

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT LARKANA

C. P No. D – 50 of 2025

Present;

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner : Mst. Hayat Khatoon, through
Mr. Javed Ahmed Soomro, Advocate
Respondents : Province of Sindh and others through
Mr. Liaqat Ali Shar,
Additional Advocate General Sindh
Date of hearing : 28.08.2025
Date of order : 28.08.2025

ORDER

Nisar Ahmed Bhanbhro, J:- Through the instant Constitutional Petition, the Petitioner has sought for the following relief:

- (a) *That this Honorable Court may graciously be pleased to direct the Respondents to immediately finalize the Family Pension Case of Petitioner's mother Mst Naseeban Ex-Midwife of Sindh Police Department, Larkana District, in the name of Petitioner and release the family pension of the petitioner right from the date of stoppage of such family pension after the death of petitioner's mother Mst. Naseeban without any delay;*
- (b) *To further direct the respondents to pay all the differential dues of the family pension of late Mst. Naseeban to the Petitioner with effect from the date of stoppage of such pension, as admissible under the rules.*

2. Mr. Javed Ahmed Soomro, Learned Counsel for the Petitioner contended that the mother of the Petitioner namely Mst Naseeban was employed as Mid Wife in police department District Larkana. Mst. Naseeban retired from service in the year 1991, she drawn monthly pension until her death on 30.04.1995. Thereafter, Petitioner being widowed daughter applied for re-grant of pension benefits as her husband had passed away

in year 1988. He argued that the Respondent No 4 (SSP Larkana) sanctioned the family pension of the Petitioner vide office letter dated 27.09.2022 and forwarded the pension papers to Respondent No 3 (District accounts Officer Larkana). He argued that Petitioner had run from pillar to post for her right, but the Respondents have refused to pay family pension to the petitioner under extraneous consideration. He prayed for grant of the petition.

3. Mr. Liaqat Ali Shar, Learned Additional Advocate General Sindh, controverting the submissions of Learned Counsel for the Petitioner, argued that Petitioner was not entitled for family pension benefits, as she was mother of a son aged above 44 years. He contended that Petitioner was not dependent upon her late mother, therefore, she was not entitled for monthly pension in terms of Rule 302(b) of Civil Service Regulations (C.S.R.). He argued that the Family Pension to the Petitioner was rightly declined. He contended that the Petition was hopelessly time barred as the mother of the Petitioner died in year 1995 and she preferred instant petition in year 2025. He argued that the Petition was misconceived, not maintainable and hit by laches and liable to be dismissed.

4. We have heard learned Counsel for the parties and examined the material made available, before us, on record.

5. Under the Service Laws in vogue in Province of Sindh, the Pension has been recognized as a right of the retired civil servant for his services rendered in the past. Pension provides a survival support in the old age and reflects the state's motherly role for those who served it. Under the Pension Rules, the pension right does not extinguish with the death of pensioner but it devolves upon the legal heirs. Section 20 of the Sindh Civil Servants Act 1973 regulates such right in a manner that a civil servant on his retirement shall be entitled to the pension and gratuity as may be prescribed. In case of the death before or after retirement of a civil servant his legal heirs shall be entitled to receive pension. Section 20 reads as under:

20. Pension and gratuity: (1) *On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.*

(2) *In the event of the death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.*

(3) *No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such a civil servant, not exceeding two-thirds of the pension or gratuity which would have been admissible to*

him, had he been invalidated from service on the date of such dismissal or removal.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity; and any over payment consequent on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family.

6. Legislature in its own wisdom incorporated word shall in above provision of law that on retirement, a civil servant “shall be entitled” to receive pension and gratuity, and in the event of his death before or after the retirement, his family shall be entitled to receive the pension or gratuity as the case may be. This provision of law, impliedly casts a duty upon the competent authority of the retired employee to forthwith sanction pensionary benefits. Sub section 4 further obligated the authority to provisionally pay such anticipatory amount of pension or gratuity as may be prescribed, if the payment of pension was delayed beyond a period of one month.

