"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 5TH DAY OF SEPTEMBER 2024 / 14TH BHADRA, 1946

WP(C) NO. 38719 OF 2016

PETITIONER:

SMT.ANITHA T, AGED 51 YEARS, W/O. LATE C.SREENIVASAN, AMRITHA CHAITHANYAPURI, CHUNDAMKANDI PARAMBIL, P.O PUTHIYAGADI, PUTHIYAGADI, KOZHIKODE-673 021.

BY ADVS.
SRI.P.S.SREEDHARAN PILLAI
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN
SRI.T.K.SANDEEP

RESPONDENTS:

1 **KERALA STATE CIVIL SUPPLIES CORPORATION LIMITED NILAMBUR DEPOT, P.O NILAMBUR, MALAPPURAM-679 329, REPRESENTED BY ITS MANAGING DIRECTOR.**

2 **TAHSILDAR, PERINTHALMANNA TALUK, MALAPPURAM DISTRICT-679 322.**

3 **STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE, SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

4 **LEELA K., KOLOTHODI HOUSE, VADAKKANGARA P.O., MALAPPURAM DISTRICT-676 324.**

ADDL.R5 HARISH, AGED 32 YEARS, S/O. LATE SREENIVASAN @

SHAFEEKH, KOLOTHODI HOUSE, VADAKKANGARA.P.O., PIN-676324, MALAPPURAM DISTRICT.

ADDL.R6 HANEESH BABU, AGED 29 YEARS, S/O. LATE SREENIVASAN @ SHAFEEKH, KOLOTHODI HOUSE, VADAKKANGARA.P.O., PIN-676324, MALAPPURAM DISTRICT.

(ADDL.R5 AND R6 ARE IMPLEADED AS PER ORDER DATED 12-11-2021 IN IA 2/2021 IN WP(C) 38719/2016).

BY ADVS.
SRI.PAULOCHAN ANTONY P., SC, KERALA STATE CIVIL SUPPLIES CORPORATION
P.SAMSUDIN
SRI.K.C.ANTONY MATHEW
KUM.ANJU CLETUS
SRI.JITHIN LUKOSE
SRI.M.S.MOHAMMED ANSARY
M.ANUROOP
BY SENIOR GOVERNMENT PLEADER, SRI.JUSTIN JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12.08.2024, THE COURT ON 05.09.2024 DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, the legally wedded wife of late Sri.C.Sreenivasan, has filed this writ petition under Article 226 of the Constitution of India, seeking to quash Ext.P9 order issued by the 2nd respondent herein and also for a declaration that the petitioner is the legal heir of the deceased C.Sreenivasan along with her daughter and mother-in-law. She has also sought for a direction to the 1st respondent to release and make payment of the terminal/pension benefits of her deceased husband, expeditiously.

2. The short facts necessary for the disposal of this writ petition are as under:

The petitioner married C.Sreenivasan on 08.10.1983 as per the Hindu rites and customs. The deceased was working as an Assistant Salesman in the 1st respondent Corporation. A daughter was born in the wedlock on 18.08.1984. The petitioner has produced their marriage certificate as Ext.P1, the birth certificate and the SSLC certificate of the daughter as Exts.P2 and P3 respectively. It is stated that the marital life of the petitioner with deceased C.Sreenivasan was not cordial on account of many reasons and the petitioner had

filed a petition for claiming maintenance before the Family Court, Kozhikode, which claim has been disposed of by Ext.P4 order dated 18.11.2014, by which, the deceased was directed to pay a maintenance of Rs.3,000/- per month to the petitioner herein. It is also stated that the deceased had contracted a second marriage with the 4th respondent herein during the subsistence of the marriage with the petitioner and also obtained a divorce from the petitioner from the Family Court, Malappuram, *ex parte*. Upon coming to know about the *ex parte* order as above, the petitioner sought for *setting aside* the said *ex parte* order and by Ext.P5 order dated 10.06.2015, the Family Court, Malappuram has *set aside* the *ex parte* order. C.Sreenivasan passed away on 03.08.2015 as evidenced by Ext.P6 death certificate dated 30.09.2015. It is further pointed out that the petitioner's request with the employer of the deceased – the 1st respondent herein, for the terminal benefits was not processed as evidenced by Ext.P7 on account of the alleged dispute as regards the legal heirs of the deceased. In the meantime, the 4th respondent applied for the legal heirship certificate and the 2nd respondent by Ext.P9 dated 23.11.2016, found that the 4th respondent and her

