IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C). No.23273 of 2012 (H)

PETITIONER(S):
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1. SHIRLY,
   W/O.GEORGE, ALAPPAT HOUSE, MANAVALASSERY,
   IRINJALAKUDA, THRISSUR DISTRICT.

2. JERISH,
   S/O.GEORGE, -DO- REP.BY POWER OF ATTORNEY SHIRLY,
   THE IST PETITIONER.

3. JISNA,
   D/O.GEORGE, -DO-

4. JIS MARIA, [MINOR],
   D/O.GEORGE, REP.BY HER MOTHER SHIRLY,
   THE IST PETITIONER.

   BY ADV. SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENT(S):
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1. STATE BANK OF INDIA,
   REP. BY ITS MANAGING DIRECTOR, OFFICE OF THE SBI,
   CORPORATE CENTRE, MUMBAI-400 001.

2. CHIEF GENERAL MANAGER,
   STATE BANK OF INDIA, HUMAN RESOURCE SECTION,
   ZONAL OFFICE, KOCHI-682 031.

3. THE BRANCH MANAGER,
   STATE BANK OF INDIA, CHALAKUDY TOWN,
   CHALAKUDY. 680 307.

4. STATE OF KERALA,
   REP. BY ITS SECRETARY, HOME DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM. 695 001.

   R1 TO R3 BY ADV. SRI.P.V.SURENDRANATH
   R4 BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-01-2015, THE COURT ON 30.1.2015 DELIVERED THE FOLLOWING:

WP(C). No.23273 of 2012 (H)

APPENDIX

PETITIONER(S) EXHIBITS:-

- **P1:** A TRUE COPY OF THE FIR NO.726/2011 OF IRINJALAKUDA POLICE STATION DATED 11.11.2001.
- **P2:** A TRUE COPY OF THE REPORT OF THE SUB INSPECTOR OF POLICE, IRINJALAKUDA DATED 14.3.2005.
- **P3:** A TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT DATED 15.2.2000.
- **P4:** A TRUE COPY OF THE LETTER DATED 22.1.2007 ISSUED by the 1ST RESPONDENT TO THE 1ST PETITIONER.
- **P5:** A TRUE COPY FO THE SCHEME FOR PAYMENT OF EX-GRATIA LUMPSUM AMOUNT IN LIEU OF APPOINTMENT ON COMPASSIONATE GROUNDS IN STATE BANK OF INDIA.
- **P6:** A TRUE COPY OF THE APPLICATION IN PROPER FORM SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- **P7:** A TRUE COPY OF THE LETTER DATED 7.5.2007 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- **P8:** A TRUE COPY OF THE LETTER DATED 18.6.2007 ISSUED BY THE 2ND RESPONDENT TOT HE 1ST PETITIONER.
- **P9:** A TRUE COPY OF THE LETTER 26.6.2007 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- **P10:** A TRUE COPY OF THE ONE OF THE REPRESENTATION DATED 22.12.2011 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- **P11:** A TRUE COPY OF THE LEGAL HEIR SHIP CERTIFICATE ISSUED BY TAHASILDHAR, TALUK OFFICE, MUKUNDAPURAM DATED 13.3.2007.

RESPONDENTS' EXHIBITS:

- **R3(A):-** TRUE COPY OF THE REGISTERED NOTICE DATED 31.7.1999 CALLING UPON THE EMPLOYEE TO REPORT FOR DUTY WITHIN 30 DAYS.
- **R3(B):-** TRUE COPY OF THE LETTER SENT TO THE EMPLOYEE DATED 8.11.1999.
- **R3(C):-** TRUE COPY OF SUCH NOTICE/ORDER PUBLISHED IN MALAYALAM MANORAM DAILY DATED 11.11.1999.
- **R3(D):-** TRUE COPY OF THE LETTER DATED 1.12.1999 SENT BY THE FIRST PETITIONER TO THE 3RD RESPONDENT.
- **R3(E):-** TRUE COPY OF THE REPORT IN THIS REGARD SUBMITTED TO THE CHIEF MANAGER, P&HRD, ZONAL OFFICE, ERNAKULAM DATED 10.5.2007.

/True Copy/

P.A to Judge

KRJ

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.23273 of 2012

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Dated this the 30th day of January, 2015

<u>JUDGMENT</u>

Aggrieved by the inaction on the part of respondents 1 to 3 in considering the petitioners' application for payment of *ex gratia* lump sum amount, for want of production of certificate of the court to the effect that Mr. A. A. George, of whom the petitioners claim to be the legal representatives, is dead, the petitioners have come up before this Court.

