

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 30269 of 2007 (C)

PETITIONER(S):

**K.B. RADHADEVI AMMA,
D/O. KUNJUKRISHNA PILLAI, AGED 57, VALIAVILA VEEDU
KIZHAKKANELA, PARIPPALLY, KOLLAM
REPRESENTED BY, SISTER, K.B.LEELADEVI AMMA
AGED 65, VALIAVILA VEEDU, KIZHAKKANELA
PARIPPALLY, KOLLAM.**

**BY ADVS.SRI.K.S.MANU (PUNUKKONNOOR)
SRI.P.SREEKUMAR**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REP. BY PRINCIPAL SECRETARY, FINANCE DEPARTMENT
THIRUVANANTHAPURAM.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
THIRUVANANTHAPURAM.**
- 3. KERALA LOK AYUKTA, THIRUVANANTHAPURAM.**

R,R1 & 2 BY ADV. GOVERNMENT PLEADER SRI. P.V. LONACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 30269 of 2007 (C)

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE DISABILITY CERTIFICATE ISSUED BY THE
MEDICAL BOARD DT.4.1.94
- EXT.P2 COPY OF THE DEATH CERTIFICATE DTD.24.10.87
- EXT.P3(A)&(B) COPY OF THE GOVT. ORDER DTD.15.3.94 DTD.4.10.2000
- EXT.P4 COPY OF THE ORDER OF LOK AYUKTA
- EXT.P5 COPY OF THE CIRCULAR NO.10/2000 FIN DTD.17.2.2000

RESPONDENTS EXHIBITS:

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.30269 of 2007 - C

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Dated this the 5th day of October, 2015

J U D G M E N T

The petitioner claims to be a mentally and physically challenged daughter of a Government employee and on the basis of such claim, seeks the arrears of family pension. Admittedly, the petitioner was sanctioned family pension as per Ext.P3. But however, the same was sanctioned only from 15.03.1994, the date of Ext.P3. The petitioner is aggrieved by the fact that the petitioner has not been paid arrears from the next day of the death of her father ie., from 29.08.1987. The petitioner's father's death which occurred on 28.08.1987 is evidenced by Ext.P2. The petitioner seeks that the arrears due between 29.08.1987 and 15.03.1994 be paid.

2. The learned Government Pleader submits on the

basis of the counter affidavit that, as per Rule 90 Part III Kerala Service Rules (K.S.R), spouse and minor children, (below the age of 25) alone are eligible for family pension and that for children above the age of 25 grant of pension is a special concession and will be payable only with effect from the date of establishing the physical disability by a competent medical certificate and by other eligible documents.

3. Herein it is to be noticed that there is no such concession spoken of in Ext.P3. In any event, the counter affidavit of the Government that the family pension granted to the disabled children of the Government employees, is a special concession, cannot be countenanced, going by the provisions under the K.S.R. Rule 90(6) part III KSR indicates that children suffering from physical/mental disorder or disability and unmarried progeny of the deceased employee daughters above 25 years come under the definition of family for the purpose of these rules. The petitioner admittedly is an unmarried progeny

of the deceased employee and also suffering from physical disabilities including epilepsy. The petitioner is unable to earn a livelihood for herself and it is on that premise, going by the provisions of the K.S.R that the Government sanctioned Ext.P3 family pension.

4. The further submission with respect to the date of eligibility certificate has already been held to be unsustainable in **Accountant General v. Shyson Geroge [2005(2) KLT 137]**. In the aforesaid case, the Division Bench was concerned with the death of a Government employee which occurred on 21.05.1988. Though the pension was sanctioned w.e.f 22.05.1988, the Accountant General refused to approve the same on the basis of Circular No.10/2000/Fin dated 17.02.2000, which indicated that the eligibility to pension would accrue only from the date of issuance of an eligibility certificate. The Division Bench specifically noticed that, the date of issuance of the eligibility certificate is immaterial and the actual date of accrual of the

disability is the relevant fact to be considered. The Court specifically took note of a situation of delayed issuance of an eligibility certificate and the restriction in the circular was held to be only in cases where the disability occurred, after the death of the employee. The special circumstances referred to in the circular was held to be only in such instances and not in a case, where the disability was there even at the time of death of the Government employee.

5. The facts and law squarely apply herein. The petitioner would be entitled to the family pension from the next day of death of her father, ie., from 29.08.1987. The fact that the petitioner is entitled to family pension is evident by Ext.P3, there is no reason why Government restricted such pension prospectively to Ext.P3 order.

6. In such circumstance, there shall be a declaration that the petitioner is entitled to family pension from 29.08.1987. The arrears due on that account as per the rates applicable at

that point of time shall be computed and paid to the petitioner within a period of three months from the date of receipt of the certified copy of this judgment.

The writ petition would stand allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/06 /10 /2015

// true copy //

P.A to Judge.