

Mathai Vs. State of Kerala

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Court : Kerala

Decided On : Jul-30-1990

Reported in : [1991(62)FLR15]; (1991)IILLJ392Ker

Judge : Sreedharan, J.

Acts : Kerala Service Rules - Rule 90(6); [Constitution of India](#) - Article 14

Appeal No. : O.P. No. 10684/1989

Appellant : Mathai

Respondent : State of Kerala

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : N. Sukumaran, Adv.

Disposition : Petition allowed

Judgement :

Sreedharan, J.

1. Petitioner is a pensioner now aged 70. Petitioner's first wife, Elamma, was the nominee approved by the respondents for the purpose of family pension. She died on February 22, 1984. Thereafter he contracted a second marriage with one Lakshmikutty Amma of Arakkal house. He submitted an application before the

second respondent for substituting his second wife, Lakshmikutty Amma in the place of his deceased wife as nominee for receiving the benefit of family pension on his death. That application was returned with the endorsement that family acquired after retirement is not eligible for pension. This was done presumably on the basis of the provisions contained in Rule 90(6) of Part III K.S.R. The Note 2 of the Rule stated that marriage after retirement will not be considered for these rules. Petitioner submits that the provision contained in this Rule is discriminatory and it has no legs to stand.

2. On behalf of the first respondent a detailed counter affidavit has been filed. The contention taken therein is based on Rule 90 of Part III K.S.R. According to Note 2 under the Sub-rule (6) of that Rule marriage after retirement will not be considered for purpose of grant of family pension. Since petitioner entered into marriage with Lakshmikutty Amma after his retirement, she cannot be treated as member of the family and so no family pension can be accorded to her. This provision, it is contended, is not violative of Article 14 of the Constitution either.

3. In *Bhagwanti v. Union of India* (AIR) 1989 SC 2088, Their Lordships had to consider the question as to whether the spouse-man or woman- as the case may be, married after the retirement of the concerned Government servant can be kept out of the definition of family so as to deprive him or her from the benefit of the family pension. It was also considered whether children born after retirement are entitled to benefits of such pension. Their Lordships observed:-

'Pension is payable as pointed out in several judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self-same consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary.'

Their-Lordships went on to observe: -

'Considered from any angle, we are of the view that the two limitations incorporated in the definition of 'family' suffer from the vice of arbitrariness and

discrimination and cannot be supported by nexus of reasonable classification. The words,' provided the marriage took place before retirement of the Government servant' in Clause (i) and 'but shall not include son or daughter born after retirement' in Clause (ii) are thus ultra vires Article 14 of the Constitution and cannot be sustained'.

4. A Government servant on his retirement acquires the right to get pension as also the right to get family pension on account of the services rendered by him in the past. The right to get pension enures to him right from the date of his retirement. The liability of Government to pay family pension arises only on the death of the pensioner. The family pension is to be paid to the family of the pensioner as on the date of his death. A person cannot have a second wife during the life time of the first. The second marriage hence should be one in conformity with law. A Government employee might contract marriage after retirement even. In these cases can that spouse be considered to be alien to the family? The answer should be in the negative. If the second wife is a member of the family on the date of the pensioner's death, Government are liable to pay family pension to her. In the instant case petitioner's first wife died on February 22, 1984. After the death of the first wife he contracted a second marriage. The lady so married became his wife. If on the death of the petitioner she is alive, she will be a member of his family and as a member of his family she will be entitled to the family pension. The contrary stand taken by the Government is untenable. The provision in the K.S.R. which states that marriage after retirement will not be considered for the purpose of these rules is arbitrary and violative of Article 14 of the Constitution. So I strike down Note 2 to Rule 90(6) of Part III K.S.R. as invalid.

5. The original petition is allowed. Petitioner will have to send back Ext.PI to the second respondent for sanctioning the family pension to Smt. Lakshmikutty Amma, treating her as his wife. Second respondent must sanction the family pension treating Lakshmikutty Amma as the spouse of the petitioner on receipt of Ext.P1 without any delay.