(2014) 04 KL CK 0067

In the High Court Of Kerala

Case No : WA. No. 1844 of 2013 in WP(C). 25931/2007

Family Planning Association of India APPELLANT

Vs

Vimala K.R. RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Citation : (2014) 04 KL CK 0067

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : Pirappancode V.S. Sudhir, Advocate for the Appellant; Sabu S. Kallaramoola, Advocate and Viju Thomas, Senior Government Pleader, Advocate for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—Family Planning Association of India (for short, ''FPAI'') and the Secretary of its Trivandrum Branch are the appellants. They challenge the judgment in the writ petition, directing FPAI to release the amounts due to the writ petitioner''s late husband towards arrears of salary.

2. Heard learned counsel for the appellants, learned counsel for the first respondent-writ petitioner, learned Central Government Counsel and learned Senior Government Pleader.

3. In furtherance of the materials placed before the learned single Judge, a counter affidavit has been filed on behalf of the Government of Kerala and another counter affidavit has been filed on behalf of the Union of India.

4. The materials on record clearly show that the writ petitioner''s late husband''s salary was not disbursed only due to the triangular administrative muddle among the Union of India, the State of Kerala and the FPAI.

5. The Government of India in letter No.M.12012/1/80-FWD dated 14.7.1980 accorded sanction for the establishment of 22 Urban centres of various types in

the State of Kerala and also for the creation of the posts admissible as per the Government of India pattern. The Government of Kerala examined the proposal of the work of Health Services as contained in different letters dated 30.7.1980, 25.10.1980 and 6.12.1980 and issued G.O.(Ms.)4/81/HD dated 6.1.1981 through the Health (FW) Department according sanction for the creation of the posts mentioned in the Appendix I to that Government Order and also to incur recurring and non-recurring expenditure as mentioned in the Appendix. The expenditure on that account was to be met from the head of account 281(C)-1-Urban Family Welfare Centre. The Director of Health Services was to furnish proposal for authorisation for incurring the additional expenditure on that account under para 95(3) of the Kerala Budget Manual. One of the centres was sanctioned by the Government of Kerala in 1982. Relevant portion of the affidavit sworn to on 29.5.2013 and filed before the learned single Judge on behalf of the Government of Kerala reads as follows:

6. It is submitted that based on Government of India letter No.12012/4/80-FWD dated 14.07.1980, the Government of Kerala sanctioned 22 Urban Health Centres of various types vide G.O.(MS)4/81/HD dated 06.01.1981. The Urban Family Welfare Centre, Kamaleswaram, Thiruvananthapuram, was sanctioned by the Government of Kerala in 1982. The funds required to meet the expenditure on staff and programmes were provided by the Government of India to the State Health Department. In turn this was transferred to the Family Planning Association of India. After examining their work and expenditure, the Government of India released such payment upto the period of 31.03.2002 and the funds were released to Family Planning Association till the period. The money was released from the 100% centrally sponsored scheme (Family Welfare) from head of account No.2211- FW-00-800-98.

7. It is submitted that the funds stopped in 2002. Thereafter the Government of Kerala continued to remind the Government of India for fund release from the Urban Family Welfare Centres. However no amount was released by the Government of India. The then Health Minister informed Government of India vide D.O.No.27378/FW2/03/H&FWD dated 20.04.2004 that since the Family Welfare Service is a Government of India Scheme, Kerala should be given assistance for Family Welfare Programme. Vide letter No.120/2/16/2002 dated 14.11.2004, the Government of India intimated that "the Urban Family Welfare Centre is not sanctioned to Kerala and there is no scope left for the expansion of the Scheme during the tenure of the 10th Five Year Plan. Hence the Government of India is not in a position to support the funding of UFWCs in Kerala now". Kerala had again taken up the issue of payment of arrears on many occasions including a D.O.letter from the then Secretary dated 30th October, 2003.

8. It is submitted that due to the decision of the Government of India, Government of Kerala could not continue funding the Urban Welfare Centres, as the funds had been received from Government of India and Government of India stopped the Scheme in Kerala.

9. It is submitted that the grant could not be paid to Family Planning Association of India for the Urban Family Welfare Centre Scheme as the Scheme was discontinued by the Government of India and the activities carried out by these Centres were shifted to Postpartum Unit attached to District and Taluk Hospitals.

6.A. counter affidavit has been sworn to on 21.3.2014 on behalf of the State of Kerala in this writ appeal. It refers to the aforesaid G.O. (Ms.)4/81/HD dated 6.1.1981 with further averment, the relevant of which is as follows:

........The funds required to meet the expenditure of staff and other programmes were provided by the Government of India to the State Health Department, who in turn transferred to the Family Planning Association of India. It is also submitted that the funds received from the 2nd respondent had already disbursed by the 3rd respondent to the appellants. Moreover, the appellants have no allegation that the 3rd respondent is holding any sum of funds/Grant received from the 2nd respondent. Thus the 3rd respondent is not in any way responsible for the default of the payment of wages to the 1st respondent''s husband.

4. It is submitted that the appellant is a voluntary organization devoted to promote knowledge of Family Planning and its accepts and international funds. Hence the appellant is competent to make payment of salary of a lower grade employee appointed by the appellant. The 2nd respondent also did not provide any funds for the working of the Urban Family Welfare Centres. Now the 2nd respondent stopped further funding for the scheme and the 3rd respondent is not in a position to run the scheme as the sole funding source has been stopped.

5. It is also submitted that, the 1st respondent''s husband Sri.Mohanan Nair (late), Lekshmi Vilasam Bunglow, Parassuvakkal P.O., Parassala, Thiruvananthapuram has been working as attendant in Urban Family Welfare Centre, Kamaleswaram from 1st December, 1987 till his expiry on 29th March 2004. He has been paid salaries upto 31.03.2002 only and the salary from 01.04.2002 till the date of his death i.e., 29.03.2004 could not be disbursed due to non receipt of grant from Government of India. The last salary drawn by him was Rs.4,841/- (Basic Pay Rs.3,440+DA Rs.1101+HRA Rs.260+CCA Rs.40/-).

7. The counter affidavit filed on behalf of the Union of India in answer to the writ petition and in this writ appeal contain virtually similar averments, though the counter affidavit filed in the writ appeal contains further statement to the effect that no Urban Family Welfare Centre has been sanctioned under the centrally sponsored Urban Family Welfare Centre and Urban Revamping Scheme and no grant has been released from Ministry of Health and Family Welfare, Government of India, since the year 1980 to the State Government of Kerala under the centrally sponsored scheme. It is further stated that no grant has been released by the Ministry of Health and Family Welfare, Government of India, to the State Government of Kerala under the centrally sponsored plan scheme viz. Urban Family Welfare Centres for the last twenty three years.

8. Reverting now to Ext.R3(e) produced by the Family Planning Association of

India along with its counter affidavit to the writ petition, it can be seen that Director of Health Services, Government of Kerala had accorded sanction to release amounts and expenditure in that regard was met in terms of Ext.R3(a) proceedings of the District Medical Officer of Health, Thiruvananthapuram. Ext.R3(b) produced before the learned single Judge by the FPAI along with I.A.No.8814/2011 is the copy of the aforenoted Government Order G.O.(Ms)4/81/HD dated 6.1.1981 along with its Appendix I which gives the details of staff and other expenditure sanctioned for the establishment of the Urban Family Welfare Centre during 1980-81. Ext.R3(f) produced along with that application is a proceeding of the competent authority of the District Medical Officer of Health, Thiruvananthapuram in furtherance of sanction granted by the Director of Health Services for release of funds to the Family Planning Association of India towards grant-in- aid for the year 2002-03 towards salary grant. This takes us to Ext.R3(g) which is D.O.No.27378/FW2/03/H&FWD dated 30.10.2003 issued by the Secretary to Government, Health & Family Welfare Department. That letter addressed to the Assistant Commissioner(UH), Department of Family Welfare, Government of India makes reference to a letter dated 7.7.2003 issued by the Assistant Commissioner(UH), Department of Family Welfare regarding grants to Urban Family Welfare Centres functioning in the State of Kerala. The Secretary to the Government of Kerala in the Health & Family Welfare Department had, as per letter dated 30.10.2003, stated as follows:

This has reference to your letter No.N 120112/16/2002-SS dated 7-7-2003 regarding grants to Urban Family Welfare Centres functioning in the State. As you are aware, consequent on the non figuring of sanctioned Urban Family Welfare Centres in the State of Kerala as per Government of India letter No.Q-17025/1/2002/SS dated 23-7-2002, release of Grant-in-aid to the 5 Urban Family Welfare Centers functioning in the State, since the date of inception and the sanction order numbers and date of sanction of which have already been communicated to Government of India, have been discontinued causing difficulties to the staff members due to non-receipt of salary for several months for no fault of theirs. All the five Urban Family Welfare Centres were functioning normally and Government of India had never communicated anything regarding the discontinuance of the centres. The head of account under which the State Government released grants to the 5 Urban Family welfare Centres in question is 2211-FW-00-800-98 which is the expenditure head for meeting the expenditure of Government of India allocation of funds in connection with the Grant-in-aid for Non-Government Organizations.

