in the matter, it is clear that the liability to pay the pension to the family members of the missing person has been accepted by virtue of various Government Orders. In INDIRA'S (supra) case nor in the case of MARIAMMA SAMUEL (supra) this Court was not concerned with the Rules prevailing as far as the liability to pay Family Pension is concerned, with reference to a missing employee in Government service. In the Government

Order dated 02.12.1987, which is produced as Ext.P1, the Government had undertaken the obligation to pay the Family Pension from the date of expiry of one year from the date of disappearance of the employee concerned. However the same stands modified by G.O.(P)No.404/89/Fin dated 23.09.1989 by which it was clarified that the family pension is to be sanctioned one year after the serving employee is reported missing and the period of one year is to be reckoned from the date of filing of F.I.R. with the Police. Admittedly, the FIR has been registered only on 25.05.1992 and it is pursuant to that the petitioner was granted the family pension. Later by another Government Order it was further clarified that the family pension shall be paid from the date of lodging of the FIR which was also paid to the petitioner.

7. In the light of the existence of orders governing the grant of family pension in respect of missing employee, this Court cannot issue any direction contrary to the said orders which has the force of law. In the judgment cited above, there is no reference to the aforesaid orders. Further in Indira's (supra) case FIR was lodged immediately and in Mariamma Samuel a

complaint was filed stating that the person was missing, though FIR was not registered by the police.

8. It is also an admitted fact by the petitioner that she applied for family pension only in the year 1991-92. No materials are produced to indicate that her husband's missing was reported to the Police or the school during the relevant time. Exts.P2 and P3 can never be the basis of the claim as the genuineness of Ext.P2 is under doubt. Ext.P3 though indicates about the entitlement of pension from 1975, can have no basis, having regard to the existence of Government orders which are referred above. Hence the petitioner is not entitled for the reliefs as prayed for.

Accordingly, this writ petition is dismissed.

Sd/-
A.M.SHAFFIQUE
JUDGE

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P.A. TO JUDGE