children are the legal heirs of the deceased C.Sreenivasan and the claim of the petitioner and her daughter cannot be accepted. The order at Ext.P9 also makes reference to the fact that the deceased C.Sreenivasan had in the meantime converted to Islam and the marriage with the 4th respondent was as an Islam and even the 4th respondent also converted to Islam Religion. It is in the above circumstances that the petitioner has filed the captioned writ petition with the afore reliefs, pointing out that the change in religion would not dissolve the marriage performed with the petitioner under the Hindu customs. It is also pointed out that the change in the religion as above is only a ruse to defeat the interest/claim of the petitioner and her daughter.

3. A counter affidavit dated 31.01.2017 has been filed by the 2nd respondent - Tahsildar, pointing out that the order at Ext.P9 was issued relying on the legal opinion obtained by him from the District Government Pleader, that the claim had to be settled by applying the Muslim Law insofar as the deceased had converted to Islam and he was also buried as per the Islamic rites, etc.

4. The 1st respondent employer has filed a counter affidavit

dated 05.01.2018, pointing out that it is on account of the non-production of the Succession Certificate/other records, that the terminal benefits are not released.

5. The 4th respondent has filed a counter affidavit dated 08.11.2021, pointing out that she was not aware about the earlier marriage of the deceased with the petitioner herein, that she came to know about the said marriage only subsequently, that it is the petitioner herein who deserted the deceased C.Sreenivasan @ Shafeeq, that the 4th respondent and the deceased embraced Islam on 14.06.1994, etc. The 4th respondent has filed another affidavit dated 16.11.2021, producing Exts.R4(f) to R4(q) to contend that the deceased lived and died as a Muslim. The petitioner has filed a reply affidavit dated 17.11.2021 contending that the claim that the 4th respondent and the deceased converted to Islam is not correct and it was only a device for contracting the second marriage, that there are several suspicious circumstances as regards the alleged conversion which require further thorough investigation and scrutiny.

6. Though this Court attempted a mediation between the petitioner and the 4th respondent on 02.12.2022, it is reported by

both sides that the mediation attempt has failed. Therefore, the writ petition is taken up for final hearing.

7. I have heard Sri.Arun Krishna Dhan, the learned counsel for the petitioner, Sri.Paulochan Antony, the learned Standing Counsel for the 1st respondent, and the learned Government Pleader for respondents 2 and 3 and Sri.P.Samsudin, the learned counsel for respondents 4 to 6.

8. Sri.Arun Krishna Dhan, the learned counsel for the petitioner would contend that:

(i) The second marriage of a Hindu husband after conversion to Islam without having the first marriage dissolved is invalid and void, as held by the Apex Court in **Sarla Mudgal v. Union of India [(1995) 3 SCC 635], Lily Thomas v. Union of India [(2000) 6 SCC 224]** and **Suresh Babu v. V.P.Leela [2006 (3) KLT 891]**.

(ii) He also submits that the observations in paragraph-9 of the judgment in **Suresh Babu**'s case (*supra*) that a Hindu who has a Hindu wife, upon conversion to Islam

and on marriage to another Muslim woman, the property upon his death will pass to the Muslim wife is not having precedential or binding value since the said observations were casual in nature without referring to the judgments of the Apex Court in **Sarla Mudgal**'s case (*supra*) **and Lily Thomas** 's case (*supra*). He also relies on the judgment of the Apex Court in **Mavilayi Service Co-operative Bank Limited and Others v. Commissioner of Income Tax, Calicut [2021) 7 SCC 90]** to contend that a decision is binding not because of the conclusion but in regard to the ratio and the principles laid down therein.

