



2023/KER/44778

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945

WP(C) NO. 1968 OF 2022

PETITIONER:

N.SAROJINI NAMBRAMCHERI
AGED 66 YEARS, W/O.LATE VENUGOPALAN,
NAMBRAMCHERI HOUSE, CHOKLI PO,
NIDUMBRAM, KANNUR - 670 672
BY ADVS.
K.MOHANAKANNAN
H.PRAVEEN (KOTTARAKARA)

RESPONDENTS:

- 1 UNION OF INDIA
REP.BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF DEFENCE, NEW DELHI 110 001
- 2 THE LT. COL. SENIOR RECORDS OFFICER,
OIC RECORDS, TOPKHANA ABILEKH,
ARTILLERY RECORDS, C/O.56, APO
- 3 THE DIRECTOR OF SAINIK WELFARE
VIKAS BHAVAN, PMG JUNCTION,
THIRUVANANTHAPURAM 695 003
- 4 THE SENIOR ACCOUNTS OFFICER
POSTAL ACCOUNTS OFFICE, PMB JUNCTION,
THIRUVANANTHAPURAM 695 003
BY ADVS.
SRI.JOSEPH RONY JOSE, CGC
SRI.GIRISH KUMAR V.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



DEVAN RAMACHANDRAN, J.

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W.P.(C).No. 1968 of 2022
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Dated this the 31st day of July, 2023

JUDGMENT

The petitioner impugns Ext.P10, whereby, her request for sanctioning family pension, consequent to the death of her husband - K.V.Venugopalan, who was an Ex-serviceman in the Artillery Wing of the Indian Army - has been turned down, saying that his first marriage to a certain Smt.K.T.Chandrakleha had not been dissolved legally.

2. The petitioner asserts that her late husband and the aforementioned Smt.K.T.Chandrakleha had agreed to divorce themselves, as evident from Ext.P2 agreement; and that it was acted upon, leading to the latter marrying again and having children of her own from such relationship. She points out that Ext.P3 affidavit has also been sworn to by Smt.K.T.Chandrakleha, averring affirmatively that she had divorced late K.V.Venugopalan and that she is not interested in his pensionary benefits.

3. Sri.K.Mohanakannan - learned counsel for the petitioner, further explained that late K.V.Venugopalan, subsequent to his discharge from the Army, joined the Department of Posts, from which he finally retired, and that Ext.P7 is the pension payment



order issued by the said department, which records his client to be the legally wedded wife of late K.V.Venugopalan. He then added that the certificate issued by the Indian Postal Department, namely, Ext.P8, would substantiate that she was fully entitled and is still drawing the family pension consequent to the death of K.V.Venugopalan. He argued that, therefore, even assuming for the sake of argument, that the marriage between late K.V.Venugopalan and the aforementioned Smt.K.T.Chandrakleha had not been dissolved as per law, the entitlement of his client to pension is beyond question, since the latter has not even made any claim over that which has been authorised by the Indian Postal Department.

4. Sri.Joseph Rony Jose - learned Central Government Counsel, submitted that his client has been incapacitated from acceding to the request of the petitioner because she has not been able to substantiate that her former husband had legally divorced from his first wife, Smt.K.T.Chandrakleha. He then read out Ext.P3 affidavit, stated to have been issued by Smt.K.T.Chandrakleha, to show me that she herself has averred that the aforesaid divorce is not valid, but that she was under the impression that a registered document akin to Ext.P2 was sufficient. He contented that, therefore, the challenge to Ext.P10 is now untenable.

5. I have evaluated the afore rival submissions and hence also



gone through the materials on record.

6. I must say that I find force in the submissions of Sri.Joseph Rony Jose - learned Central Government Counsel, which is also reflected in Ext.P10, that the divorce of late K.V.Venugopalan from Smt.K.T.Chandralekha was not as per law. However, it is also equally true that Smt.K.T.Chandralekha never asserted any right over the pension of late K.V.Venugopalan, which is evident from Exts.P7 and P8; and she is also stated to have sworn to an affidavit, namely Ext.P3, to the effect that she does not want the pension eligible for late K.V.Venugopalan's family from the Indian Army.

