

(2004) 03 KL CK 0039
In the High Court Of Kerala
Case No : O.P. No. 16214 of 1996

Aisha Kunju

APPELLANT

Vs

Deputy Director of Education

RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Constitution of India, 1950 — Article 21
Kerala Service Rules, 1958 — Rule 110, 114, 115

Citation : (2004) 3 ILR (Ker) 33 : (2004) 2 KLT 174

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : M.V. Thambran, for the Appellant; Khader Kunju, Government Pleader, for the Respondent

Judgement

Kurian Joseph, J.—A few questions affecting the pensioners, both retiring from service and retiring from life arise in this writ petition. What is the situation of a retired employee dying without submitting a formal application for pension? What is the date of effect of family pension under the liberalised family pension scheme? Date of death of the pensioner? Date of application? 1.1.1986 when the scheme was implemented?

2. Petitioner has two grievances: (1) non disbursement of the pensionary benefits due to her late husband K. Jaggafar; and (2) non disbursement of family pension under the liberalised family pension scheme with effect from 1.1.1986. Late Jaggafar was a Drill Teacher in an aided school, of which the 3rd respondent is the Headmaster. He retired from service in March 1963. He retired from life on 12.12.1968. Till his death or even thereafter no orders were passed with regard to the pensionary benefits. It is not in dispute that Jaggafar was entitled to pension. The reasons stated for not sanctioning the pension was that the Teacher had applied for the pension only after his retirement. It is profitable to refer to the statement filed on behalf of the first respondent Deputy Director of Education:-

" As per the report of the Headmaster it is seen that the teacher had applied for pension only on 2.3.1964. As per the rules the pension proposal should have been submitted one year ahead of actual date of retirement. Such a mandatory formality had not been complied with by the teacher. It is submitted that the pension proposal had been returned by the second respondent District Educational Officer on 16.5.1965 for re-submission after curing the defects. Thereafter the proposal had not been resubmitted. The teacher had not taken any steps for sanction of his pension till his death. Law is well settled that court will not lend its arm to those who are not vigilant. There is inordinate delay in resubmission of the proposal. The defective application cannot be treated as a valid submission for the grant of monetary benefits."

3. Part III of the Kerala Service Rules deals with pension. Rules 114 and 115 extensively deal with the procedure to be taken by the head of office in the matter of grant of pension. It is seen that the head of office has to initiate steps for getting the pension papers duly prepared by a retiring employee and that such steps are to be taken one year in advance of the date on which the government employee attains the age of superannuation. To the extent relevant the Rules read as follows:-

"114. Every Head of Office shall undertake the work of preparing pension papers one year in advance of the date on which a Government employee is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier. This work shall not be delayed till the Government employee has actually submitted his formal application for pension.

115.(a) As the first step, the Head of Office shall send to every non-gazetted employee a copy of Form II (Formal application for pension) one year in advance of the date on which the Government employee attains the age of superannuation or before the date of his anticipated retirement if earlier, requiring him to return it duly filled in along with necessary documents within a period of three months; but in no case later than the actual date of retirement".

Under Rule 110 "every Government employee shall submit a formal application for pension in Form II". However, it can be seen from Rule 110 that even the formal application has to be submitted one year in advance of the date of anticipated retirement. However, it is provided that if a Government employee dies without making a formal application before his retirement, the competent authority is empowered to relax the rigour of the rule and sanction pension and gratuity due to the Government employee "as if he had made a formal application for the same before retirement". To the extent relevant Rule 110 reads as follows:-

"110. Every Government employee shall submit a formal application for pension in Form II. Gazetted Government employees shall send their applications direct to the Audit Officer and non-gazetted employees to the head of Office. Every

Government employee should submit his formal application for pension at least one year in advance of the date of his anticipated retirement,

Provided that,-

(i) in cases in which the date of retirement cannot be foreseen one year in advance, the application shall be submitted immediately after the date of retirement is settled; and

(ii) a Government employee proceeding on leave preparatory to retirement in excess of one year, shall submit the application at the time of proceeding on such leave; and

(iii) when a Government employee dies without making a formal application before his retirement, the authority competent to sanction pension may relax the provision of this rule and sanction pension or gratuity due to the Government employee from the date of retirement upto and inclusive of the date of his death as if he had made a formal application for the same before retirement.

The pension or gratuity sanctioned in accordance with this proviso may be paid to the heirs of the deceased in accordance with the normal provisions of the Rules.