(iii) He refers to the judgments of the Apex Court in **Vidhyadhari v. Sukhrana Bai [(2008) 2 SCC 238]** and also the discussions in paragraphs 13 of said judgment and contends that the above discussions and findings were only with respect to the issue of a nominee filing an application under the provisions of the Succession Act and would not be a binding precedent

for consideration of the question as regards the status of a legal heir.

(iv) He also refers to the judgment of the Apex Court in **C.K.Prahalada and others v. State of Karnataka and others [(2008) 15 SCC 577]** to contend that the Apex Court themselves have clarified that the succession certificate referred to in **Vidhyadhari**'s case (*supra*) is only for limited purposes and upon obtaining such certificate, one does not become owner of the property.

(v) In the light of the above submissions, Sri.Arun Krishna Dhan makes reference to the death certificate at Ext.P6 and points out that the deceased is identified only as C.Sreenivasan and not by the name referred to by the 4th respondent, the application at Ext.P8 for the legal heirship certificate submitted by the 4th respondent only makes a claim under the Hindu Succession Laws and the applicant under Ext.P8 is identified by her name as "Leela" alone, to contend that the petitioner is justified

in contending that the change to Islam, etc. is only for defeating the claim of the petitioner. He also points out that even the employer in their counter affidavit points out that the employer was not aware about the acceptance of a new religion or the subsequent marriage, etc. with reference to the service book produced along with the counter affidavit of the employer.

9. Per contra, the learned counsel for the 4th respondent would refer to the provisions of Section 16 of the Hindu Marriage Act, 1955 (for short, the 'Act') as also the judgments of the Apex Court in **Revanasiddappa v. Mallikarjun [2023 (5) KHC 486]** and **Mukesh Kumar and another v. Union of India and others [2022 (2) KHC 695]** and contend that the claim made by the 4th respondent which stood accepted by the proceedings at Ext.P9 is perfectly justified.

10. I have also heard the learned Government Pleader and the learned Standing Counsel for the 1st respondent.

11. The issue arising for consideration in this writ petition is as

to whether the 2nd respondent was justified in issuing Ext.P9 legal heirship certificate in favour of the 4th respondent and her children, brushing aside the objection raised by the petitioner herein.

12. The facts are not in dispute. The petitioner herein was married to deceased C.Sreenivasan on 08.10.1983. A daughter was born in the wedlock as evidenced by Ext.P2. An order at Ext.P4 is issued by the Family Court, Kozhikode, allowing the claim of maintenance made by the petitioner herein against deceased C.Sreenivasan. The decree of divorce obtained by Sri.C.Sreenivasan against the petitioner herein is *set aside* by the Family Court, Malappuram by Ext.P5. Thereafter, the Family Court has not passed final orders on the divorce application. Sri.C.Sreenivasan has left for heavenly abode on 03.08.2018. The 4th respondent applied for getting the legal heirship certificate from the 2nd respondent herein who issued the impugned order at Ext.P9.

13. The Apex Court in **Sarla Mudgal**'s case (*supra*) was called upon to consider whether a Hindu husband married under Hindu Law by embracing Islam can solemnise a second marriage and also whether such a second marriage without having the first marriage

with the Hindu lady dissolved under law, would be a valid marriage qua the first wife who continues to be a Hindu. The Apex Court considered this issue and laid down the following principles:

> "21. A Hindu marriage solemnised under the Act can only be dissolved on any of the grounds specified under the Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. The second marriage by a convert would therefore be in violation of the Act and as such void in terms of Section 494 IPC. Any act which is in violation of mandatory provisions of law is per se void.
>
> 22. The real reason for the voidness of the second marriage is the subsisting of the first marriage which is not dissolved even by the conversion of the husband. It would be giving a go-by to the substance of the matter and acting against the spirit of the statute if the second marriage of the convert is held to be legal.
>
> 24. Looked from another angle, the second marriage of an apostate-husband would be in violation of the rules of natural justice. Assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Act to marry again without getting his earlier marriage under the Act dissolved. The second marriage after conversion to Islam would, thus, be in violation of the rules of natural justice and as such would be void.

