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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00060/2019

Friday, this the 30th day of August, 2019

C O R A M :

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

Gowrikutty.V.,
W/o.late Divakaran,
Aged 64 years,
Sobhalayam, Venkavila,
Vettampally, Irinchayam P.O.,
Nedumangad, Thiruvananthapuram – 695 561. ...Applicant

(By Advocates Mr.Kaleeswaram Raj along with Mrs.Maitreyi.S.Hegde)

v e r s u s

1. Union of India represented by the Secretary,
Department of Posts, New Delhi – 110 001.
2. Director General (Posts),
Directorate of Posts,
Dak Bhavan, New Delhi – 110 001.
3. Member (Planning and HRD),
Directorate of Posts, Dak Bhavan,
New Delhi – 110 001.
4. Chief Post Master General,
Kerala Circle, Thiruvananthapuram – 695 036.
5. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram – 695 036. ...Respondents

(By Advocate Mr.E.N.Hari Menon, ACGSC)

This application having been heard on 30th August 2019, the Tribunal on the same day delivered the following :

ORDER (ORAL)

The applicant who is the second wife of Shri.G.Divakaran had applied for family pension of her husband who passed away on 12.4.2016. The applicant is not having marriage certificate in proof of her marriage with Shri.G.Divakaran. The deceased employee retired from service on 1.2.1986 while working as Head Post Master in the Department of Posts. The applicant has produced death certificate of her husband as Annexure A-2. Being the second wife of the deceased employee she claims the family pension. It is also stated that the first wife of the deceased employee has already expired. Therefore she claims that she is entitled for getting family pension of her late husband.

2. It is submitted that the applicant got married with Shri.G.Divakaran in the year 1974. During that period the registration of marriage was not mandatorily practiced by laymen. They have got married according to the hindu rituals and the same marriage was valid as per customary rites. But she was unable to produce the marriage certificate before the authorities. However, she has submitted legal heirship certificate to show that she is the second wife of the deceased employee, a copy of which is available at Annexure A-3. Apart from Annexure A-3, she has also submitted Aadhar Card, Ration Card and property documents which would show that she is the wife of the deceased employee. Till date she has not received any pension despite making several requests to the respondents which was rejected for untenable reasons. Feeling aggrieved by this she has approached this Tribunal

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for redressal of her grievance by relying on the judgment passed by the Hon'ble High Court of Madras dealing with similar case of **G.Pushpan v. TNEB (2015) SCC Online Mad 10125** wherein it is stated that when there is another proof of marriage, the refusal to pay family pension due to unavailability of marriage certificate is not valid. The fact in the aforesaid case was such that the petitioner was the widow of a Junior Engineer Grade I to whom she married after the death of his first wife. The petitioner claims family pension on the death of deceased employee, but the department refused to grant such pension since she did not produce the marriage certificate. In the aforesaid case since the petitioner has produced other documents like birth certificate of Akilandeswari which show the deceased employee as the father and the petitioner as the mother. She has also produce legal heirship certificate and certificate from Village Administrative Officer certifying that the petitioner was the second wife of the deceased employee. Then the Court held that the respondents were not justified in refusing to pay family pension to the petitioner and the minor daughter of the deceased as per the pension rules applicable to TANGEDCO. The ratio in the aforesaid case is squarely applicable in the present case.

3. Learned counsel for the applicant has also relied upon the judgment passed by the Hon'ble High Court of Madras in **M.Vasanthi v. The Director, Government Medical College & Hospital, Kilpauk, Chennai (2017) SCC Online Mad 21942** dealing with the same issue. Another judgment cited by

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the learned counsel for the applicant on the subject is **Baby Rajammal v. The Superintending Engineer, Theni Electricity Distribution Circle, TANGEDCO, Theni & Anr. (2016) SCC Online Mad 12546** of the Hon'ble High Court of Madras at Madurai.

