

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4454 OF 2016
(Arising out of SLP (C) No. 10128 of 2015)

PHILOMINA.K. A. ... Appellant

VERSUS

DISTRICT COLLECTOR, ALAPPUZHA AND ANR. ... Respondents

J U D G M E N T

A. K. SIKRI, J.

Leave granted.

The facts which are not in dispute are that the appellant is the unmarried daughter of a veteran freedom fighter. Father of the appellant was given freedom fighter's pension under the Kerala Freedom Fighters' Pension Rules, 1971 (hereinafter referred to as 'the 1971 Rules') promulgated by the respondents. He started getting this pension w.e.f. 01.04.1971 till his death on 11.07.1985. The Rules postulate grant of pension after the demise of the pensioner to his widow/ minor sons/ unmarried daughters etc., as well. Because of this reason, mother of the appellant started getting pension after the demise of her father. She continued to get this pension till 13.09.2012 when she also

passed away. The appellant applied for the said pension on the ground that she was unmarried daughter of the veteran freedom fighter and, therefore, she is entitled to get the pension under the 1971 Rules.

It may be noted that by Order dated 02.05.2012, Rule 11A was inserted in the said Rules as per which the Government has the power of sanction of pension to dependent widowed daughter/ divorced daughter till their remarriage or death and also to the physically / mentally disabled dependent son/daughters.

The appellant gave representation dated 08.10.2012 claiming pension under the aforesaid Rule 11A. As per the extant Rules, enquiry is to be made by the Village Officer to verify the contents of the application and the claim made therein. In the instant case, Tehsildar under the Office of District Collector conducted this enquiry and submitted the report. The District Collector submitted his report dated 30.11.2012, *inter alia*, stating as under:

"The applicant was residing along with her late mother. She has not legally married so far. However, she is having a son aged 25 years in her extramarital relationship. The son got married and residing in his wife's house at Thumpoly. The applicant Philomina is now residing along with her nephew. She does not have any other income. The matter is reported along with the application and annexed records herewith."

He, thus, as per the aforesaid report, found that the appellant had not married. She was, accordingly, unmarried

daughter of her late father who was given freedom fighters' pension under the aforesaid Rules. No doubt, it was mentioned therein that she had a son aged 25 years from her extra-marital relationship. At the same time, during the enquiry, it was also found that the said son got married and was residing in his wife's house at Thumpoly, whereas the appellant is resident of Alappuzha and is residing along with her nephew. The fact that she is residing with her nephew also shows that there is no other person, after her parents passed away, to take care of her. It is also categorically found that she does not have any other income.

Notwithstanding the above, her request for grant of pension was turned down on the ground that she is having a son who is 25 years old and on this basis, it was concluded that she was not dependent on her parents. Same view is taken by the learned Single Judge of the High Court dismissing the writ petition filed against the order of the District Collector and the Division Bench vide the impugned judgment has affirmed this view.

Relevant Rule with which we are concerned in this case is Rule 10 which reads as under: -

"10. The widow/minor sons/unmarried daughters who have not otherwise become independent of a Freedom Fighter who has been sanctioned a pension under rule 6 shall be eligible to the continuance of the pension."

As per the aforesaid Rule, unmarried daughters are eligible for freedom fighter's pension and they become ineligible only if they are independent. This independence is also related to the freedom fighter who was getting the pension.

In the instant case, from the facts disclosed above, it becomes manifest that the appellant been an unmarried daughter of late Shri Anthrayose Kariyadiparambu, a freedom fighter and late Stella Anthrayosegi, who never got married. As per the report of the Tehsildar, she had no income. She started living with her nephew after the demise of her parents. Thus, she never became independent of her father, a freedom fighter. The High Court has committed an error in relying upon the fact that she has a son who was born of extra-marital relationship of hers with somebody ignoring the fact that he did not live with the appellant and is living with his wife at his wife's house. We are, therefore, of the opinion that all the ingredients which are required to be satisfied to earn pension as per Rule 10 above stand satisfied in the instant case.

We, accordingly, allow this appeal setting aside the impugned judgment and hold that the appellant shall be entitled to pension w.e.f. 14.09.2012, as her mother passed away on 13.09.2012. The respondents shall start paying pension to the appellant within one month from today and

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insofar as arrears are concerned, the same shall be paid
within two months.

....., J.
[A.K. SIKRI]

....., J.
[R.K. AGRAWAL]

New Delhi;
April 26, 2016.



JUDGMENT