

Mohan Abraham vs State of Kerala

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Court : Kerala

Decided On : Sep-25-2024

Judge : Honourable the Acting Chief Justice Mr. a.Muhamed Mustaque, Honourable Mr. Justice S.Manu

Appeal No. : WP(C)/10384/2013

Appellant : Mohan Abraham

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN MONDAY, THE 18TH DAY OF JANUARY 2021 / 28TH POUSHA, 1942 PETITIONER: MOHAN ABRAHAM, DIRECTOR, CENTRE FOR CONTINUING EDUCATION KERALA, CHARACHIRA KOWDIAR (PO), THIRUVANANTHAPURAM-695 003 SRI.ELVIN PETER P.J. SRI.K.R.GANESH SRI.T.G.SUNIL (PRANAVAM) RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, HIGHER EDUCATION

DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM. 2 THE SECRETARY TO GOVERNMENT GENERAL EDUCATION DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM. 3 THE DIRECTOR CENTRE FOR CONTINUING EDUCATION KERALA, CHARACHIRA KOWDIAR (PO), THIRUVANANTHAPURAM. 4 THE DIRECTOR VOCATIONAL HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, (4TH FLOOR), THIRUVANANTHAPURAM. -695001 5 THE SECRETARY TO GOVERNMENT HEALTH & FAMILY WELFARE DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM. 6 KERALA LOK AYUKTA, REPRESENTED BY THE REGISTRAR, VIKAS BHAVAN, LEGISLATIVE COMPLEX, THIRUVANANTHAPURAM. SRI.K.ANAND SR. SMT.LATHA KRISHNAN SRI.B.S.KRISHNAN, SC SRI.SUNIL KUMAR KURIAKOSE - GP THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON

18.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 'CR'

JUDGMENT

Dated this the 18th day of January 2021 The challenge made this case is against the order of the learned Kerala Lok Ayukta, which confirms a demand made on the petitioner by the competent Authority of the Government of Kerala, to refund an amount of Rs.1,16,799/-, which was claimed by him as medical reimbursement for his mother's medical treatment.

2. At the time when this writ petition was filed, the

petitioner was working as a Director of Centre for Continuing Education, Thiruvananthapuram and he says that his father died in the year 1981. He concedes that his family, through his mother, was thereafter granted family pension by the Southern Railway, where his father had been

working and that since she had no other source of income 'she was wholly dependent upon him'.

3. The petitioner says that in such circumstances, he was entitled to the benefit of the Kerala Government Servants Medical Attendance Rules, 1960 because, under

Rule 3(e) thereof, wholly dependent parents are eligible to medical reimbursement on account of the Government Servants. The petitioner says that, however, without considering any of these aspects in its proper perspective, the learned Lok Ayukta issued Ext.P13 order rejecting his complaint and confirmed the demand made on him by the concerned Department of the Government. The petitioner, therefore, prays that Ext.P13 be set aside and consequently, that the recovery pursuant to Ext.P11 be interdicted.

4. In response, the learned Government Pleader -

Sri.Sunil Kumar Kuriakose, took me extensively through the various provisions of the Rules and submitted that the word family therein has been defined to include parents who are wholly dependent upon the Government servant. He submitted that the word wholly dependent has been considered in the context of the same Rules by a Division Bench of this Court in *State of Kerala v. Sunu George* [2019 4 KLT 288], to hold that when the parent is drawing a handsome pension, the Government servant would not be eligible to seek medical reimbursement on account of such parent.

5. The learned Government Pleader then submitted

that, in the case at hand, it is conceded even by the petitioner that his mother was drawing a family pension, consequent to his father's death and therefore, that she would be excluded from the purlieus of family for the purposes of the Rules. He, therefore, prayed that this writ petition be dismissed.

6. The record of the facts and submissions above make

it ineluctable that the pertinent question involved is whether the petitioner's mother can be seen to be wholly dependent on him so as to entitle the latter to claim medical reimbursement on her behalf.