7. For grant of Family Pension, Rule 4.10 of the Pension Rules, lays down a procedure setting out preference within the family descendance of the deceased employee. Rule 4(10) 2(A) of Pension Rules categorized the priorities of the entitlement of the family members of the deceased pensioner. The widow of the deceased pensioner is entitled to receive the pension on priority and in her absence the unmarried daughters, in absence of unmarried daughter, the eldest widowed daughter shall be entitled to receive the pension. Rule 4.10(A) of the West Pakistan Civil Services Pension Rules, 1963 is reproduced as under;

4.10.2(A) A family pension sanctioned under this rule shall be allowed as under:

*(i) (a) **To the widow of deceased**, if the deceased is male Government servant, or to the husband, if the deceased is a female Government servant.*

*(b) **If the Government servant had more than one wife**, and the number of his surviving widows and children does not exceed 4, the pension shall be divided equally among the surviving widows and eligible children. If the number of surviving widow and children together is more than 3, the pension shall be divided in the following manner, viz, each surviving widow shall get 1/4th of the pension and the balance(if any) shall be divided equally among the surviving eligible children. Distribution in the above manner shall also take place whenever the*

Government servant leaves behind surviving children of a wife who has predeceased him in addition to the widow and her children if any.

(c) In the case of female Government servant leaving behind children from a former marriage in addition to her husband and children by her surviving husband, the amount of pension shall be divided equally among the husband and all eligible children. In case the total number of beneficiaries exceeds four, the husband shall be allowed $\frac{1}{4}$ of the pension and the remaining amount distributed equally among the eligible children.

(ii) Failing a widow of husband, as the case may be the pension shall be divided equally among the surviving sons not above 25 years and unmarried daughter.

*(iii) **Failing (i) and (ii), to the eldest widowed daughter.***

(iv) Failing (i) and (iii), to the eldest widowed of the deceased son of the Government servant.

(v) Failing (i) and (iv), to the eldest surviving son of deceased son of the Government servant.

(vi) Failing (i) and (v), to the eldest unmarried daughter of a deceased son of the Government servant.

(vii) Failing these, to the eldest widowed daughter of a deceased son of the Government servant.

8. The referred rule, articulated that the widowed daughter was entitled to receive pension under Rule 4.10(2)(A)(iii). The Finance Department Government of Sindh vide notification / office memorandum dated 07.04.2016, FURTHER LIBERLIZED THE PENSION RULES and extended the benefit of family Pension to widowed and divorced daughters for life. For the ease of reference, the Office Memorandum is reproduced below:

**GOVERNMENT OF SINDH
FINANCE DEPARTMENT**

No. FD(SR-III)3-115/2015

Karachi dated the 07th April, 2016

OFFICE MEMORANDUM

**SUBJECT: FURTHER LIBERALIZATION OF LIBERALIZED PENSION
RULES FOR CIVIL SERVANTS – FAMILY PENSION**

In continuation of this Department's Policy Circular No FD(SR-III)3/35-83, dated 27th August 1983 & Notification No FD(SR-III)3/11-84 dated 29th June, 1989 and clarification No FD(SR-III)3/23-2000 dated 15th March 2000, with the

approval of the Competent Authority(i.e Chief Minister Sindh), Government of Sindh has been pleased to extend the benefit of family pension to the widowed/divorced daughter of deceased pensioner by making following amendments, applicable w.e.f 01.07.2015 in Family Pension in rule 4.10, sub rule (2) Clause A sub-clause (iii) & sub-clause (vi) of the West Pakistan Civil Services Pension Rules 1963.

- A. *(iii) “failing (i) to (ii) to the widowed daughter for life or till her re-marriage*
- B. *(vi) failing (i) to (v) to the divorced daughter for life or till her re-marriage.*

SECRETARY TO GOVERNMENT OF SINDH

9. The further liberalization of the pension rules of 1963 by the Government of Sindh, with no hesitation in mind entitled the widowed and divorced daughter for re-grant of the pensionary benefits for life or until re-marriage. The Further Liberalized Pension Rules, 2016 have recognized the right of widowed daughter without any exception, the circular if any issued by the Finance Department linking that right to the degree of dependance, would not set at naught the rules framed in consonance to the statute and would not be sustainable under being discriminatory and biased towards women. The grant of family pension to the widow, widowed daughter, unmarried daughter and divorced daughter has been recognized under the law independently.