> 25. The interpretation we have given to Section 494 IPC would advance the interest of justice. It is necessary that there should be harmony between the two systems of law just as there should be harmony between the two communities. The result of the interpretation, we have given to Section 494 IPC, would be that the Hindu law on the one hand and the Muslim law on the other hand would operate within their respective ambits without trespassing on the personal laws of each other. Since it is not the object of Islam nor is the intention of the enlightened Muslim community that Hindu husbands should be encouraged to become Muslims merely for the purpose of evading their own personal laws by marrying again, the courts can be persuaded to adopt a construction of the laws resulting in denying the Hindu husband converted to Islam the right to marry again without having his existing marriage dissolved in accordance with law.

The Apex Court in **Lilly Thomas**'s case (*supra*) has approved the earlier judgment in **Sarla Mudgal**'s case (*supra*), finding as under:

> "35. From the above, it would be seen that mere conversion does not bring to an end the marital ties unless a decree for divorce on that ground is obtained from the court. Till a decree is passed, the marriage subsists. Any other marriage, during the subsistence of the first marriage would constitute an offence under Section 494 read with Section 17 of the Hindu Marriage Act, 1955 and the person, in spite of his conversion to some other religion, would be

liable to be prosecuted for the offence of bigamy. It also follows that if the first marriage was solemnised under the Hindu Marriage Act, the "husband" or the "wife", by mere conversion to another religion, cannot bring to an end the marital ties already established on account of a valid marriage having been performed between them. So long as that marriage subsists, another marriage cannot be performed, not even under any other personal law, and on such marriage being performed, the person would be liable to be prosecuted for the offence under Section 494 IPC.

59. We are not impressed by the arguments to accept the contention that the law declared in *Sarla Mudgal case* cannot be applied to persons who have solemnised marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law. We do not agree with the arguments that the second marriage by a convert male Muslim has been made an offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is

liable to be dismissed on this ground alone."

14. The challenge raised in this writ petition against Ext.P9 proceedings is to be considered on the touchstones of the principles laid down by the Apex Court in the afore two judgments. The long and short of the above judgments is that if a Hindu who had solemnised a marriage under the Act with a Hindu female, cannot bring to an end the marital ties with the Hindu wife by mere conversion to another religion, so long as the earlier marriage is subsisting. There cannot be a reference to Personal Laws for that matter. Applying the above principles to the facts and circumstances of the case at hand, it is not in dispute that the petitioner was married to C.Sreenivasan on 08.10.1983 and a daughter was also born out of this wedlock. It might be that C.Sreenivasan later married Leela. Even going by the counter affidavit filed by the 4th respondent - Leela, C.Sreenivasan married her in 1986 (See paragraph 6 of the counter affidavit). It is further admitted by the 4th respondent- Leela that herself, C.Sreenivasan and their children embraced Islam only on 14.06.1994 as evidenced by Ext.R4(d) and also entered into a legal marriage as per the Muslim Personal Law on the same date as per Ext.R4(e) (see paragraph 8 of the counter affidavit). Thus, as on

the date of marriage of Sreenivasan with the 4th respondent herein, the marriage of C.Sreenivasan with the petitioner herein had not been dissolved in a manner known to law. Without getting the marriage with the petitioner herein dissolved as provided by law, the marriage of C.Sreenivasan with the 4th respondent herein cannot be legalised. Furthermore, even though the legal heirship certificate application has been filed with reference to the provisions under the Hindu Succession Act (Ext.P8), the name of the 4th respondent is shown only as Leela. The death certificate of C.Sreenivasan is also in the name of Sreenivasan C. and the name Shafeeq is not figuring anywhere. From the above, I find subsistence in the contention of the petitioner that Ext.P9 and the findings contained therein to the effect that the legal heirship certificate has to be considered with reference to the Muslim Personal Laws, is not correct. Therefore, Ext.P9 issued by the 2nd respondent is *set aside*.