4. A combined reading of Rules 110, 114 and 115 of Part III KSR would show that it is not only the retiring employee but the head of office and the competent authority to sanction pension, have a duty to see that appropriate steps are taken while the employee is in service, in the matter of pension on retirement. The employee has to submit the formal application in Form No. II and it is for the Head of Office to prepare the employee to become a pensioner, not only mentally but also officially. Even the formal application form has to be sent to the employee, if he is a non-gazetted employee. There is no dispute that late Jaggafar was a non-gazetted employee. The third proviso to Rule 110 casts a duty on the competent authority to relax the provision regarding submission of formal application and sanction the pension in the case of an employee retiring from life while in service without submitting the formal application. If that be the position, the Rule necessarily has to be understood as casting an obligation on the competent authority in the matter of sanction of pension in the case of those employees dying after retirement, but without submitting a formal application for pension. It is the contention of the learned Government Pleader that though the employee submitted an application, the same was defective. Therefore, in the eye of law the employee died without submitting a formal application. As already stated above, the competent authority has a duty to see that an employee on retirement gets his pension. It is now a well settled principle that right to pension is part of the guarantee under Article 21 of the Constitution of India.

5. Petitioner's husband retired from service in March, 1963. There is no dispute that he was entitled to pension. But the dispute is that the pensioner had not submitted a formal application complete in all respects. Learned counsel for the

petitioner however, submits that her husband had taken all steps to cure the defects in the formal application and had submitted the same before the competent authority. Even assuming that late Jaggafar had not submitted the formal application, after the death of the pensioner no such contention is available to the competent authority for not settling the pensionary benefits. Admittedly late Jaggafar died on 12.12.1968. The respondents should have taken steps to see that the pensionary benefits of late Jaggafar are settled immediately after his death. In the above circumstances there will be a direction to the respondents to see that the pensionary benefits due to late Jaggafar, the husband of the petitioner, are settled within a period of three months from the date of production of a copy of the judgment. The entire benefits due to late Jaggafar will carry interest at the rate of 9% from 1.1.1969 and the amount worked out as above shall be disbursed to the petitioner within a period of one month thereafter.

6. The second grievance is on family pension. There is no dispute that the petitioner is entitled to get family pension under the liberalised family pension scheme as per Ext.P8 Government Order GO(P)No. 146/86/Fin. dated 11.2.1986 produced along with I.A.No. 3736/2004. It is seen from the said Government order that it will take effect from 1.1.1986. However, as per Ext.P9 Government order G.O.(P)No. 437/92/Fin. dated 24.6.1992 it was ordered that the formal pension as per Ext.P8 will be effective "from the date of submission of the application to the Government with all the necessary documents". It is also ordered that cases already settled will not be reopened. One fails to understand as to what is the purpose behind such a condition limiting the eligibility from the date of formal application. In fact the very purpose of family pension is to provide some solace to the "family" of the pensioner, when the pensioner retires from life. Since Ext.P8 being a new scheme introduced, it can take effect only from the notified date for implementation thereof. The scheme was introduced as per Ext.P8 wherein it is ordered that the liberalised family pension Scheme will be effective from 1.1.1986. The question is, for the only reason of delay on the part of a poor widow/ widower can the benefit of arrears of pension from the date of entitlement be denied? To put it differently, once the eligibility is declared what is the prejudice caused to the Government if a pensioner makes a belated application, so long as there is no claim for interest on the arrears?

7. In a recent decision of the Supreme Court in S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another, the Supreme Court has declared that the right to family pension is part of the guarantee under Article 21 of the Constitution of India. It was a case where a poor widow submitted an application for pension only in 1992 - her husband died in 1969. To quote from the decision:-

"It is on record that the appellant is an illiterate who at the time of her husband's death did not know of her legal right to family pension and the remedy to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer viz. the Railways, in the present

case to compute the family pension payable to the appellant and offer the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension amounted to a violation of the guarantee assured to the appellant under Article 21. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. In view of the said obligation of the Railways and also in view of the fact that her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate, the Single Judge was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. The Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992".

8. Right to family pension thus being part of the guarantee under Article 21 of the Constitution, there is no justification in limiting the same to the date of submission of the application. The scheme should be made applicable with effect from the date it was introduced. It is clearly provided in Ext.P8 Government Order that the scheme is implemented with effect from 1.1.1986. Ext.P9 Government Order certainly interferes with the constitutional guarantee to a pensioner under the family pension scheme introduced as per Ext.P8 and hence the same is liable to be quashed. I do so. In the case of the petitioner the family pension was sanctioned only with effect from 9.7.1993, the date of application. As already held above, there is no justification in limiting the pension from the date of application, once the eligibility and entitlement under the scheme are not in dispute. Therefore, the petitioner will be entitled to get the family pension as per Ext.P8 scheme with effect from 1.1.1986. The benefits as above shall be worked out by the respondents and shall be disbursed to the petitioner within a period of three months from the date of production of a copy of the judgment.

The Original Petition is disposed of as above.