7. The path of this Court is illuminated by the judgment

of the Hon'ble Supreme Court in State of M.P. and others v. M.P.Ojha and another [(1998) 2 SCC 554], wherein the Hon'ble Court has declared affirmatively that the expression wholly dependent is not a term of art and that it cannot be confined to mere financial dependence. The specific observations of the Hon'ble Supreme Court is available in paragraph 13 of the said judgment, which I reproduce under for the purpose of easy reference.

13. The expression wholly dependent is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression wholly dependent to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would be likely to lead to results which the relevant rules would not have contemplated. The expression wholly dependent has to be understood in the context in which it is used keeping in view the object of the particular rules where it is contained. We cannot curtail the meaning of wholly dependent by reading into this the definition as given in SR8[sicSR2(8)] which has been reproduced above. Further, the expression Wholly dependent as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of a family it would mean other support, may be physical, as well. To be wholly dependent would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent.

8. That said, in Sunu George [supra], a Division Bench

of this Court distinguished M.P.Ojha (supra) on the facts of that case because it was found that the parent concerned was a service pensioner and was drawing a large amount of 22,000/- as pension. The Division Bench, however, affirmed the views of the Hon'ble Supreme Court but held that in the singular facts available in that case, the parent of the Government servant could not have been construed to be wholly dependent on him. Obviously therefore, the

holdings and findings in Sunu George [supra] was only intended to operate on the facts of that case or in cases which offer analogous factual circumstances.

9. That being said, none of the orders impugned in this

writ petition show what is the amount of pension drawn by the petitioner's mother. In any event of the matter, that would be, in my firm view, irrelevant because it is conceded that she was only drawing a family pension and not service pension. This is crucially important in this case because service pension would be entitled to a person consequent to his or her retirement from his service; while family pension is drawn by a person consequent to the death of his or her spouse who was in such service. Ineluctably, service pension is eligible to the person who claims it and who is eligible to it; while the family pension is eligible not merely to the person in whose name it is paid but also to the eligible members of the family. This is a crucial difference that will have to be borne in mind while the claims of the petitioner in this case are assessed.

10. However, as is evident from the reasoning of the

learned Lok Ayukta in Ext.P13 or by the impugned order

issued by the Government, these aspects have not been looked into at all but they have nevertheless entered into a

conclusion that the petitioner's mother cannot be seen to be

wholly dependent on him, for the purpose of the aforementioned Rules.

11. In the absence of any evidence to show the amount

actually obtained by the petitioner's mother as family pension, it can never be concluded that she is not wholly dependent, particularly because as is evident from M.P.Ojha (supra), the Hon'ble Supreme Court has conclusively held that financial dependence is only a component of the facet of dependence as a larger concept.

12. Be that as it may, it is without contest that the

petitioner's mother become a widow as early as in the year 1981 and that she had never worked. Her only income is the portion of the family pension consequent to the death of her husband and that by itself, in my certain view, cannot exclude her from the definition of family as stipulated in Rule 3(e) of the Rules. I am indubitably fortified in my view as afore by M.P.Ojha (supra) and I am also certain that the findings in Sunu George [supra] is not in any manner contrary to

this. In the afore circumstances, I allow this writ petition and set aside Ext.P11, as also the order of the learned Kerala Lok Ayukta, namely Ext.P13; and direct the respondents not to effect any recovery from the petitioner with respect to the amounts that he has already claimed as reimbursement for the treatment of his widowed mother.