10. The case of the Petitioner for re-grant of family pension was declined by the Respondents No 2 and 3 on the ground that she was not dependent upon deceased pensioner and she has had a son aged above 44 years for sustenance and survival. To sustain their objection, the Respondent No 2 and 3 in their reply, have referred to Rule 302(b)(6) of C.S.R, which granted discretionary powers to Government to re-grant pension to any member of the family dependent upon the deceased pensioner. It is quite strange to notice that the Respondents No 2 and 3 who were at the helm of affairs of the finance department, were unaware that Rule 302 of C.S.R did not apply to ordinary pension cases. Referred rule regulates the pension of the employees who were killed or died of a wound or injury received while serving in a civil capacity with military force. It would be advantageous to reproduce Rule 302 of the C.S.R for the ease of reference:

302. (a) If a family pension is granted under Rule 275 to the family of a Government Servant who is killed or dies of a wound or injury received while serving in a civil capacity with a military force, its amount shall be one half of his pay subject to a maximum of Rs 200 per mensem and a minimum of Rs. 10 per mensem.

(b) (1) For the purpose of awarding a family pension under this rule the term “family” includes only wife, legitimate child, and father or mother dependent upon the deceased for support.

(2)

(3)

(4)

(5)

(6) On the cessation of the Pension through death, marriage, or other cause, Government may, at their discretion, regrant it in whole or in part to members of the family lower down in the scale prescribed in clause (2) who may have been dependent on it for support, and for such period as they may consider desirable, not exceeding that admissible under (3) or (4) for an original grant.

11. The Respondents were reading sub rule (b)(6) of rule 302 read in isolation, it has to be read in conjunction with the main provisions. From bare reading of the rule 302 of C.S.R, it inferred that the same was applicable to the cases for re-grant of the family pension, where the initial family pension was granted under Rule 271, 272 and 275 of C.S.R. For the academic purposes it would be advantageous to refer rule 275 of C.S.R, which reads as under:

275. Government may sanction the grant of family pension to the family of a Government Servant who is killed or who dies of injuries received or disease contracted in the circumstances described in Rule 271 or 272.

12. Rule 4.10 of the Pension Rules, did not articulate that a widowed daughter shall be disentitled of the family pension, in case she had the offspring of son aged above 21 years, any notification or circular issued by the Finance Department linking grant of pension to a female/ widowed daughters under the concept of dependency on male would not be sustainable under the law as notifications or circulars of the department cannot not in any manner override, nullify and set at naught the provisions of statute or the rules framed thereunder. The concept of dependence for grant of any benefit, which accrued as a matter of right was alien to law. Had it been so, a widow would have stood excluded to receive the pension benefits on the death of her husband in case he was survived by sons aged above 21 years. The entitlement of the petitioner to receive the family pension cannot be denied on the ground of dependence. It is a right guaranteed under the statute and must stand transferred to her without hinderance. Broadly speaking woman is an independent right holder. Her rights were never linked to her marital status. The exclusion of a widowed daughter from the right recognized under statute reflected a regressive, repressive and

untenable conception, which is neither permissible under Islamic Law nor acceptable under the Laws of Land so also under the constitutional command. Linking the civic and economic right of woman on her relationship to a man under any relationship, had no backing of the law. The Constitution of the Country grants rights to the citizens under the concept of personhood, where women are equally protected and held equal in status to that of the men. The Constitution guarantees rights to individuals, not to marital units or prescribed social roles. Women are independent rights-bearing citizens, their rights were not linked to their relation as mother, wife, sister or daughter. Financial independence is pivotal to the independence of women, it results into a free, fair, hygienic and amicable environments to deal the affairs of home.

