IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN
&
THE HONOURABLE MR.JUSTICE G. GIRISH

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

CON.CASE(C) NO.153 OF 2015

AGAINST THE JUDGMENT DATED 09.07.2014 IN WA 556/2014

OF HIGH COURT OF KERALA

PETITIONER/APPELLANT IN W.A:

*** SALMA BEEVI *(DIED)**
W/O.KUNJUMUHAMMED, PUTHIYAVEETTIL VILLANGI HOUSE, SALEEL ROAD, NATTIKA.P.O., THRISSUR DISTRICT.

**** MARIYATH P.V**
AGED 44 YEARS, D/O LATE SALMA BEEVI V.A, VYSAM VEETIL HOUSE, THALIKULAM VILLAGE, PUTHEN THODU, THRISSUR DISTRICT - 680 569. **(IS IMPLEADED AS ADDITIONAL PETITIONER VIDE ORDER DATED 10/07/2015 IN IA NO. 248/2015 IN COC 153/2015.)

BY ADV SRI.P.R.SHAJI

RESPONDENT/2ND RESPONDENT IN W.A:

PAUL ANTONY
CHAIRMAN, COCHIN PORT TRUST, AGE NOT KNOWN, S/O.NOT KNOWN, ADDRESS NOT KNOWN, WILLINGTON ISLAND, ERNAKULAM DISTRICT, COCHIN-682 009.

BY ADVS.SRI.V.ABRAHAM MARKOS
SRI.ABRAHAM JOSEPH MARKOS
SRI.BINU MATHEW
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC
SRI.TOM THOMAS KAKKUZHIYIL

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

This contempt case was originally filed by Salma Beevi.V.A, who is the petitioner in W.P(C)No.29316 of 2013, and the appellant in W.A.No.556 of 2014. W.P(C)No.29316 of 2013 ended in dismissal by the judgment dated 15.01.2014. W.A No.556 of 2014 filed by Salma Beevi was disposed of by Annexure A1 judgment dated 09.07.2014. Paragraphs 24 to 26 and also the last paragraph of Annexure A1 judgment read thus;

> "24. Rule 81 deals with sanction of family pension and residuary gratuity on the death of a pensioner. Going by Rule 81(1), where the Head Office has received an intimation regarding the death of a retired employee, who was in receipt of pension, he shall ascertain whether any family pension or residuary gratuity or both is or are payable in respect of the deceased pensioner. Going by Rule 81(2)(A)(i), if the deceased pensioner is survived by a widow or widower who is eligible for the grant of family pension under Rule 54, the amount of family pension as indicated in the Pension Payment Order shall become payable to the widow or widower, as the case may be, from the day following the date of death of the pensioner. Clause (ii) to Rule 81(2)(A) mandates that, on receipt of a claim in Form 14 from the widow or widower, the Pension Disbursing Authority from whom the deceased pensioner was drawing his or her pension shall authorize the payment of family pension to the widow or widower, as the case may be. Rule 81(2)(B) deals with cases where the deceased pensioner is survived by child or children.
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> 25. Therefore, once an application is made by the appellant

claiming family pension, the 1st and 2nd respondents should have considered such application with reference to the details of family furnished by the deceased pensioner in Form 3, which contains, among other particulars, the date of birth of the members of his family and also the details of any child having disability referred to in the proviso to sub-rule (6) of Rule 54. If as on 18.9.1998, the pensioner is not survived by any eligible child, in terms of Rule 54(6), out of his wedlock with late Haleema, the appellant would be entitled to receive full family pension. Therefore, the 1st and 2nd respondents will have to reconsider the entitlement of the appellant to receive full family pension from the day following the date of death of late Khader Kunjumuhammed in accordance with Rule 54(6), (7) and (12) read with Rule 81(2)(A)of the CCS (Pension) Rules.

26. Therefore, this Writ Appeal is disposed of directing respondents 1 and 2 to reconsider the entitlement of the appellant to receive full family pension with effect from 19.9.1998, as directed above, and take an appropriate decision, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a certified copy of the judgment. If it is found that the appellant is entitled for full family pension, consequential monetary benefits shall be disbursed to her as expeditiously as possible, at any rate, within a period of three months from the date of such decision. Needless to say that while taking such decision, a reasonable opportunity of being heard shall be afforded to the appellant. It would be open to the appellant to produce heirship certificate issued by the Tahsildar or any other relevant documents before the 1st and 2nd respondents, in order to substantiate her contention that as on 18.9.1998, late Khader Kunjumuhammed was not survived by any eligible child in terms of Rule 54(6) of the CCS (Pension) Rules and that she is entitled for full family

pension from the day following his date of death."

2. Salma Beevi filed this contempt case, alleging wilful disobedience of the directions contained in Annexure A1 judgment of this Court dated 09.07.2014 of this Court in W.A.No.556 of 2014. During the pendency of this contempt case, she died and her daughter was impleaded as additional petitioner, vide order dated 10.07.2015 in I.A No.248 of 2015. This contempt case was dismissed by the order dated 05.07.2023 of the Division Bench, which was thereafter re-opened, by the order dated 03.01.2024.

3. Heard the learned counsel for the petitioner and also the learned Standing Counsel for Cochin Port Trust for the respondent.

4. During the course of arguments, the submission made by the learned counsel for the petitioner is that out of the total family pension payable, Salma Beevi was paid only Rs.3,94,391/-, after withholding an amount of Rs.29,393/-, towards the amount that has to be paid to one Zainudin. According to the petitioner, that amount is illegally withheld by the respondent.

5. The learned Standing Counsel for the Cochin Port Trust would point out Annexure R5 receipt/undertaking given by the additional petitioner, which reads thus;

> "I, **P.V.Mariyath**, aged 44 years, Daughter of late Salma Beevi, P.P.O.No. 199, and Petitioner in CCC.No.153/2015 filed before the Hon'ble High Court of Kerala, hereby acknowledge

to have on this day of 11th September, 2015 received from FA & CAO, Cochin Port Trust, an amount of Rs.3,89,127/- (Rupees Three lakh eighty nine thousand one hundred and twenty seven only) as Family pension arrears payable to my mother late Mrs.Salma Beevi, for the period from 15.11.2000 to 31.03.2015 and Rs.5,264/- (Rupees five thousand two hundred and sixty four only) for the period 01.05.2015 to 20.05.2015 being full family pension arrears for the month of May 2015, upto the date of death of Mrs.Salma Beevi viz. 20.05.2015. Further I also accept and confirm the following:-

1) 1 accept that, in the light of Form No.3 (details of family) filed by late Khader Kunjumohammed, husband of my late mother Mrs. Salma Beevi, his son by his first marriage, Sri Zainudheen is eligible for 50% of the family pension from 19.09.1998 to 14.11.2000, amounting Rs.29,393/- (Rupees Twenty nine thousand three hundred ninety three only) and according to the relevant provisions of the CCS (Pension) Rules, 1972 and accordingly I relinquish all claims over the same.

2) 1 accept the amount of Rs.3,94,391/-(Rupees Three lakh ninety four thousand three hundred ninety one only) in full and final settlement of all arrears in family pension payable to my mother late Mrs. Salma Beevi.

3) I shall withdraw CCC.153 of 2015 filed before the Hon'ble High Court of Kerala, at the earliest and hereby declare that I have no further claim or grievance against Cochin Port Trust and/or its Officers."

6. Paragraph No.7 of the affidavit dated 28.05.2015 filed by the respondent deals with the above aspect, which reads thus;

"7. Following the direction in Annexure R1 clarification received from the Ministry and on perusal of records, namely Form 3 (Details of Family) submitted by the late husband of the

Petitioner, it was found that at the Sime of his death, one of his sons, namely Zainudin, who is the Petitioner's husband's son from his first marriage would have been only 23 years old at the time of death of the petitioner's husband, i.e., on 18.09.1998. Hence, he is eligible for 50% of the family pension till the day he turned 25, i.e., 14.11.2000. True copy of the aforesaid Form 3 (Details of Family) is produced herewith and marked as **Annexure R3**. Hence it was decided to disburse the arrears in family pension with respect to Late Mr.Khader Kunjumohammed as follows:

Mrs. Salma Beevi V.A	Rs. 3,89,127/-
Mr. Zainudin	Rs. 29,393/-"

7. The grievance of the additional petitioner, which is pointed out by the learned counsel, is beyond the scope of this contempt petition filed under Section 12 of the Contempt of Courts Act. It is for the additional petitioner to work out her remedy before the appropriate forum.

Without prejudice to the aforesaid right of the additional petitioner, this Contempt Case is closed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-
G. GIRISH, JUDGE

vgd