15. In the normal course, this Court would have left the present writ petition at that. However, I notice that the deceased C.Sreenivasan, had married the 4th respondent and the said fact cannot be disputed even if the said marriage may not be a valid

marriage for the afore reasons. It is also to be noticed that the deceased had three children with the 4th respondent herein. The fact that the two children who have been impleaded in this writ petition as additional respondents 5 and 6, are the children of the deceased C.Sreenivasan and the 4th respondent, is also not in dispute. In such circumstances, this Court cannot be oblivious to the rights of the said children of C.Sreenivasan and the 4th respondent.

16. In **Vidhyadhari**' s case (*supra*) the Apex Court considered a case wherein one Sukhrana Bai was the first wife of Sheetaldeen and during the subsistence of the said marriage, Sheetaldeen married Vidhyadhari and in that marriage, there were four children. Sheetaldeen, during his lifetime, had nominated Vidhyadhari and his children for receiving his terminal benefits after cancelling the original nomination filed in the name of the 1st wife, Sukhrana Bai. After the death of Sheetaldeen, Sukhrana Bai and Vidhyadhari applied for succession certificates. The trial court issued the succession certificate in favour of Vidhyadhari and not in favour of Sukhrana Bai. In an appeal at the instance of Sukhrana Bai, the High Court reversed the findings of the trial court and directed the

succession certificate to be granted in favour of the 1st wife - Sukhrana Bai in exclusion of the 2nd wife. The matter was taken up before the Apex Court by 2nd wife – Vidhyadhari. Considering the above position, the Apex Court found as follows:

> "The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his lifetime. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the succession certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of succession certificate the court has to use its discretion where the rival claims, as in this case, are made for the succession certificate for the properties of the deceased.

The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a succession certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had borne his four children and had claimed a succession certificate on behalf of children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

14. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be 1/5$^{th\ to}$o balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the trial court to the satisfaction of the trial court."

Therefore, in the present case also, it is to be noticed that the 4th

respondent in her marriage with C.Sreenivasan had three children. Though the marriage with the 4th respondent cannot be held to be a valid marriage, this Court cannot lose sight of the fact that in that marriage, there were three children born to C.Sreenivasan. In such circumstances, the rights of the said three children is also to be taken into consideration by this Court. In such circumstances, it is to be held that the said three children are also entitled for terminal benefits of the deceased.

18. Though Sri.Arun Krishna Dhan, the learned counsel for the petitioner submitted that the above findings of the Apex Court have since been clarified by the Apex Court in **C.K.Prahalada***'s case* (*supra*), I notice that in the said judgment, at paragraph 17, the court has held only as under:

> "A succession certificate is granted for a limited purpose. A court granting a succession certificate does not decide the question of title. A nominee or holder of succession certificate has a duty to hand over the property to the person who has a legal title thereto. By obtaining a succession certificate alone, a person does not become the owner of the property."

Therefore, the rights of the children of C.Sreenivasan born out of the 4th respondent cannot be forgotten with reference to the principles

laid down in paragraph 17 of the afore judgment. In the above judgment, the Apex Court only opined that the nominee of the succession certificate has a duty to hand over the property to the person who has a legal title thereto and by obtaining a succession certificate alone, the person does not become the owner of the property. Applying the above principles, to the facts of the case, even if the legal heirship certificate is being issued to the petitioner, her daughter and mother-in-law, the right of the three children of C.Sreenivasan cannot be lost sight of.

