(2007) 02 KL CK 0003

In the High Court Of Kerala

Case No : W.A. No. 192 of 2005

State of Kerala and Others APPELLANT

Vs

V. Aisha Kunju and Another RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:
Kerala Service Rules, 1958 — Rule 110

Citation : (2007) 02 KL CK 0003

Hon'ble Judges : K.A. Abdul Gafoor, J;Antony Dominic, J

Bench : Division Bench

Advocate : Sandesh Raja, Govt. Pleader, for the Appellant; M.V. Thamban, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—An aided school teacher (late K. Jaggafar) retired on 31-3-1963. After retirement, on 12-3-1964 he made an application for pension. That was returned stating that it is defective on 16-5-1965. Thereafter he could not resubmit the application. Later, he died on 12-12-1968. The widow was clamoring for the benefits due to her deceased husband towards retiral benefits. In the meantime, Ext. P-8 order was issued extending the benefit of family pension to the families of Government employees who retired or died after 1-4-1964. Therefore, the widow of late K. Jaggafar too became eligible for family pension as well with effect from 1-1-1986 in terms of Ext. P-8.

2. Family pension will be available to the widow of a pensioner. For that, pension had to be sanctioned. Sanction had not been made. In the meanwhile, Ext. P-9 order was issued on 24-6-1992 making it clear that payment of family pension payable as per Ext. P-8 would be made with effect from the date of the application.

3. Either pension or family pension was not granted. Therefore, the widow approached this Court for a direction to pay arrears of pension and D.C.R.G, due

to her husband, who died on 12-12-1968 and also to sanction family pension from 13-12-1968. The learned Single Judge held that the deceased was entitled to pension and therefore, the Petitioner/widow ought to have been granted the arrears of pension right from the date of retirement of K. Jaggafar with interest from 1-1-1969, as going by Rule 110(iii), the Head of Office ought to have taken appropriate action, in case of those who had died without filing an application for pension, to sanction pension. The learned Single Judge also found that the widow was entitled to family pension as ordered in Ext. P-8 notwithstanding the restriction contained in Ext. P-9 from the date when the scheme was introduced as per Ext. P-8 viz., 1-1-1986 and not from the date of death.

4. This is appealed by the State contending that the interest granted to the arrears of pension due to the deceased employee is unjustified as the deceased had not submitted the application for pension in time. It was further contended that there was inordinate delay on the part of the widow of the pensioner to apply for the family pension in tune with Ext.P-8 and therefore, going by Ext.P-9 order, she was entitled to family pension only from the date of her application.

5. Rule 110(iii) reads as follows:

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.

6. This provision is sufficient enough to cover even a pensioner who had not made an application while in service for pension. Moreover, so far as the pension applications are concerned, it is duty of the Head of the Department to obtain it from the retiring employee and to take necessary steps to sanction the same. The pension sanctioning authority cannot contend that the application was defective and it was not sanctioned in time. So, the learned Single Judge, on the strength of the said rule was justified in holding that the deceased employee was entitled to pension right from 1-4-1964 onwards and that arrears ought to have been granted immediately at least after his death and therefore, entitled to interest thereon from 1-1-1969, a date after his death. The rate of interest fixed at 9% is at the minimal level. There is nothing for interference with that direction.

7. Ext. P-8 family pension scheme was introduced in respect of those employees who retired/died after 1 -4-1964 only with effect from 1-1-1986. The order Ext. P-9 which limits the grant of family pension from the date of application for family pension came into force only on 24-6-1992. The Petitioner could not make an application pursuant to Ext. P-8 as pension had not been sanctioned to her deceased husband. Had it been sanctioned in time, necessarily, family pension application as mentioned in Ext. P-8 could have been made well earlier than the

date of Ext. P-9 and it should have been settled. She happened to file application later than the date of Ext. P-9, only because of the delay in sanctioning pension to her late husband. The eligibility for family pension as per Ext.P-8 is from 1-1-1986. Therefore, the learned Single Judge was perfectly justified in directing payment of family pension from 1-1-1986.

8. At the same time, there is substance in the submission of the learned Government Pleader that the learned Single Judge ought not to have quashed Ext. P-9, in the circumstances. Further, it is submitted that there was no challenge against Ext.P-9. Taking into account the aforesaid aspects, we are of the view that Ext. P-9 ought not to have been quashed.

The writ appeal is allowed to the limited extent of reviving Ext. P-9, setting aside that part of the Judgment quashing Ext. P-9.