Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

CP No.D-5999 of 2023

(Mst. Kehkashan Bano v. Province of Sindh and others)

Date	Order with signature of Judge

Before:

Mr. Justice Riazat Ali Sahar

Mr. Justice Ali Haider 'