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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

WEDNESDAY, THE 8TH DAY OF JANUARY 2025 / 18TH POUSHA, 1946

OP (CAT) NO. 191 OF 2017

AGAINST THE ORDER DATED 03.10.2016 IN OA NO.398 OF 2015 OF

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA,
DEPARTMENT OF POSTS, MINISTRY OF COMMUNICATIONS
GOVERNMENT OF INDIA, NEW DELHI-110 001
- 2 THE CHIEF POSTMASTER GENERAL
KERALA CIRCLE, TRIVANDRUM- 695 033
- 3 THE SUPERINTENDENT OF POST OFFICERS
MAVELIKKARA POSTAL DIVISION,
MAVELIKKARA-690101

BY ADV SRI.T.V.VINU, CGC

RESPONDENT/APPLICANT

S. SATHIKUMARI AMMA
W/O.LATE GOPALAKRISHNA PILLAI, AGED 59 YEARS,
RESIDING AT THAYYIL PUTHEN VEEDU,
NADUILEKKARA, THEVALAKARA.P.O.,
KARUNGAPPALLI, KOLLAM-690524

BY ADVS.
Sajith Kumar V.
VIVEK A.V.

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 08.01.2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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‘CR’

J U D G M E N T

K. V. JAYAKUMAR, J

The present OP(CAT) is directed against the order of the Central Administrative Tribunal, Ernakulam dated 03.10.2016 in O.A.No.398/2015.

2. The issue involved in this Original Petition is whether a family pension would come within the purview of property or estate of an employee?.

3. Succinctly, the facts in brief are as follows:

The respondent, S.Sathikumari Amma, is the wife of late Gopalakrishna Pillai, retired Postal Assistant. Late Gopalakrishna Pillai has availed Voluntary Retirement Scheme from service on 01.01.2003 and died on 24.10.2013. Late Gopalakrishna Pillai was receiving pension as per Annexure-A2 Pension Payment Order. At the time of his retirement, the deceased pensioner, Gopalakrishna Pillai, while making his application for pension expressed his intention not to include the applicant, Sathikumari Amma, as a family member. Moreover, the deceased pensioner had submitted a representation on 12.11.1998 with a

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request to strike off the name of his wife Sathikumari Amma and daughter S.Lakshmi from his service book and other records and to declare that the nomination made in favour of them for pensionary benefits stands cancelled. Thereafter, on 26.12.2002, he also filed another application stating that he had divorced his wife as per order dated 23.11.1991 of the Chief Judicial Magistrate, Kollam in M.C.No.37/1990.

4. The respondent/applicant approached the Central Administrative Tribunal claiming the family pension along with interest. The Tribunal taking note of the contentions of the parties, allowed the original application directing the respondents/Union of India and others to release the family pension to the applicant along with interest until the applicant's death or till her remarriage.

5. The learned counsel for the respondent/applicant Adv.Sajith Kumar V. supported the order of the Central Administrative Tribunal. He submitted that family pension is not an estate or property of the employee, unlike the pensionary benefits like provident fund and gratuity. Further, the employee cannot struck down the name of his wife and other dependants from the records so as to disentitle them from claiming the said relief.

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6. Per contra, Adv.T.V.Vinu, learned Central Government Counsel appearing for the Union of India submitted that the impugned order is patently illegal and unsustainable. The learned Central Government Counsel further submitted that, late Gopalakrishna Pillai, while he was alive, had struck off the names of applicant and her daughter from the pension papers and the deceased pensioner had abandoned his wife and daughter as stated by him in the written submission dated 26.12.2002. Therefore, the Tribunal ought to have rejected the claims of the applicant for family pension.

7. He further submitted that the impugned order of the Tribunal, so far as it direct the payment of interest to the respondent/applicant is liable to be set aside in the interest of justice.

8. We have heard the counsel for the parties and appraised the paper book.

9. The short issue involved in this case is that, whether family pension would come within the purview of property or estate of a deceased employee and whether an employee struck off the names of his wife and other dependants from service records during the subsistence of a valid marriage.

10. In **Jodh Singh v. Union of India [(1980)4 SCC 306]**, the Honourable Supreme Court observed that, what is not payable



during the lifetime of the deceased, over which he has no power of disposition, cannot form part of his estate. It is the event of his death that provides eligibility qualification for claiming special family pension. The question involved in **Jodh Singh**'s case (supra) was that, whether a special family pension awarded by the President to the widow of a deceased officer who belong to Air Force could be the subject matter of testamentary disposition by the deceased in his lifetime. The relevant paragraphs of **Jodh Singh**'s case reads thus:

"11. It was, however, said that not all widows are entitled to special family pension but only the dependent wife who becomes widow on the death of an officer alone becomes eligible for pension and in this case the deceased had not shown his wife as one of his dependents but on the contrary the parents, the sisters and the brothers were shown as dependents of the officer. Rule 74 envisages a special family pension to the widow, a special children allowance to his legitimate children or dependents' pension to his parents, brothers or sisters. To each one of them, if he or she qualifies for special family pension, the benefit is admissible. Rule 75 envisages ordinary family pension to widow and legitimate children of the deceased officer. Rule 79 confers discretion on the President to grant a pension and/or gratuity to a widow who may not be eligible under Rule 74 or Rule 75 because she was separate from the husband at the time of his death. Thus, whether a widow has qualified for a special family pension, gratuity or ordinary family pension is a matter to be determined by the President. If the President is satisfied that the widow is eligible for pension, she cannot be denied the benefit by some other dependents of the deceased



claiming that instead of the widow he or she should have been held eligible for special family pension. Therefore, it is irrelevant whether the deceased had shown his wife as his dependent or not if the President is satisfied that she as the widow of the deceased officer was eligible for special family pension.

12. The real controversy is whether a special family pension admissible to a widow in her capacity as widow could ever form a part of the estate of the deceased which could be disposed of by testamentary disposition? Special family pension is payable to the widow on the death of the officer. It is not payable in his lifetime. What is not payable during lifetime of the deceased over which he has no power of disposition cannot form part of his estate. It is the event of his death that provides the eligibility qualification for claiming special family pension. Such qualifying event which can only occur on the death of the deceased and which event confers some monetary benefit on someone other than the deceased albeit related to the deceased, cannot form part of the estate of the deceased which he can dispose of by testamentary disposition. Therefore, it is unquestionably established that special family pension sanctioned to the widow of an officer of the Indian Air Force by the President of India under Rule 74 of the Rules could not be subject-matter of testamentary disposition.

11. In **Smt. Violet Issaac and others v. Union of India and others - [(1991) 1 SCC 725]**, the Honourable Apex Court held that an employee cannot dispose the family pension by testamentary disposition as family pension is not a part of his estate. The decision in



Jodh Singh's case (supra) was followed by the Apex Court in **Violet Issac's** case (supra).

12. In **Nitu v. Sheela Rani & Ors. [2016 KHC 6646]**, the Hon'ble Apex Court reiterated that, family pension does not form part of the estate of the deceased and therefore, even an employee has no right to dispose of the same by his will by giving a direction that someone other than the one who is entitled to it, should be given the same.

13. In **Radhamony Amma v. State of Kerala [2001 KHC 661]**, a Division Bench of this Court opined that, all members of family are entitled to family pension on the death of Government employee. Wife cannot be excluded from receiving a pension by a Government employee. The family pension is not a part of estate of the deceased so as to allow him to make a decision as to whom it has to be given.

14. In **Salma Beevi v. Administrative Officer, Cochin & Ors [2014(3) KHC 820]**, a Division Bench of this Court made it clear that, family pension is neither debt nor security of the deceased pensioner and hence, succession certificate cannot be insisted upon for receiving family pension.



15. In view of the law laid down by the Honourable Apex Court in **Jodh Singh**'s case (supra), and **Violet Issac**'s case (supra), it is clear that family pension is not an estate or property of the employee. Therefore, an employee cannot make a representation that his legally wedded wife or other dependants are not entitled to claim the family pension. Family pension unlike the other pensionary benefits like provident fund, gratuity etc, could not be a subject matter of testamentary disposition by the employee during his lifetime. In other words, an employee cannot bequeath his family pension in favour of another nor he can nominate some other person for receiving family pension other than the one who is entitled to it. An employee cannot exclude his wife or children from receiving the family pension on his death, by making an application in this regard.

16. Family pension is not a debt or security and therefore, the executive authorities cannot insist the production of succession certificate for the grant of family pension.

17. Now coming back to the facts of the instant case, wherein the employee made a representation to the postal authorities stating that the name of his wife and daughter should be excluded from the service records so as to disentitle them from getting family pension on his death.

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18. The stand of Union of India before the Tribunal and before us was that the deceased employee has submitted an application to strike off the name of the applicant from his service records and he does not intend to nominate his wife and children as the legal heirs.

19. The Central Administrative Tribunal noticing the facts and circumstances of the case and the law laid down by the Honourable Apex Court allowed the original application with interest. We do not find any illegality much less fallacy in the impugned order.

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Sd/-

AMIT RAWAL
JUDGE

Sd/-

K. V. JAYAKUMAR
JUDGE

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APPENDIX OF OP (CAT) 191/2017

PETITIONER ANNEXURES

ANNEXURE P1 TRUE COPY OF THE OA NO.180/00398/2015 DATED 25/5/2015 FILED BY THE RESPONDENTS BEFORE THE CAT, ERNAKULAM BENCH

ANNEXURE A1 TRUE COPY OF THE LETTER NO.C/MISC/DLGS DATED 23/1/2015 ISSUED BY THE 3RD RESPONDENT

ANNEXURE A2 TRUE COPY OF THE PENSION PAYMENT ORDER NO.9993/LPS/TVM DATED 28/4/2013 ISSUED BY THE 2ND RESPONDENT

ANNEXURE A3 TRUE COPY OF THE CERTIFICATE OF MARRIAGE ISSUED BY THE REGISTRAR OF MARRIAGE

ANNEXURE A4 TRUE COPY OF THE LETTER NO.C/IB/MVK/2003 DATED 12/5/2014 ISSUED BY THE 3RD RESPONDENT

ANNEXURE A5 TRUE COPY OF THE CERTIFICATE NO.C3/12083/2014/D.DIS DATED 19/11/2014 ISSUED BY TAHSILAR, KARUNGAPPALLY, ALONGWITH ENGLISH TRANSLATION

RESPONDENT ANNEXURES

ANNEXURE R1 TRUE COPY OF THE SUBMISSION DATED 17/12/2002 OF THE LATE PENSION

ANNEXURE R2 TRUE COPY OF THE SUBMISSION DATED 12/11/1998 SUBMITTED BY THE LATE PENSIONER

PETITIONER ANNEXURES

ANNEXURE R3 (a) TRUE COPY OF THE SUBMISSION DATED 26/12/2002

ANNEXURE R3 (b) ENGLISH TRANSLATION OF THE COPY OF SUBMISSION DATED 26/12/2002

RESPONDENT ANNEXURES

ANNEXURE R4 TRUE COPY OF THE DETAILS OF FAMILY SUBMITTED BY THE DECEASED ON 3/2/2003

ANNEXURE R5 TRUE COPY OF THE NOMINATION FORM DATED 12/5/1999 SUBMITTED BY THE LATE PENSIONER

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PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE OA NO 180/00398/2015 DATED 25.5.2015 FILED BY THE RESPONDENTS BEFORE THE CAT, ERNAKULAM BENCH.

EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT DATED 11.9.2015, FILED BY THE PETITIONERS

EXHIBIT P3 TRUE COPY OF THE ORDER IN OA NO.180/00398/2015 DATED 3.10.2016 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.