
(2007) 07 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 29538 of 2001 (T)

Safia Beegum

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Citation : (2007) 3 KLJ 395

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : R. Rajasekharan Pillai and George T. Thachett, for the Appellant;
Jayapradeep V. (Addl. CGSC), for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair

1. Heard learned counsel for petitioner and learned Standing Counsel appearing for respondents. The prayer in the original petition is for a direction to the respondents to grant family pension to the petitioner, which, according to her, she is eligible after the death of her husband Shri. P.A. Jalaludeen, who was an Ex-Naik in the Indian Army. The said Mr. Jalaludeen died on 01-09-1996. The respondents have declined family pension to the petitioner for the reasons that, as per the record petitioner was divorced from her husband on 26-05-1996. The last communication issued to the petitioner is Ext. P6 on 20-04-2001.

2. The only question to be considered is whether petitioner was divorced from her husband as claimed by the respondents, and if so, whether she is not entitled to family pension. The original service records pertaining to service of petitioner's husband is admittedly not available with the respondents. However, they have reconstructed the file and from records, it is seen that petitioner's husband gave declaration before the respondents that he was granted divorce by the Court of "Judicial Chief First Class Magistrate", Alappuzha from 26-05-1996 onwards. Petitioner's case is that the proceedings before the Magistrate was only

a maintenance petition. No divorce decree or order was produced by the deceased while he was in service and Judicial Magistrate has no authority under the statute to grant divorce. There fore the declaration by petitioner's husband that he got divorce from the court is not substantiated with any document before the Department. The deceased had four children in the petitioner is an admitted fact, whose pension she is claiming after the death under the Family Pension Scheme. The deceased himself and stated that he was living with one of his children. There is no case even for the respondents that a divorce according to religious rites are carried out. In the absence of any documents or materials to prove the divorce at the maximum this could be a case of the deceased just living separately from his wife during latter part of his life after he got four children. Even the statement given by him about the divorce relied on by the Department is also unreliable because the Court, namely, Court of Judicial Chief First Class Magistrate has no authority under law to grant divorce. In the circumstances, the only inference possible is subsistence of marriage at the time of death of petitioner's husband, Mr. Jalaludeen. Original Petition is accordingly allowed vacating Ext. P6 order of respondents declining family pension to the petitioner. There will be a direction to the 1st and 3rd respondents, whoever is the authority to grant family pension to the petitioner from the date of entitlement after the death of her husband Mr. Jalaludeen. However, arrears should be paid to the petitioner with interest within a period of three months from the date of production of a copy of this judgment. Thereafter family pension should be disbursed to the petitioner on regular basis.