

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 10TH DAY OF JANUARY 2018 / 20TH POUSHA, 1939

OP (CAT).No. 89 of 2017
AGAINST THE ORDER/JUDGMENT IN OA 658/2014 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 11-11-2016

PETITIONER(S)/PETITIONERS : (RESPONDENTS 1 & 2 IN O.A.)

- 1 SOUTHERN RAILWAY,
REPRESENTED BY THE DIVISIONAL PERSONNEL OFFICER,
DIVISIONAL OFFICE, SOUTHERN RAILWAY, PALAKKAD-678001
- 2 THE DEPUTY GENERAL MANAGER(LAW) ,
SOUTHERN RAILWAY, LAW OFFICE, M.M.C.BUILDING,
CHENNAI-600001

BY ADV.SMT.ASHA CHERIAN, SC, RAILWAYS

RESPONDENT(S)/RESPONDENTS : (APPELLANTS AND 3RD RESPONDENT IN O.A.):

1. K.N. SURENDRAN PILLAI,
S/O.LATE R.NARAYANAN PILLAI, 7/324, VASANTHA SURABHI,
SIVANKOVIL STREET, THAREKKAD, PALAKKAD-678001
(RETD. SENIOR PERMANENT WAY SUPERVISOR, SOUTHERN
RAILWAY)
2. K.VASANTHAKUMARI,
W/O.SURENDRAN PILLAI, 7/324, VASANTHA SURABHI,
SIVANKOVIL STREET, THAREKKAD, PALAKKAD-678001
3. P.R.VIJAYALAKSHMI,
D/O.P.N.RAMAKRISHNA IYER, VIJAYASURABHI HOUSE,
LAKSHMINARAYANAPURAM, CHOKKANATHAPURAM,
PALAKKAD-678005

R1,R2 BY ADV. SRI.K.A.SIYAD
R1,R2 BY ADV. SRI.K.V.WINSTON
R1,R2 BY ADV. SMT.ANU JACOB
R1,R2,RADDL BY ADV. SRI.JACOB SEBASTIAN

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 10-01-2018, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 89 of 2017 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF O.A.180/00658/2014 FILED BEFORE THE
CAT/ERNAKULAM

EXHIBIT P2 TRUE COPY OF REPLY STATEMENT FILED BY RAILWAY
IN O.A.180/00658/2014

EXHIBIT P3 TRUE COPY OF ORDER DATED 11.11.2016 IN
O.A.180/00658/2014 OF CAT/ERNAKULAM

/TRUE COPY/

P.A. TO JUDGE

**P.R. RAMACHANDRA MENON
&
DEVAN RAMACHANDRAN, JJ.**

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O.P.(CAT) No. 89 of 2017

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Dated, this the 10th day of January, 2018

JUDGMENT

Ramachandra Menon , J.

Who is to step into the shoes of the deceased first respondent herein to claim the benefit of family pension obtainable from the Railways/petitioners herein i.e. whether it is the second respondent or the third respondent, is the subject matter of dispute in this Original Petition.

2. The petitioners, the Railways, were arrayed as the respondents in the Original Application filed by the deceased employee joining hands with the 2nd respondent, who claims to be his wife. The deceased employee was working as Senior Permanent Weigh Supervisor in the Palakkad Division. While in service, he was required to furnish particulars, particularly, the members of the family in the prescribed form and it was accordingly, that Annexure R1 was submitted on 16.06.2010 [which is the renewal certificate, the

original one having given way back in 1987]. In the said certificate name of the wife of the employee was shown as P. R. Vijayalakshmi - 3rd respondent herein. Based on the said entry, various benefits were being extended including privilege passes like Annexures R2 and R3 [which however do not disclose the name of the person to whom it was issued]. Later, in the year 2011, the employee wanted to effect some change with regard to the name of the spouse shown in the Family Compensation Certificate. According to him, he actually had married one K. Vasanthakumari and not the 3rd respondent herein. The request made by the employee to effect the change was not acceded to by the Railways, who insisted to produce proper proof from the competent authority/court of law. In the meanwhile, the second respondent herein, joining hands with the children, had moved the Munsiff's Court, Palakkad by filing O.S. No. 572 of 2010 against the employee [petitioner's husband] and the third respondent herein, arraying them as defendants 1 and 2, seeking for a declaration to the effect that the first plaintiff was the legally wedded wife of the employee/1st defendant and other plaintiffs were the children born out of the said wedlock. It is seen that, despite serving summons, the defendants did not turn up and in the said circumstances, the suit was

decreed ex parte as borne by Annexure A3 dated 22.10.2010.

3. Though a copy of the said verdict was produced before the Railways, the Railways did not consider it as a legally acceptable document, as no jurisdiction was vested with the Civil Court to grant any such declaration, as it was within the exclusive domain of the Family Court under the relevant provisions of law. This made the employee to approach the Tribunal by filing O.A. along with K. Vasanthakumari shown as the applicant No.2, wherein the 3rd respondent [whose name was mentioned in Annexure R1] was included as respondent No.3. The claim was resisted by the Railways, particularly, with the objection that the decree obtained from the Civil Court was not liable to be acted upon by virtue of the mandate of Section 7 (1) of the Family Courts Act, read with explanation b thereunder. The Tribunal, after hearing both the sides, held that the materials on record clearly revealed that the second applicant was the legally wedded wife of the first applicant and that they were to be given the benefits accordingly. It was accordingly, that the O.A. was allowed as per Ext. P3, which made the Railways to approach this Court challenging the same on various grounds, both legal as well as factual. Despite completion of service of notice, the

3rd respondent has not chosen to approach this court, nor has he approached the Tribunal as well.