19. Furthermore, I also notice that the provisions of Section 16 of the Hindu Marriage Act, 1955 provide as under:

> **"16. Legitimacy of children of void and voidable marriages**.- (1) Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
>
> (2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or

> conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.
>
> (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

The afore-extracted provisions of Section 16 of the Act are substituted by Act 68 of 1976 with effect from 27.05.1976. Under the above-substituted provision, there are three sub-sections. Under sub-section (1) in respect of marriages which are null and void under Section 11 and children born out of such marriage, the legislature has legitimatised such children even if such children were born before the commencement of the Amendment Act and whether or not a decree of nullity has been granted in respect of the marriage. Sub-section (2) dealt with the situations where a decree of nullity under Section 12 of the Act is obtained, legitimising the children begotten

or conceived before the decree is made. Sub-section (3) dealt with the limited rights of such legitimate children under sub-sections (1) or (2), to claim only the property of the parents. The Apex Court has found that the above amendments were brought in, so as to bring social reforms, conferment of social status of legitimacy on a group of innocent children, etc. in the judgment of the Apex Court in **Parayankandiyal Eravathkanapravan Kalliani Amma v. Devi [(1996) 4 SCC 76]**. This Court also notices the judgment of the Apex Court in **Revanasiddappa v. Mallikarjun [2023 (5) KHC 486]** relied on by the learned counsel for the 4th respondent wherein with reference to the amended provisions of Section 16 of the Act, the court has held that the children born out of a void marriage will also have rights to the property of the parents. Therefore, by virtue of the amended provisions under Section 16 of the Act referred to above, the three children born out of the marriage of C.Sreenivasan with the 4th respondent herein are also legitimate.

20. In this connection, a reference is to be made to the judgment of the Apex Court in **Mukesh Kumar v. Union of India [2022 (2) KHC 695]**, wherein the Apex Court considered the

question whether the condition imposed in a Circular issued by the Railway that compassionate appointment cannot be granted to the children born from the second wife of the deceased employee is legally sustainable. The Apex Court, after referring to the earlier judgment in **Union of India and another v. V.R.Tripathi [(2019) 14 SCC 646],** found as under:

> "7. This Court held that the scheme and the rules of compassionate appointment cannot violate the mandate of Art.14 of the Constitution. Once S.16 of the Hindu Marriage Act regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would violate Art. 14 if the policy or rule excludes such a child from seeking the benefit of compassionate appointment. The circular creates two categories between one class, and it has no nexus to the objects sought to be achieved. Once the law has deemed them legitimate, it would be impermissible to exclude them from being considered under the policy. Exclusion of one class of legitimate children would fail to meet the test of nexus with the object, and it would defeat the purpose of ensuring the dignity of the family of the deceased employee."

The above principles reiterated by the Apex Court in the afore judgment would apply to the facts and circumstances of the case at hand also.

21. At this juncture, the reliance placed by Sri.Arun Krishna Dhan, the learned counsel for the petitioner, on the judgment of this Court in **Jayachandran v. Valsala [2016 (2) KHC 177]** is to be considered. Sri.Arun Krishna Dhan, the learned counsel for the petitioner, would refer to paragraph 16 of the above judgment, wherein the Division Bench of this Court held that unless and until a marriage is pleaded or proved, the provisions under Section 16 of the Act would not get attracted, even if the amended provisions of Section 16 of the Act are held to be a beneficial legislation. In the said paragraph, this Court held that "the object of the Act is to protect children born to Hindus, once it is proved that they performed the ceremony of a marriage, in whatever form it be, although ultimately it may later turn out to be a void marriage". He points out that there was no marriage between C.Sreenivasan and the 4th respondent herein, and therefore, the benefits under Section 16 of the Act as amended could not be extended to the three children born to C.Sreenivasan and the 4th respondent herein. However, a reference to the counter affidavit dated 08.11.2021 would show that C.Sreenivasan married the 4th respondent in 1986 and they were

living as husband and wife thereafter (paragraph 6 of the counter affidavit). After converting to Islam, they entered into a marriage under the Muslim Personal Law on 14.06.1994 as evidenced by Ext.R4(e). Again, various documents produced along with the counter affidavit dated 16.11.2021 would also disclose that there was a marriage between C.Sreenivasan and the 4th respondent herein. Therefore, this Court is not in a position to accept the contentions raised by Sri.Arun Krishna Dhan, the learned counsel for the petitioner, relying on the judgment of this Court in **Jayachandran**'s case (*supra*)**.**

In the result, this writ petition would stand allowed as under:

i. Ext.P9 issued by the 2nd respondent would stand quashed.

ii. The 2nd respondent is directed to issue a legal heirship certificate to the petitioner, her daughter and the three children born to the deceased C.Sreenivasan and the 4th respondent herein [two of whom have been impleaded as the additional respondents 5 and 6 in this writ petition.

iii. The 1st respondent is directed to release and make payment of terminal/pension benefits of the deceased C.

