IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 18TH DAY OF DECEMBER 2020 / 27TH AGRAHAYANA, 1942

WP(C).No.24766 OF 2020(U)

PETITIONER:

P.OMANAKUTTAN, AGED 60 YEARS
S/O.PARAMBU, R/O THENGHUVILA, PUTHENVEEDU,
KAKKAKOTTUR, AMBALATHUNKALA P.O., EZHUKONE,
KOLLAM, PIN - 691 505.

BY ADVS.
SRI.HARIS BEERAN
SMT.O.A.NURIYA
SMT.ASHITHA RIA MERIN
SRI.AZHAR ASSEES

RESPONDENTS:

1 **STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT, FINANCE (PENSION-A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 695 001.**

2 **SECRETARY, FINANCE DEPARTMENT (PENSION-A) GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 695001.**

R1-2 BY GOVERNMENT PLEADER
SRI. C.M.SURESH BABU - SPL.GP(FIN)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court seeking a direction to the respondents to disburse to him the arrears of Family Pension, which became entitled to him, consequent to the death of his wife - who was a Government servant - from 01.07.2009 to 30.09.2014.

2. The petitioner, through his learned counsel – Smt.Nuriya O.A., says that subsequent to his wife's death he was drawing the Family Pension; but that in July 2009, on account of the rather distressing financial circumstances faced by him and his family, he went abroad seeking better prospects in life, but that his dreams turned sour and he became in a worse state abroad, having to return to India in the year 2014.

3. Smt.Nuriya further submitted that after her client came back to India, he applied for the arrears of pension from

01.07.2009 to 30.09.2014, but that has been rejected through Ext.P5 solely saying that since he did not authorise anybody to collect the said amounts during the period he was not in India, he will statutorily be construed to have relinquished the same, going by Rule 135 of Part I of the Kerala Service Rules (KSR for short). The learned counsel contends that the stand taken by the Government in Ext.P5 is totally contrary to the declaration of law in Ext.P7 judgment, which has been delivered in identical circumstances; and therefore, prays that Ext.P5 be set aside and the Government be directed to disburse to her client the arrears as prayed for.

4. In response, the learned Special Government Pleader – Sri.C.M.Suresh Babu, submitted that a counter affidavit has been filed on record conceding that the petitioner had been sanctioned Family Pension, consequent

to the death of his wife. He then said that as per Rule 135 of Part I of the KSR, if pension remains undrawn for more than three years, it ceases to be payable and that the provisions of Rule 136 of Part III of the KSR, read with Article 294 of Kerala Treasury Code-Volume I, can be invoked only very sparingly and in special circumstances and not for 'vague' reasons like the petitioner being out of station etc. He, therefore, prays that this Writ Petition be dismissed.

5. I have examined Ext.P5 and have also carefully read the pleadings available on record.

6. It is indubitable that the petitioner had been out of India for the period in question and he says that this was because he had gone looking for better prospects to take care of his family, which consists of a son. The petitioner has also averred that his wife

had been suffering from cancer and succumbed to the said disease, thus plunging the family to huge financial crisis and that he, therefore, thought that he can make some money working in Oman to get over this crisis. The pleadings show that the petitioner, however, had to continue there without visa, labour card and passport, consequently leading to his loss of employment and that he came to be at mercy of other fellow Indians who finally were able to bring him back to India under the Amnesty Scheme declared by the Government of the said country.

7. Obviously, if the above facts are true, then it is a fit case where Rule 136 of Part III of the KSR, read with Article 294 of Kerala Treasury Code-Volume I, ought to have been invoked, since even going by the submissions of the learned Senior Government Pleader, these provisions can be invoked in

deserving circumstances, though sparingly.

8. Therefore, the real question is whether the petitioner is entitled to be granted the latitude through the afore provisions and when I go through Ext.P7 judgment, which is delivered by a learned Division Bench of this Court, it is clear that in similar circumstances, it has been found that such benefits should be granted in cases where reasons warrant lenitude.

9. In the case at hand, there is no doubt that the petitioner has averred very clearly that he was in Oman and that he had not been able to find employment there, leading to his deportment to India under the Amnesty Scheme. Ineluctably, the financial condition of his family and himself would have only deteriorated during this time and therefore, merely because he had not authorised anyone to collect the pension during the period of his

absence, I do not think he should be forfeited of even the opportunity of being granted some lenitude under the aforementioned provisions of the KSR and the Kerala Treasury Code.

10. I am, therefore, of the firm view that Ext.P5 cannot find favour in law and that the Government must reconsider the matter, taking note of my observations above and specifically adverting to the declarations in Ext.P7 judgment, which was delivered in identical circumstances.

In the afore circumstances, I order this writ petition and set aside Ext.P5; with a consequential direction to the competent Authority of the Government to reconsider the case of the petitioner with respect to his claims for arrears of pension from 01.07.2009 to 30.09.2014, adverting specifically to my observations above and taking note of the declarations and holdings in Ext.P7 judgment.

The afore exercise shall be completed by the competent Authority of the Government, leading to an appropriate order to be communicated to the petitioner, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.

Needless to say, if after the afore exercise, the petitioner is found to be entitled to the arrears, then the same shall be disbursed to him without any further delay but not later than two months thereafter.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF DEATH CERTIFICATE OF PETITIONER'S WIFE DATED 10/09/2007.
EXHIBIT P2	TRUE COPY OF PENSION PAYMENT ORDER OF PETITIONER DATED 20/06/2008.
EXHIBIT P3	TRUE COPY OF THE PASS BOOK OF TREASURY SAVINGS BANK ISSUED BY THE DEPARTMENT OF TREASURIES DATED NIL.
EXHIBIT P4	TRUE COPY OF THE DISTRICT COLLECTOR'S LETTER TO THE SECRETARY TO THE CHIEF MINISTER OF KERALA DATED NIL.
EXHIBIT P5	TRUE COPY OF THE LETTER ISSUED BY ADDITIONAL CHIEF SECRETARY FINANCE (PENSION-A) DEPARTMENT TO PETITIONER DATED 24/08/2019.
EXHIBIT P6	TRUE COPY OF APPLICATION SUBMITTED BEFORE THE MINISTER FOR FINANCE BY PETITIONER DATED 22/10/2019.
EXHIBIT P7	TRUE COPY OF JUDGMENT IN WRIT APPEAL NO.2224 OF 2007 DATED 15/10/2007.
EXHIBIT P8	TRUE COPY OF JUDGMENT IN W.P.(C) NO.19213 OF 2019 DATED 25/11/2019.