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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

Article 12(1)

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எனது இல. }
My No. }

ඔබේ අංකය }
உமது இல. }
Your No. }

දිනය } 22-02-2018
திகதி }
Date }

Complainant : Ms. A. Mariyampillai
26/17 A, Sahayamatha Street
Anpuvalipuram
Trincomalee.

Respondent : Director General of Pensions
Department of Pensions
Maligawatta, Colombo 10.

Complaint No : HRC/3047/16

Complaint

The Complainant has lodged this complaint at the Human Rights Commission of Sri Lanka on 27.06.2016, saying that she is Mrs. Agathamah Mariyampillai, widow of late Mr. K.P. Mariampillai and she seeks justice against the decision of the Director of Pension as he has refused her right to receive the Widow and Orphans' pension from her husband's contribution.

The complainant further states in her complaint that she married Mr. K.P. Mariampillai on 29th October 1955 at the St. Mary's Cathedral, Jaffna and they have six children.

She states that she is the legitimate wife of Mr. K.P. Mariyampillai and her husband never had any extra marital relationship, as far as she is aware.

Also she says in her complaint that after her husband died, she came to know that in his declaration he had given a wrong statement about his marital status.

- In his Widow and Orphan pension form – 04 he had declared that his wife died.
- He declared that he had divorced his wife on 30-06-1980.

The complainant also states that both the statements in his W & OP declaration are completely wrong and he would have done so due to his depressed condition. She submits that he never submitted any documentary proof of the same and the Pension Department too did not obtain proof of the same.

The complainant also says that she submitted their marriage certificate and a necessary affidavit to confirm the marriage.

The Human Rights Commission has called observations on 19.09.2016 from the Director General of Pension and sent summons to both parties to appear before the Commission on 20.06.2017 for the inquiry.

For the inquiry at HRCSL the complainant and Legal Officer of Department of Pension, Mrs. R.M.W.K Ratnayake attended on 20.06.2017.

The complainant said that they married in 1955 and only in 1960 did her husband obtain a teaching appointment and until such time he was unemployed and it was she who was the breadwinner of the family.

The complainant points out that as per the document submitted by her husband to the Pensions Department on 19.11.1981, he divorced her on 30.06.1980 but he did not forward any documentary proof to support the same.

Respondent's Statement

The Respondent's Legal Officers submitted at the inquiry that the complainant's husband Mr. Kabrial Mariampillai submitted the widow and orphan pension form dated 19.11.1981 to the Department of Pension through Zonal Education Office. In his application above Mr. Kabrial Mariampillai has mentioned that he has divorced his wife (the complainant) on 30.06.1980. Also the Respondent's Legal Officer states that it was revealed that complainant and her husband continuously lived separately for a long period of time and in the above circumstances they claim that the complainant & her husband did not live together and that their divorce is confirmed.

Findings

- The complainant married Mr. K.P. Mariampillai in 1955.
- Mr. K.P. Mariampillai obtain a teaching appointment in 1960 and worked within Zonal Education Office – Jaffna.

- Mr. Mariampillai contributed to the Widow and Orphan Funds.
- Mr. Mariampillai died in 2013 and Mrs. Agathamma Mariampillai, widow wife of Mr. Mariampillai applied for W & OP pension with relevant documents.
- The W & OP pension application was denied by DG of Pensions, saying that as per the W & OP pension form dated 19.11.1981 submitted by Mr. Mariampillai, it is revealed that Mr. Mariampillai has divorced the complainant on 30.06.1980.
- Mr. K.P. Mariampillai did not submit the divorce certificate or any other documentary proof and the Respondent too did not verify this contradictory position clearly, in the light of Mrs. Mariampillai's position that there had been no divorce.

Recommendation

In view of the above it is evident that the Complainant is the widow of Mr. K.P. Mariampillai and she is in law entitled to the Widow and Orphan's Pension after her husband died in 2013. Though the Complainant's husband had claimed he had divorced her, in the light of her assertion that there had been no divorce, it was imperative for the officials of the Pensions Department to have considered her W & OP application duly submitted along with the marriage certificate and affidavit. In the absence of any documentary proof regarding such a divorce it is unfair to deny the complainant the W & OP pension. Thus such denial is a violation of Article 12(1) of the Constitution.

It is recommended to make arrangements to release the W & OP Pension to the Complainant with all arrears.



Commissioner
Human Rights Commission of Sri Lanka.

M/A



Commissioner
Human Rights Commission of Sri Lanka.

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.

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