

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 374 of 2008

Friday, this the 12th day of December, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Indira, W/o. Sankaranarayanan,
Kampalath House, Manjalore Post,
Ethanur Via, Alathur Taluk,
Palakkad District.

... Applicant.

(By Advocate Mr. Sajan Varghese)

v e r s u s

1. Government of India,
Ministry of Steel,
Udyog Bhavan, New Delhi,
Represented by the Secretary to
Government of India. ... Respondents.

(By Advocate Mr. George Joseph, ACGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant is the daughter-in-law of late KPV Menon, who was employed in the Ministry of Steel and retired on superannuation on 31.1.1981 and later on expired on 21.08.2005. The said Menon was in receipt of pension during his post retired life. He was survived by his son.

2. In the proviso to Rule 54 (6) of the CCS (Pension) Rules, 1972, if the son or daughter of a government servant is suffering from any

disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of (twenty-one years in the case of the son and thirty years in the case of the daughter) the family pension shall be payable to such son or daughter for life subject to certain conditions.

3. During the life time of late Menon, on his request for grant of family pension under the above rule to his son, the respondents had made a communication directing him to produce medical certificates spelling out the medical condition and other aspects of his son so as to pass orders on the entitlement and otherwise of family pension to the son in the event of demise of the said KPV Menon (Annexure A/1 refers). Accordingly, copies of medical certificate dated 5.6.2003 issued by the Medical Board of the District Hospital, Palakkad, were obtained vide Annexure A/2. On receipt of the aforesaid certificate, the competent authority had approved the payment of family pension to the handicapped son of Shri Menon in terms of Rule 54(6) of the CCS (Pension) Rules, 1972. The respondents have in terms of clause (iii) and (vi) of proviso to that Rule called for appointment of the guardian for Sankaranarayanan, S/o. Shir Menon, to receive the family pension on behalf of his mentally retarded son, vide Annexure A-3 communication dated 14.08.2003. This was followed by another communication dated 10.09.2003 asking for guardianship certificate from an appropriate Court appointing the applicant herein as the guardian of the mentally retarded son of late Shri KPV Menon.

[Signature]

4. Applicant herein filed Original Petition No. 238/2003 before the District Court, Palakkad, under Sections 40, 52 and 54 of the Mental Health Act, 1987, in which the following two issues were framed :

(a) Whether the person by name, Shri Sankaranarayanan, aged 43 years is a mentally ill person incapable of doing and maintaining his properties;

(b) whether the petitioner can be appointed as the Manager of the mentally ill person.

5. The aforesaid petition was, however, dismissed vide judgement (Annexure A/5) dated 19.02.2004..

6. In the Court of Munsiff Court, Alathur, the applicant filed another Suit No. 332/2004 in which reference to O.P. No. 238/2003 before District Court, Palghat and dismissal of the same by the learned District Judge had been highlighted vide para 3 of the O.S No. 332/2004. This Suit was decided by Annexure A/7 judgement dated 23.03.2005, which reads as follows :

" In the result, the Suit is allowed declaring that the plaintiff's husband Sankaranarayanan is permanently medically incapacitated and incapable of taking care himself and his properties.

b. Plaintiff is hereby appointed as the guardian of her husband Sankaranarayanan to take care of him and his properties."

7. In so far as the Petition before the District Judge, Palakkad, the applicant initially filed Writ Petition No. 26339/2007 which was, however,

dismissed as withdrawn vide order dated 6.9.2007.

8. When the applicant served upon the respondents a copy of the judgment by the learned Munsiff, Alathur, initially her case was rejected by the respondents stating as under :

" I am directed to refer to your letter dated the 24.09.2005 on the above subject and to state that the question of sanctioning a family pension in favour of your husband, Shri Sankaranarayanan has been examined in consultation with the Department of Pension and Pensioners' Welfare who have advised that marriage or remarriage of a son or daughter, including a disabled son or daughter, renders him or her ineligible for family pension.

In the light of the position stated above, it is regretted that there is no possibility of sanctioning a family pension to your son who is married.

This issues with the approval of the competent authority."