Since the Urban Family Welfare Service is a Government of India scheme, the assistance from Government of India is required to be restored for the smooth functioning of the Family Welfare Programme.

The matter is under correspondence with Government of India by the Directorate of Health Services in the State for the last several months. Copies of relevant communications, performance report on the functioning of the Urban Family

Welfare Centres in the State are also enclosed.

I shall be grateful, if you could look into this personally and take expeditious action in the matter.

9. We have quoted the relevant portions of the counter affidavit and the letter of the Secretary to Government of Kerala in the Health & Family Welfare Department because the Union of India appears to be passing off its responsibility to nowhere. We say, so more particularly, because of the evidentiary value of the State Government Secretary''s letter and the specificity of its contents qua the omnibus and superfluous statements in the counter affidavits on behalf of the Union of India, essentially trying to wash its hands off the real issue. May be that, the issue is one that has to be sorted out between the State of Kerala and the Central Government, more importantly because of the contents of the letter dated 15h June, 2004 issued by the then Minister for Health & Family Welfare in the Government of India to the Minister of Health & Family Welfare in the State Government of Kerala. That letter with D.O.No.N.12012/16/2002-SS [Ext.R1(a)] produced by the Union of India itself along with its counter affidavit before the learned single Judge reads as follows:

Please refer to your D.O.letter No.27378/FW2/03-H&FWD dated 20th April 2004 regarding grant to 5 Urban Family Welfare Centres in the State of Kerala.

The matter has been examined in this Ministry. It is informed that no grants have been released to the State of Kerala by the Central Government for any Urban Family Welfare Centre during the last twenty-three years under the Centrally sponsored Plan Scheme viz. Urban Family Welfare Centre Scheme. Therefore, this Ministry requested the State Government of Kerala to inform the head of account under which they met the expenditure on these Urban Family Welfare Centres. The State Government of Kerala informed vide their D.O. letter No.27378/FW2/03/H&FWD dated 30.10.2003 that they met the expenditure on Urban Family Welfare Centres under the head consisting of UFWC and PPC. As Government of India has not released any grant to State Government of Kerala under UFWC Scheme as mentioned above, it is evident that the State Government of Kerala has been funding the Urban Family Welfare Centres as an integral part of Post Partum Programme out of the funds of Post Partum Programme released by Government of India till the end of the year 2001-2002. The State Government of Kerala stopped the grants to the UFWCs w.e.f. the year 2002-2003. The Post Partum Programme was transferred to the State Governments from the year 2002- 2003 with the request that the State Governments may fund this programme from their own sources.

Further, there is no scope for the expansion of the Urban Family Welfare Centre Scheme during the Tenth Five-year Plan. Hence the Government of India is not in a position to provide funds for Urban Family Welfare Centres in Kerala. Therefore the Government of Kerala may continue to fund the Urban Family Welfare Centres as an integral part of Post Partum Programme from its own sources.

10. The resultant situation reflected by the aforesaid communications between the Union Government and the State Government and the managerial issues of running the Urban Family Welfare Centres in the State of Kerala has pushed the writ petitioner''s late husband and others employed with the Urban Family Welfare Centres to deprivation of livelihood which was otherwise due to them. They are entitled to be paid for the period for which they have worked and other benefits as due to them in terms of the conditions of engagement. That cannot be deprived.

11. FPAI unit where the petitioner''s late husband was working cannot but be treated as one eligible to be funded by the Central Government through the State Government. We are unable to countenance the defence set up by the Union of India, more particularly because, the specific details including the head of account under which the grants were dealt with by the State Government, as evidenced by the letter dated 30.10.2003 issued by the Kerala Government''s Secretary in the Health & Family Welfare Department to the Assistant Commissioner(UH), Department of Family Welfare cannot be disputed by the Central Government.

12. Therefore, while this appeal by the FPAI is against the judgment putting the liability on them exclusively, may succeed to some extent, that cannot deprive the eligibility of the writ petitioner to relief. The amounts due to the writ petitioner as arrears of salary due to her late husband will have to be paid by the Union of India. The impugned judgment has to be modified to the aforesaid extent.

In the result, this appeal is allowed modifying the directions contained in the impugned judgment and it is ordered that arrears of salary due to the writ petitioner''s late husband shall be released to the petitioner by the second respondent Union of India (first respondent in the writ petition).The said respondent is directed to effect such payment by releasing the amounts to the writ petitioner without fail, within a period of three months from the date of receipt of a copy of this judgment. No costs.