Sd/- DEVAN RAMACHANDRAN Stu JUDGE

APPENDIX PETITIONER'S EXHIBITS: EXT.P1 - TRUE COPY OF THE ORDER NO.CE(A)419/2004 DATED 3-11-2004 ISSUED BY THE 3RD RESPONDENT EXT.P1(A) - TRUE COPY OF THE ORDER

NO.CE(A)419/2004 DATED 13-9-05 ISSUED BY THE 3RD RESPONDENT. EXT.P1(B) - TRUE COPY OF THE ORDER NO.CE(A)419/2004(2) DATED 26-11-2005 ISSUED BY THE 3RD RESPONDENT EXT.P1(C) - TRUE COPY OF THE GO(RT)NO.252/2006/H.EDN. DT.2.2.2006 OF THE 1ST RESPONDENT EXT.P1(D) - TRUE COPY OF THE ORDER NO.CE(A)419/450/2004 DATED 6-2-2006 ISSUED BY THE 3RD RESPONDENT EXT.P1(E) - TRUE COPY OF THE ORDER NO.E2/15765/2007 DATED 29-8-08 ISSUED BY THE 4TH RESPONDENT EXT.P2 - TRUE COPY OF THE ORDER NO.19412/LI/06/H.EDN. DATED 29-9-06 OF THE 1ST RESPONDENT EXT.P3 - TRUE COPY OF THE LETTER NO.CE(A)450/2004/71 DATED 5-10-2006 OF THE 3RD RESPONDENT. EXT.P4 - TRUE COPY OF THE G.O(RT)NO.378/2007/H.EDN. DATED 28-2-2007 OF THE 1ST RESPONDENT ISSUED BY THE 2ND RESPONDENT EXT.P5 - TRUE COPY OF THE ORDER NO.CE(A)450/2004 DATED 17-3-07 ISSUED BY THE 3RD RESPONDENT EXT.P6 - TRUE COPY OF THE ORDER NO.B2/15765/10 DATED 30-3-2011 OF THE 4TH RESPONDENT EXT.P7 - TRUE COPY OF THE LETTER NO.76789/SC 3/10/G.EDN. DATED 30-4-11 OF THE 2ND RESPONDENT EXT.P8 - TRUE COPY OF THE LETTER NO.B2/15765/07 DT.20-5-11 OF THE 4TH RESPONDENT EXT.P9 - TRUE COPY OF THE CIRCULAR NO.64215/G2/2004/H&FWD DT.31-3-2004 OF THE 5TH RESPONDENT

EXT.P10 - TRUE COPY OF THE ORDER NO.4054/11/G.EDN. DT.27-9-11 ISSUED BY THE 2ND RESPONDENT EXT.P11 - TRUE COPY OF THE LETTER DATED 8-7-2011 ISSUED BY THE 1ST RESPONDENT EXT.P12 - TRUE COPY OF THE LETTER DATED 15-7-2011 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT EXT.P13 - TRUE COPY OF THE ORDER DATED 17-12-2012 IN COMPLAINT NO.2283/2011 OF THE HON'BLE KERALA LOK AYUKTA.

RESPONDENT'S EXHIBITS: EXHIBIT R2(A) 1 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER SECONDARY EDUCATION, THIRUVANANTHAPURAM. EXHIBIT R2(A) 2 TRUE COPY OF THE DIRECTOR,

VOCATIONAL HIGHER B2/15765/07(1) DATED 07/03/2008. EXHIBIT R2(A) 3 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER B2/15765/07(2) DATED 07/03/2008. EXHIBIT R2(A) 4 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER B2/15765/07(4) DATED 07/03/2008. EXHIBIT R2(A) 5 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER B2/15765/07(3) DATED 07/03/2008. EXHIBIT R2(A) 6 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER B2/15765/07(1) DATED 15/01/2009. EXHIBIT R2(A) 7 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER B2/15765/07(2) DATED 15/01/2009. EXHIBIT R2(A) 8 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER B2/15765/07(3) DATED 15/01/2009. EXHIBIT R2(A) 9 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER B2/15765/07(4) DATED 15/01/2009. EXHIBIT R2(A) 10 TRUE COPY OF THE DIRECTOR, VOCATIONAL HIGHER B2/15765/07 DATED 15/01/2009.

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