9. However, by Annexure A-9 communication dated 20.06.2006, the respondents have sought for certain clarification in regard to dismissal of OP by the learned 1st Additional District Judge and the order by the learned Munsiff appointing the applicant as guardian of Shri Sankaranarayanan. It was, thereafter, that the applicant was issued with Annexure A-10 order dated 1.12.2006 stating that family pension is not admissible to Shri Sankaranarayanan S/o. Late Shri KPV Menon.

10. The applicant has challenged Annexure A-8, A-9 and A-10 communications on various grounds as contended in para 5 of the



O.A. and seeking *inter alia* for following reliefs :

- (a) To set aside Annexures A-8 to A-10 ;
- (b) To declare that Sankaranarayanan, S/o. Late KPV Menon, is entitled to get family pension in the wake of the provisions contained in CCS (Pension) Rules, 1972 with special reference to Rule 54 (6) therein and;
- (c) For a direction to disburse family pension to Sankaranarayanan S/o. Late KPV Menon.

11. The Original Application was filed belatedly, M.A. No. 486/2008 was also filed. The applicant has stated in the said application that there is no wilful laches or negligence on the part of the applicant in filing the O.A. belatedly. The actual reason was that on the demise of her mother-in-law, the family is not in receipt of financial assistance and as such it is difficult for her to reach Ernakulam and make arrangement for filing of the O.A. Hence the delay of 368 days has crept in.

12. The question for our determination is whether the petitioner is entitled to Family Pension in terms of proviso to Rule 54(6) of the Central Civil Services (Pension) Rules, 1972. The said proviso is reproduced hereunder:

" Provided that if the son or daughter of a government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of (twenty-one years in the case of the son and thirty years in the case of the daughter) the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:

- (i) if such son or daughter is one among two or more

children of the government servant, the family pension shall be initially payable to the minor children in the order set out in clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of (twenty-one or thirty, as the case may be), and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him/her for life;

(ii) if there are more than one such son or daughter suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the following order namely:

(a) firstly to the son and if there are more than one son, the younger of them will get the family pension only after the lifetime of the elder;

(b) secondly, to the daughter, and if there are more than one daughter, the younger of them will get the family pension only after the lifetime of the elder;

(iii) (the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled son/daughter who has attained the age of majority);

(iv) before allowing the family pension for life to any such son or daughter, the (appointing authority) shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child;

(v) The person receiving the family pension as guardian of such son or daughter (or such son or daughter not receiving the family pension through a guardian) shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled."

13. The above rule does not enforces any stipulation that marriage or remarriage of a son or daughter including a disable son or daughter,

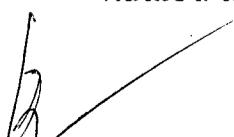


renders him or her ineligible for family pension. Thus, Annexure A-8 has no authority. It has to be set aside.

14. As regards annexure A-9, a perusal of the OS No. 332/2004 in the court of Munsiff of Alathur goes to show that the fact that the applicant had earlier approached another forum has been conspicuously provided including the O.P. No. and the fate of the same, vide Para 3 thereof. Of course, it is not clear from the documents furnished as to whether the information had been duly communicated to the Ministry of Steel in response to their letter dated 20th June, 2006 i.e. Annexure A-9.

15. As regards Annexure A-10, it is seen that no reason has been spelt out to knock out the case of the applicant stating that family pension is not admissible to Shri Sankaranarayanan. This communication is addressed to an M.P. With copy to the applicant.

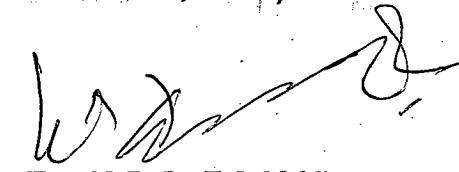
16. It is clear that the case has not been fully analyzed by the respondents, before passing the impugned orders. While Order at Annexure A-8 is set aside, as regards order at Annexure A-9, respondents should consider the fact that full details have been given in the petition filed before the Munsif court and on the basis of the same, they should come to a firm decision about the admissibility or otherwise of family pension to the mentally retarded son of late Menon. As Annexure A-10 order is in mono-syllable style, without spelling out any reason, the said order also stands vitiated and hence quashed and set aside.



17. Respondents are, therefore, directed to consider the entire case on its proper perspective and communicate the decision to the applicant within a period of 8 weeks from the date of communication of this order. OA is disposed of with the above directions.

18. No orders as to costs.

(Dated, the 12th December, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.