2. The writ petition was filed with the following allegations.

The petitioners are the legal representatives of Sri. A. A. George, who was working as Record Keeper/Cashier in the second respondent's office and whose whereabouts had not been known to the petitioners from 1.6.1998 onwards. On 1.6.1998 at about 9 a.m., he went to the second respondent's office as usual. However, he did not return to the house thereafter. The petitioners *bona fide* believed that it was only because of the debt trap and the attending circumstances, Sri. George left the house. Since he did not return even after three years of his disappearance, the 1st petitioner had complained to the police and accordingly, FIR No.726 of 2001 was registered by the Irinjalakuda Police for man missing on 11.11.2001.

After investigation, the police filed final report before the learned Magistrate. The disappearance of A.A.George was informed to the respondent bank in time. As per Ext.P3, the bank informed that A.A.George was removed from service and all terminal benefits due to him would be settled if appropriate application is filed.

After filing of the final report by the police as per Ext.P2, the first petitioner submitted an application before the respondents seeking payment of *ex gratia* lump sum amount on compassionate grounds as per Ext.P5 scheme. The third respondent processed the application, sent an application form and further informed that as per the said scheme, the families of missing/absconding employees are not eligible for *ex gratia* amount as such and that bank's board may consider and take a view on a case to case basis in the case of employees missing for more than 7 years and declared dead by the Court. In response to the same, the first petitioner submitted an application in the prescribed form with all documents such as F.I.R, final report of the police, legal heirship certificate etc. However, it was returned stating that the court order declaring A.A.George dead was not produced.

Though the petitioners have applied for payment of *ex gratia* lump sum, the respondents 1 to 3 have not considered the same till the date for want of production of certificate from the court to the effect that A.A.George dead. It is with this background, the petitioners have come up for this Court.

3. In the counter affidavit filed by the respondents, they admitted that the husband of the first petitioner had worked as Record Keeper/Cashier in the office of the second respondent during

the year 1998 and he had been unauthorisedly absent from 30.5.1998. According to them, as notice was sent to the house of the petitioners, the first petitioner sent a communication to the branch manager of the respondent bank stating that her husband was undergoing treatment in Rajasthan and, therefore, he required three months further time for reporting duty. Therefore, according to the respondent bank, they could not proceed under the assumption that the first petitioner's husband is no more.

4. It was further contended that the presumption under Section 108 of the Evidence Act shall be invoked only in a judicial proceedings and the bank cannot straightaway proceed to consider the application of the petitioners for *ex gratia* payment on the ground that the first petitioner's husband is no more.

5. Arguments have been heard.

6. Admittedly, all terminal benefits have been received by the petitioners as per Ext.R3(b) order dated 8.11.1999.

7. The application for *ex gratia* payment is resisted by the respondents on two grounds. Firstly, it was contended that the employee, who is unauthorisedly absent, was deemed to have voluntarily vacated the office. Secondly, Ext.P6 application for *ex gratia* payment cannot be considered without a declaration from a competent court of law regarding the death of first petitioner's husband. According to the respondents, such a declaration is necessary even for proceeding with the application on the basis that it is a case of missing/absconding employee.

8. After adjusting the liability to the tune of ₹1,31,077/-, the balance available amount of ₹32,777/- has been paid to the petitioners against acknowledgment and they have received the amount on 5.9.2007. The payment of terminal benefits of George to the petitioners on account of benevolent consideration is not a ground to grant *ex gratia* payment to them.

9. As rightly pointed out by the learned counsel for the

respondents, the payment of *ex gratia* lump sum amount to the dependent on compassionate ground is governed by Ext.P5 circular. As per clause 15V of Ext.P5, the families of missing/ absconding employees are not eligible under the scheme. Therefore under the scheme, the petitioner cannot claim the *ex gratia* lump sum payment as a matter of right.

10. The stand taken by the petitioners is that the whereabouts of A.A.George is not known from 1.6.98 onwards. This appears to be false in the teeth of Ext.R3(d) dated 1.12.1999 given by the first petitioner.

11. The learned counsel for the petitioners relied on Section 108 of the Evidence Act for raising the presumption that A. A. George is dead. In support of the said argument he invited my attention to the two decisions of this Court in **Mariamma Samuel** v. **State of Kerala** [2012 (3) KLT 152] and in **Indira** v. **Union of India** [2005 (3) KLT 1071]. These decisions cannot have any application

to the facts of the present case. The presumption would hold good only after seven years of alleged missing. Admittedly, A.A.George was alive on 1.12.1999 and his whereabouts were known to the petitioners on that date. During the relevant period and on the date, A.A.George was out of service of the respondent bank as he was deemed to have vacated the office.

On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioners are not entitled to succeed.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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