13. The Honorable Supreme Court of Pakistan in the case of Province of Sindh through Secretary Government of Sindh, Karachi and others Versus Mst. Sorath Fatima and another CIVIL PETITION NO.616-K OF 2025, while deciding the issue of grant of pension right to a divorced daughter observed as under:

2. *Having said that, we also are of the opinion that in the context of family pension, it is deeply concerning that admissibility of pension to a surviving daughter continues to depend entirely on her marital status. This dependency model reveals that there is a systematic bias that treats a daughter as a dependent, with her financial dependency shifting from parent to spouse. This assumption not only perpetuates the stereotypical mindset about women being dependent members within the family structure but also fails to recognize women as individuals or autonomous individuals who may have the capacity to be financially independent. It is also based in the flawed belief that unmarried or divorced women are financially dependent, while married women are financially secure. This mindset fails to account for the fact that married women may also face financial difficulty. It reflects a systematic bias that fails to recognize women as autonomous right-holders and also does not account for the lived realities of women. It assumes, first and foremost that all women are financially dependent within the traditional family unit, from parents to husband and secondly that marriage per se ensures financial stability. It totally ignores the hardship and insecurities faced by married women who may be in need of the financial security in the form of pension. Dependency is not a metric for financial stability rather it is an assumption that disregards actual economic need and the lived experiences of many women. The claim of surviving daughters should be based on need and individual assessment rather than a legal framework built on parochial assumptions as to what is stereotypically believed to constitute dependency. This form of presumptive exclusion based solely on marital status is unconstitutional, discriminatory and a violation of Articles 14, 25, and 27*

of the Constitution. The concept of tying a daughter's eligibility to family pension solely to her marital status results in an unjustifiable distinction.

14. The Constitution of the Islamic Republic of Pakistan of 1973 also obligated the state to shun parochial treatment to the individuals. Article 29 burdened each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with the Principles of Policy in so far as they relate to the functions of the organ or authority. Article 33 obligated that the State shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens. Article 34 obligated the state to take steps to ensure full participation of women in all spheres of national life. Article 38 obligated the state to secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, to provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure. Any action contrary to these principles would militate the concept of a welfare state.

15. Honorable Supreme Court of Pakistan in the case of The CHIEF COMMISSIONER REGIONAL TAX OFFICE, BAHAWALPUR and others Versus SHAHEEN YOUSAF reported as 2025 S C M R 1076 has held that:

7. The rights of widows should not be viewed as acts of state generosity, but as legal entitlements rooted in constitutional guarantees, statutory protections, and developing judicial principles. Furthermore, international human rights instruments to which Pakistan is a party, including the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") impose obligations on the State to dismantle legal and social barriers to women's full economic participation. Any policy that makes public employment contingent upon a woman's marital status not only entrenches dependency but effectively penalizes her for exercising a fundamental liberty. Widows, like all citizens, are entitled to employment, dignity, equality, and autonomy without discrimination or reprisal. The law must serve as a shield against exclusion, not a tool for reinforcing outdated social hierarchies.

8. It is also critical to consider the social context in which such executive decisions operate. Widowhood, in its simplest sense, refers to the status of a woman whose spouse has died. However, in many societies, including ours, it carries a layered social identity often accompanied by stigma, isolation, and a diminished sense of social worth. Widows are too often viewed through the prism of loss and dependence, rather than as individuals

with agency and resilience. This perception restricts their choices, particularly when it comes to remarriage or economic independence. The law must reject these harmful cultural narratives and affirm that widowhood is not a diminution of identity but a life circumstance deserving of dignity, protection, and equal opportunity. It is incumbent upon courts to ensure that public policy reflects this understanding and shields widows from both overt and covert forms of systemic discrimination.

16. Adverting to the objection raised by the Learned Additional AG, as to the maintainability of this Petition under the doctrine of laches being filed after 30 years of the death of the deceased pensioner. In our candid consideration such an objection was frivolous and would not sustain, for the reason that the law of laches is not of universal application. The doctrine of laches cannot be applied in every case as a hard and fast rule without examining the dictates of justice, equity and fair play. In the case of Petitioner, they were the Respondents No 2 and 3 who were required to act fairly and justly by granting the family pension of the Petitioner. The Respondents kept the case of Petitioner in files despite of the sanction accorded by the SSP Larkana. The Petitioner had no role in delay, Respondents made her file travel in between them, the attitude of indifference on the part of the Respondents created a recurring cause of action for the Petitioner. She cannot be knocked out on technicalities when otherwise she was entitled to such benefits under the law, as a matter of right. If we place an embargo of laches by non-suiting the petitioner on the said account it will amount to perpetuate injustice to a bereaved family with no fault on their part. Failure of Respondents No 2 and 3 to perform their job diligently and fulfil statutory obligations within time brings the case of the Petitioner within limitation and laches would not debar the petitioner from filing of this Petition. We are of the considered view that there is a recurring cause of action for the petitioner to knock at the doors of justice and petition cannot be dismissed on account of mere delay which in our view is not applicable to instant case.

