

(2006) 03 KL CK 0005

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7670 of 2006-K

T.K. Barathy

APPELLANT

Vs

The Principal Secretary to Govt. and Others

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Kerala Service Rules, 1958 — Rule 126, 127, 129, 135, 136

Citation : (2007) 2 ILR (Ker) 161 : (2008) 1 KLJ 250 : (2007) 2 KLJ 250

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : B. Sathiq and C. Anirudhan, for the Appellant; Lal George, Spl. GP Fin, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Basheer, J.—The petitioner retired from service as a Primary Department Teacher on October 31, 1996. She is now living a New York in the United States of America with her husband and daughter.

2. This writ petition has been filed through her power of attorney holder. Her grievance is that arrears of pension payable to her for the period from November 1996 to September 2000 have been denied to her on the ground that she failed to draw the same when it fell due. It is contended by learned Counsel for the petitioner that Exts. P3 and P4 orders passed by the Government in this regard are totally illegal and unsustainable. The prayer in this writ petition is to issue a writ of certiorari to quash Exts. P3 and P4 orders. There is a further prayer to issue a writ of mandamus or such other appropriate writ order or direction to respondent No. 1 to accord sanction to release the arrears of pension in terms of the relevant rules.

3. It is not in dispute that the monthly pension became payable to the petitioner from November, 1996. It is also beyond controversy that petitioner did not draw the pension from November 1996 till September 2000. According to the

petitioner, she was constrained to be away from India because of some problem in the family. She had to join her husband and daughter in America. The daughter was undergoing study in Nursing in the States and because of some problems that she faced there, petitioner was constrained to go to America and join her husband and daughter.

4. On September 14, 2004 the petitioner had submitted Ext. P2 application before the respondents requesting them to release the entire arrears of pension including Pensioners' Festival Allowance amounting to Rs. 1,77,639/- to her for the period from November 1996 till September 2000. In the said application, she had admitted that she had been receiving pension from October 2000 onwards through Bank. She had also stated the reasons why she could not draw pension for the earlier period. But by Ext. P3 order dated November 30, 2004 the Government rejected the above request. It appears that the petitioner had moved the Government again in this connection. The Government had passed Ext. P4 order explaining the reasons as to why the Government did not deem it fit to allow the prayer for payment; of arrears of pension as requested by the petitioner. It also appears that the petitioner and her husband who is also a retired Government servant, had approached the Kerala Lok Ayuktha for the same relief. By order dated October 27, 2005 the Lok Ayuktha dismissed the complaint since it was submitted before the said authority that the petitioner wanted to take appropriate steps in accordance with law before other forum.

5. Learned Counsel submits that there is no justification on the part of the Government in refusing to release the arrears of pension. It is contended by the learned Counsel that Rule 136 of Part III K.S.R. does not empower the authority to forfeit arrears of pension if it had not been drawn by the petitioner. Learned Counsel submits that the Government can release the pension in appropriate cases. The failure on the part of the petitioner to draw the pension was due to reasons beyond her control. The Government ought to have kept in view the peculiar circumstances which prevented the petitioner from drawing it. It is further contended by the learned Counsel that Ext. P4 order was passed without affording any opportunity to the petitioner.

6. Rule 126 of Part III K.S.R. enables a pensioner to draw pension through an authorised agent, if permitted by the Government. Rule 129 postulates that "a pensioner who resides in the State may draw his pension through a duly authorised agent possessing a legally valid Power of Attorney who must produce a life certificate as referred to in Rule 126 and 127 on each occasion unless the duly authorised agent has executed an indemnity bond to refund overpayment in which case he has to produce the life certificate as aforesaid at least once a year." The above rule applies in the case of those pensioners who reside outside the State. It is the admitted position that the petitioner is receiving pension now by virtue of Rules 126 and 129, since she is admittedly residing in the United States even now with her husband and daughter. Rule 135 postulates that if pension remains undrawn for more than three years, pension ceases to be

payable. However, Rule 136 stipulates that if the pensioner appears afterwards, the disbursing officer may reclaim the Pension Payment Order and renew his payments. Rule 136 further postulates thus:

But the arrears cannot be paid (a) without the orders of the Audit Officer, and (b) if the pension in arrears is to be paid for the first time or if the amount of arrears exceeds Rs. 75,000/- without the previous sanction of the Government to be obtained through the Audit Officer.

7. Ext. P4 order shows that the Government had considered the matter. It was noticed that the petitioner had been living outside the country. She had not made arrangements to draw her pension for a long period. It is pertinent to note that though the petitioner had retired in the month of October 1996, she had started to draw her pension only from October 2000. Thus, the pension payable to her from November 1996 till September 2000 had ceased to be payable in terms of Rules 135. It is also pertinent to note that the petitioner had made a claim for arrears only in the year 2004 as is revealed from Ext. P2. There was again a delay of more than four years in claiming the arrears of pension. Therefore, it is apparent that there was laches on the part of the petitioner. In my view, the delay in claiming the arrears of pension further disentitles the petitioner in getting the benefit of Rule 136. The Government on considering her request, had found that she was not entitled to get the arrears of pension.

8. It is true that pension is not a bounty from the State. The right to receive pension is statutorily recognised. But still a pensioner cannot have the luxury of choosing his/her own time to claim the arrears of pension, especially since the rules have provided for adequate mechanism to claim pension through a Power of Attorney Holder/Authorised. Agent, in cases where the pensioner is forced to be away from his home town. Petitioner had not availed of the said facility till September 2000 though she had retired from service in 1996. Still further, she had not bothered to claim the arrears for no apparent reasons for more than four years.

9. Having regard to the totality of circumstances I do not find any reason to interfere with Exts. P3 and P4 orders. As rightly noticed by the Government, the petitioner has not pointed out any valid or justifiable reasons for the inordinate delay in claiming the arrears of pension.

I do not find any material illegality or irregularity in the impugned order. The writ petition fails. It is accordingly dismissed.