4. Notices were issued and the respondents put appearance through learned counsel Shri.E.N.Hari Menon. The respondents have filed detailed reply statement controverting the claim of the applicant mainly on two grounds that the name of the applicant is not their in the PPO order authorizing to release the family pension to her after the death of the deceased employee. The second objection they have taken is that the marriage certificate is not produced by the applicant in order to prove her marriage with deceased employee Shri.G.Divakaran. It is further stated that Shri.G.Divakaran has not come forward at any time to state that the applicant was his wife and has never nominated her to receive the pensionary benefits even after the death of his legally wedded wife Smt.Bharathy on 21.8.1992. Though the applicant has submitted copies of the Aadhaar Card, Election ID Card, Ration Card, Tax Receipts from Anad Panchayath, Deed No.2236/1981, Deed No.456/15 and legal heirship certificate issued by Tahasildar, Nedumangad on 4.9.2018, these documents were sent to ASP, Nedumangad Sub Division for verification. The ASP, Nedumangad has reported that the Government servant Shri.G.Divakaran was living separated from his legally wedded wife but no evidence of the marriage of the Government servant with the applicant was produced and hence attestation of the forms for genuineness

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of the claim cannot be made. Thus the applicant was directed by the 5th respondent to submit marriage certificate or any other evidence of her marriage with the deceased employee.

5. It is further submitted that the legal heirship certificate issued by the Tahasildar, Nedumangad is an executive order issued by an revenue authority which has no statutory status for issuing pension. The pension has been issued after following the various statutory rules and procedures enunciated in CCS (Pension) Rules, 1972 by complying provisions in Rule 53(1 to 8) and Rule 54 (1to 15) by the Pension Sanctioning Authorities. Therefore the legal evidence of marriage certificate is indispensable. As per Rule 54 of CCS (Pension) Rules, 1972 as and when a pensioner marries or re-marries after retirement, he shall intimate the event to the Head of Office who processed his pension papers at the time of his retirement. He shall also furnish along with his application an attested copy of the marriage certificate from Registrar/Gram Panchayat/District Magistrate in respect of his post-retirement marriage.

6. Further the Postal Department has issued PPO dated 23.1.1986 in which the Accounts Officer, Pension, Director of Postal Accounts has sanctioned family pension in favour of Smt.C.K.Bharathy, the legal wife till her remarriage or death. Thus it is evident from the PPO that Smt.C.K.Bharathy is the only wife alive on that date of the said order ie. 23.1.1986. As per the Nomination Rule under 53(1) of CCS (Pension) Rules 1972

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Smt.C.K.Bharathy is the only nominee who was eligible to receive the family pension. But the applicant herself submits that she got married to Shri.G.Divakaran in the year 1974. If that be so the marriage of the applicant with the deceased employee Shri.G.Divakaran when the legally wedded wife was alive become void and therefore the applicant will not be entitled to the pension. Hence the respondents prayed for dismissal of the O.A.

7. After hearing both parties at length and based on the legal position laid down, this Tribunal is of the view that the circumstances of the present case is entirely different than the cases relied on by the learned counsel for the applicant. It is very clear that during the life time of first wife the applicant is not supposed to marry again unless and until he has obtained a divorce against his present wife from a Court of Law. As per the Hindu Marriage Act, any second marriage by a hindu male during the life time of his first wife is void. As a result, the claim of the applicant for family pension is hereby rejected. But I hereby give liberty to the legal heirs other than applicant to make representation for getting family pension as per Rule 54 (7) of the CCS (Pension) Rules, 1972 which states that eligible offspring from another widow are legally entitled to family pension in respect of deceased employee. Hence the eligible offspring of deceased Shri.G.Divakaran may make a representation to the respondents within a period of thirty days from the date of receipt of a copy of this order who in turn shall consider and take a decision on the same within a period of sixty days from the date of receipt of such representation.

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8. The O.A is disposed of with the above directions. No costs.

(Dated this the 30th day of August 2019)

**ASHISH KALIA
JUDICIAL MEMBER**

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List of Annexures in O.A.No.180/00060/2019

- 1. Annexure A-1** – A copy of the application dated 17.1.2017 along with covering letter and all annexures.
 - 2. Annexure A-2** – A copy of the death certificate of the husband of the applicant.
 - 3. Annexure A-3** – A copy of the legal heirship certificate dated 12.1.2017 issued by the Tahsildar, Nedumangad along with English translation.
 - 4. Annexure A-4** – A copy of the letter dated 2.8.2018 issued by the Superintendent of Post Offices.
 - 5. Annexure A-5** – A copy of the letter dated 3.9.2018 submitted by the applicant to the Superintendent of Post Offices.
 - 6. Annexure R-1** – A copy of the Pension Payment OrderPPO No.3209/LPS/Tvm.
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