17. The conclusion drawn by us, finds support from the Judgment of Honorable Supreme Court in the case of Ummar Baz Khan & others Versus Jahanzeb Khan & others reported in **PLD 2013 Supreme Court 268**, wherein the Honorable Apex Court has held as under: “No Court could dismiss a lis on the ground of laches if it defeated the cause of justice and thereby perpetuated an injustice. Bar of Laches could not be over emphasized in a case where the relief claimed was based on a recurring cause of action”

18. In the case of Director General Civil Aviation Authority Versus Abdul Touheed Khan reported in **2010 SCMR 468** the Honorable Apex Court was pleased to grant pension

benefits to the retired employee overruling the objection of maintainability on the doctrine of laches.

19. In the case of Pakistan Post Office Versus Settlement Commissioner reported as **1987 SCMR 1119** while dealing with the issue of laches the Honorable Supreme Court was pleased to hold as under “It needs to be emphasized that there is no justification to equate laches with statutory bar of limitation. While the former operates as a bar in equity, the latter operates as a legal bar to the grant of remedy. Thus, in the former all the dictates of equity, justice and balance of legitimate rights are to be weighed; in the latter, subject to statutory relaxations in this behalf nothing is left to the discretion of the Court; it is a harsh law. Thus, passage of time per se brings the statute of limitation in operation, but the bar of laches does not deny the grant of right or slice the remedy unless the grant of relief in addition to being delayed must also perpetuate justice to other party.”

20. Every individual enjoys the equal protection of law and is subject to due process of law. The Petitioner was entitled to receive the pension benefits being a widowed daughter within one month of the death of her mother as articulated under section 20 of the Sindh Civil Servants Act, 1973. The Respondents have failed to demonstrate bonafide and good faith for declining the pension benefits to the Petitioner. Sufficient material was available on record to elicit, either they acted under malice or were ignorant of the law while passing the impugned order of the denial of the monthly pension. They took blanket cover of wrong provisions of rules which did not attract to the case of Petitioner, and deliberately put her case in doldrums. Learned Law Officer representing the Respondents supported their stance, which too cannot be appreciated.

21. The delay in grant of pension benefits offends the foundational concept of the law that a right must go to the person to whom it belongs without any excuse or delay. Honorable Supreme Court of Pakistan, in the case of Haji Muhammad Ismail Memon reported as PLD 2007 SC 35 shown its dismay and anger over delay in pension payments and observed that all the Government Departments, Agencies, and Officers deployed to serve the general public within the limit by the Constitution as well as by the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary/retirement benefits cases in future and violation of these directions shall amount to criminal negligence and dereliction of the duty assigned to them. The authorities at the helm of affairs may not forget that in future their families may also face this critical situation and stand helpless. We record our dismay on the conduct of the Respondents the way they dealt with the family pension case of the Petitioner, which resulted into mental agony and distress and caused a financial burden upon the petitioner to bring instant *lis*.

22. For what has been discussed herein above, We have arrived at an irresistible conclusion that the acts of the Respondents to refuse re-grant of Family Pension to the Petitioner were illegal, perverse and without any lawful authority and based upon the wrong interpretation of provisions of rules (Rule 302(b) (6) of C.S.R), thus not sustainable under the law and amenable to the judicial review of this Court in its powers conferred under article 199 the Constitution of Islamic Republic of Pakistan, 1973. Consequently, this petition is allowed the Respondents are directed to pay family pension to the Petitioner along with past arrears, within a period of Two Months from the date of the order.

23. The petition is disposed of in the above terms. Office to send Copy of the order to Respondents No 1 to 4 by fax today for compliance.

Judge

Judge

Larkana

Dated 28.08.2025

Approved for reporting

Manzoor