Sreenivasan, to the petitioner, her daughter, mother-in-law (if she is alive) and the three children (born to C.Sreenivasan and the 4th respondent herein) in equal shares.

iv. If the mother of the deceased C. Sreenivasan is not alive, her share is to be provided to the petitioner and her daughter.

Sd/-

HARISANKAR V. MENON

JUDGE

ln

APPENDIX OF WP(C) 38719/2016

PETITIONER EXHIBITS

EXHIBIT P1.	**COPY OF THE MARRIAGE CERTIFICATE ISSUED ON 8.11.12.**
EXHIBIT P2.	**COPY OF THE BIRTH CERTIFICATE OF THE DAUGHTER ISSUED ON 4.4.88.**
EXHIBIT P3.	**COPY OF THE SSLC CERTIFICATE OF THE DAUGHTER ISSUED IN MARCH 2000.**
EXHIBIT P4.	**COPY OF THE ORDER OF THE FAMILY COURT, KOZHIKODE IN MC 104/13.**
EXHIBIT P5.	**COPY OF THE ORDER DATED 10.6.15 IN IA 1190/14 IN OP 358 OF 2013 OF THE FAMILY COURT, MALAPPURAM.**
EXHIBIT P6.	**COPY FO THE DEATH CERTIFICATE DATED 30.09.15 RELATING TO THE HUSBAND OF THE PETITIONER.**
EXHIBIT P7.	**COPY OF THE LETTER DATED 22.09.16 ISSUED BY THE IST RESPONDENT CORPORATION.**
EXHIBIT P8.	**COPY OF THE APPLICATION SUBMITTED BY THE 4TH RESPONDENT.**
EXHIBIT P9.	**COPY OF THE ORDER NO.C2-16763/2015 DATED 623.11.2016 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENTS' EXHIBITS:

Exhibit R4(F)	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY OF VADAKKANGARA OLD JUMA MASJID MOSQUE COMMITTEE DATED 14/11/2021.**
Exhibit R4(G)	**TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE SECRETARY OF PANDIKKAD ANHGADI JUMA MASJID COMMITTEE DATED 07/10/20211 IN RESPECT OF THE 2ND PETITIONER.**
Exhibit R4(H)	**TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE LOCAL REGISTRAR SREEKRISHNAPURAM GRAMA**

	PANCHAYATH DATED 30/01/2016 IN RESPECT OF THE 3RD PETITIONER.
Exhibit R4(I)	**TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE KIDANGAZHI MASJID COMMITTEE IN RESPECT OF THE YOUNGER SON AJEESH DATED 25/04/2019.**
Exhibit R4(J)	**TRUE COPY OF THE CERTIFICATE DATED 14/06/1994 ISSUED BY THE MAUNATHUL ISLAM ASSOCIATION PONNANNI.**
Exhibit R4(K)	**TRUE COPY OF THE ADHAR CARD OF THE 1ST PETITIONER.**
Exhibit R4(L)	**TRUE COPY OF THE ADHAR CARD OF THE 2ND PETITIONER.**
Exhibit R4(M)	**TRUE COPY OF THE PASSPORT OF THE 2ND PETITIONER.**
Exhibit R4(N)`	**TRUE COPY OF THE ADHAR CARD OF THE 3RD PETITIONER.**
Exhibit R4(O)	**TRUE COPY OF THE PASSPORT OF THE 3RD PETITIONER.**
Exhibit R4(P)	**TRUE COPY OF THE ADHAR CARD OF THE YOUNGER SON AJEESH.**
Exhibit R4(Q)	**TRUE COPY OF THE PASSPORT OF THE YOUNGER SON AJEESH.**