

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**C.P No. D-469 of 2021**

**Present:**

Yousuf Ali Sayeed and  
Sana Akram Minhas, JJ

**Shabana Begum.....Petitioner**

Versus

**Controller General & Others.....Respondents**

Petitioner, in person.

Sandeep Malani, Assistant Advocate General, Sindh along with  
Shakeel Ahmed, Accounts Officer on behalf of the Respondent  
No.2.

Malik Naeem Iqbal, Advocate, Amicus Curiae.

Date of hearing : 23.04.2025

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution so as to impugn the disciplinary proceedings and Order whereby her deceased husband, Manzoor Ahmed Jalbani (the “**Deceased**”), was removed from service as a Senior Auditor (BS-16) in the office of Controller General Accounts.

2. Briefly stated, the factual matrix underpinning the matter is that the Deceased was serving in the aforementioned capacity and post until he was removed from service by the Accountant General Sindh following vide an Office Order dated 10.05.2016 (the “**Impugned Order**”) upon culmination of disciplinary proceedings undertaken against him on the basis of three separate charge sheets issued between 2013 and 2016 (the “**Proceedings**”). Critically, soon thereafter, specifically on 13.05.2016, the Deceased was admitted to hospital, placed on a ventilator, and then expired on 03.06.2016. During his hospitalization, the Petitioner, being his wife, filed a mercy appeal before the Controller General of Accounts seeking reconsideration of the Impugned Order. She also filed further departmental appeals dated 06.06.2016 and 05.10.2016, which were eventually forwarded to the appellate authority and rejected vide letter dated 09.02.2018. Subsequently, a co-accused of the deceased, who had been awarded the same major penalty of removal from service, was granted relief by converting such punishment into one of compulsory retirement vide office order dated 09.11.2018, which prompted the petitioner to file the present petition seeking that the Impugned Order be set aside.
  
3. Suffice it to say that the matter remains of relevance and continues to present a live issue in as much as the Deceased had served for a period of approximately 23 years, otherwise qualifying for pension.

4. The first question that arises in that backdrop is whether a major penalty of removal from service imposed upon a civil servant can be challenged by his legal heirs after his demise, and if so, whether a Petition under Article 199 would lie in the matter notwithstanding the bar contained under Article 212 of the Constitution?
  
5. It merits consideration in that regard that in the case reported as *Regional Operation Chief, NBP & Others v. Mst. Nusrat Parveen & Others* 2021 SCMR 702, the Supreme Court held that certain service related rights, particularly pecuniary and pensionary benefits, do not extinguish upon the death of a civil servant. Rather, they form part of the estate and are inheritable by the legal heirs. The Court further observed that the abatement of such proceedings would infringe upon property rights and the dignity of the heirs. Thereafter, in the case reported as *Azra Bibi v. General Manager, Pakistan Railways & Others* 2023 SCMR 46, the Court distinguished a scenario where no service appeal was pending at the time of death, holding that while legal heirs cannot file a fresh appeal before the Service Tribunal, they may however seek other appropriate remedies in such cases. Earlier, in *I.A. Sherwani v. Government of Pakistan* 1991 SCMR 1041, it had been enunciated by a larger bench of the Supreme Court that the bar under Article 212 of the Constitution applies only where the Service Tribunal has jurisdiction, and that in cases where such jurisdiction is lacking, the constitutional jurisdiction under Article 199 remains intact.

6. In the context of the case, it is evident from the record that following his removal from service on 10.05.2016, the Deceased remained hospitalized until his demise on 03.06.2016, leaving him with no opportunity to file a departmental or service appeal during his lifetime. Since the right to sue against a major penalty survives for the benefit of the legal heirs, and given that no service appeal was pending, the Petitioner was justified in invoking the constitutional jurisdiction of this Court under the peculiar circumstances, as the bar under Article 212 would not apply where the Service Tribunal lacked the jurisdiction to entertain a fresh appeal posthumously.
  
7. Turning to the merits, it is apparent from record, that while the Deceased was proceeded against on allegations that payments said to have been fraudulently processed in the G.P. Funds of multiple employees were enabled due to data entered in the computerised system through his User ID, he was exonerated in respect of the first of the three charge sheets issued against him, whereas the inquiries conducted on the latter two were not in consonance with the Government Servants (Efficiency and Discipline) Rules, 1973, as the inquiry reports were sketchy and unsupported by cogent admissible evidence or assertion of personal gain. Furthermore, the Deceased was even otherwise not properly confronted with the material, nor afforded the right of cross-examination, thereby giving rise to serious questions of procedural fairness, and even the plea raised by him as to the possible misuse of his ID was not properly enquired into, which runs contrary to the settled principle that a major penalty cannot be imposed without properly conducting a regular inquiry in accordance with the applicable disciplinary rules. Reference may be made in that regard

to the cases reported as *Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi* and another 1993 SCMR 1440, *Usman Ghani v. The Chief Post Master, GPO Karachi and others* (2022 SCMR 745) and *Federation of Pakistan through Chairman Federal Board of Revenue, FBR House, Islamabad and others v. Zahid Malik* (2023 SCMR 603).

8. In view of the foregoing, we are of the opinion that the Impugned Order cannot stand, and the same is accordingly set aside. Under the given circumstances, where the deceased has passed away and no purpose would be served through remanding the matter for a *de novo* inquiry, we deem it appropriate to direct the Respondents to treat his case as one of retirement from service and release all pensionary benefits and other admissible dues to his legal heirs strictly in accordance with the applicable rules. The petition stands allowed in such terms. While parting with judgment we would like to record our appreciation for the valuable assistance rendered in the matter by the learned *amicus curiae*.

JUDGE

JUDGE