4. The learned standing counsel for the Railways submits that there cannot be any compromise with regard to the legal position that Civil Court does not have any jurisdiction to grant the relief as borne by Annexure A3. Reliance was sought to be placed on the verdict passed by the Supreme Court in **Balram Yadav Vs. Fulamaniya Yadav [AIR 2016 SC 2161]** where it has been held that such power is exclusively vested with the Family Court and never with the Civil Court. There cannot be any dispute with the proposition mooted by the learned standing counsel. But the question is, whether the verdict passed by the Tribunal is based on Annexure A3 passed by the Civil court, or if it is based on such other materials to be taken into consideration and further whether any rival claim was put forth by the 3rd respondent, whose name was given in Annexure R1.

5. During the course of hearing, it is brought to the notice of this Court by the learned counsel appearing for the parties that the first claimant, who was an employee of the Railways was suffering from serious kidney ailments and he bid farewell to this world in October 2017, as borne by Annexure R2A death certificate. By virtue

of the apprehension nurtured by him, he had executed 'Will' bequeathing all the properties in the name of the second respondent and the children as revealed from Ext. R2B. The learned counsel points out that Ext.R3C Birth Certificate of the elder child and Ext.R3D Birth Certificate issued in the case of younger child by the competent authority clearly reveal the particulars of the parents, wherein the name of the mother is shown as the 'second respondent' and nobody else. The said applicant also seeks to place reliance on the marriage certificate issued by the competent authority/Guruvayur Municipality [Annexure A1]. As per the said certificate, the marriage of the deceased first applicant and second applicant took place at Guruvayoor on 30.08.1999. Annexure A2 is the extract of the ration card where the members of the family of the deceased employee have been shown as Vasanthakumari, Durga Lakshmi and Iswarya Lakshmi, apart from the name of the deceased employee. These documents were very much part of the records produced before the Tribunal, particularly, Annexures A1 and A2 and it was after perusing the said documents, that the verdict was rendered by the Tribunal as per Ext.P3

6. There is no dispute to the fact that the name of the 3rd

respondent herein was mentioned in Annexure R1 Family Composition Certificate issued in the name of wife of the first applicant. Explanation sought to be offered from the part of the first applicant, particularly, as given in paragraph 4 of the O.A. is that there was an intention to marry the third respondent, which however did not take place. In the said circumstances that the name originally given years back, but not permitted to be changed by Railways continued as such, as the entry in the first instance. It was only after retiring from the service, that the original applicant could seek to challenge the course and proceedings by filing a case against the Railways. The fact remains that despite completion of notice, she did not put forth any claim before the Tribunal and Ext. P3 verdict has been rendered in the said circumstances, based on Annexures A1 and A2 and such other materials. Similarly, service of notice was completed before this Court as well. Still, the third respondent did not chose to appear before this Court. We put a specific question to the learned standing counsel whether any claim was mooted in any manner by the third respondent before the Railways, to which the learned standing counsel submits that there was no such need, necessity or occasion earlier, as the demise of the first applicant took place only in October 2017.

7. The learned counsel for the second respondent submits that the third respondent clearly knows the position i.e. why no claim was mooted at any point of time against the first applicant with reference to the marital bond if at all any raising some or other claim against him. That apart she did not turn up before the Tribunal and also before this Court as well, despite notice/summons. It is undertaken that, subsequently if she puts up a claim and succeeds in establishing the right, if at all any against the second respondent herein, the said respondent is ready to satisfy the claim and compensate all the requisite extent and no burden will be shifted to the shoulders of the Railways, for granting relief by way of family pension and such other consequential reliefs flowing therefrom.

8. After hearing both the sides and after going through the materials on record, this Court finds that the verdict passed by the Civil Court vide Annexure A3 need not be looked into, to decide the 'lis' between, as the respondent No.2 has already produced other materials in support of her claim. We do not find any reason to doubt the genuineness or as to the contents of Annexure A1 certificate of marriage issued by the competent authority/local authority in conformity with Rule 14 of the Kerala State Hindu Marriage Rules

which is dated 30.08.1999, as to the solemnization of marriage held on that day, between the deceased first applicant and the second applicant. Similarly, Annexure A2 ration card shows the particulars of the first applicant employee, also giving particulars of wife by name Vasantha Kumari and two children by name Durga Lakshmi and Iswarya Lakshmi. The above proceedings issued by the competent authority are valid piece of evidence to sustain the claim mooted by the 2nd respondent herein and her deceased husband and only difference of material to deny such relief, as sought to be relied on by the Railways, are Annexures R1 to R3. As mentioned already, Annexure R1 is only a declaration made by the applicant employee stating that person by name P. R. Vijaya Lakshmi is legally wedded wife; whereas the other documents Annexures R2 and R3 do not mention the name or such other particulars of anybody else including the 3rd respondent therein. In the said circumstances, no reliance can be placed on the above documents to negate the claim mooted by the applicants on the strength of Annexures A1 and A2.

10. Viewed in the above circumstances, we find that the verdict passed by the Tribunal vide Ext. P3 does not warrant any interference in exercise of the supervisory jurisdiction of this Court under Article

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: 9 :

227 of the Constitution of India. OP fails and it is dismissed accordingly.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**DEVAN RAMACHANDRAN,
JUDGE**

kmd

/True copy/

P.A. To Judge