7. Therefore, even if it is taken that the divorce as reflected in Ext.P2 is not legally valid, it would cause no prejudice to the Indian Army, as long as Smt.K.T.Chandralekha does not stake a claim to the family pension. This is more so because, the marriage of late K.V.Venugopalan and the petitioner appears to have been accepted by the Indian Postal Department, which is evident from Exts.P7 and P8, and hence it would only be in furtherance of such that the Indian Army also considers their marriage to be valid. Of course, any claim from Smt.K.T.Chandralekha will have to be accounted for.

In the afore circumstances, I allow this writ petition and set aside Ext.P10; with a consequential direction to the competent Authority of the Indian Army to reconsider the petitioner's claim,



after affording her and Smt.K.T.Chandralekha, an opportunity of being heard; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible.

I make it clear that, should Smt.K.T.Chandralekha refuses to answer summons or notices issued to her, or if she is to affirm, as done in Ext.P3, that she is not interested in the pension, then the competent Authority will ensure that all necessary steps for disbursement of the same in favour of the petitioner is taken forward as per law and completed without any avoidable delay.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

anm

**APPENDIX OF WP (C) 1968/2022**

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE MARRIAGE CERTIFICATE IN ISSUED BY THE REGISTRAR OF MARRIAGES, CHOKLI GRAMA PANCHAYAT, AS PER REGISTRATION NO.41/1981 DATED 5.5.1981.
- Exhibit P2 TRUE COPY OF THE DEED ISSUED BY THE SUB REGISTRAR OFFICE, KOOTHUPARAMBU ALONG WITH A TRUE ENGLISH TRANSLATION OF THE DOCUMENT NO.18/1980
- Exhibit P3 TRUE COPY OF THE AFFIDAVIT DATED 13.1.2021 OF SMT. K.T.CHANDRALEGHA (1ST WIFE)
- Exhibit P4 TRUE COPY OF THE DEATH CERTIFICATE NO./DEATH/2019/5707 OF LATE K.V.VENUGOPALAN DATED 26.8.2019 ISSUED BY THE KOCHI CORPORATION
- Exhibit P5 TRUE COPY OF THE EX-SERVICE MAN CONTRIBUTORY HEALTH SCHEME CARD NO.KO000002962135
- Exhibit P6 TRUE COPY OF ADHAR CARD NO.4771 0719 8278 OF PETITIONER
- Exhibit P7 TRUE COPY OF THE PENSION PAYMENT ORDER NO.11028/LPS/TVM
- Exhibit P8 TRUE COPY OF THE CERTIFICATE OF PAYMENT OF FAMILY PENSION ISSUED BY THE POSTAL AUTHORITIES DATED 15.1.2021
- Exhibit P9 TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- Exhibit P10 TRUE COPY OF THE ORDER NO.1286516/T-H/DAR/MIS./PEN.4 DATED 5.3.2020
- Exhibit P11 TRUE COPY OF THE REPRESENTATION DATED 21.1.2021 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- Exhibit P12 TRUE COPY OF THE AFFIDAVIT DATED 4/2/2020 SWORN BY THE PETITIONER
- Exhibit P13 TRUE COPY OF JUDGMENT IN WRIT PETITION NO.26911/2020 DATED 12/8/2021
- Exhibit P14 TRUE COPY OF THE REPRESENTATION DATED 22/03/2022 BY WHICH THE TRANSLATED COPY OF THE REGISTERED DEED OF DIVORCE SENT TO THE 2ND RESPONDENT THROUGH THE ZILLA SAINIK WELFARE OFFICER.



RESPONDENTS' EXHIBITS

- Exhibit R2 (a) PHOTOSTAT COPY OF CERTIFICATE ISSUED BY
TALUK OFFICE, TELLICHERRY BEARING NO.
K.DIS 5796/81 DATED 25 MAR 1981.
- Exhibit R2 (b) THE PHOTOSTAT COPY OF ARTY RECORDS LETTER
NO. GEN/1286516K/OBSN/T-3/POR/NER (PUB
CELL) DATED 19 OCT 2021.
- Exhibit R2 (c) THE PHOTOSTAT COPY OF ARTY RECORDS LETTER
NO. SR/1286516K/T-3/OBSN/POR/NER (PUB
CELL) DATED 18 FEB 2022.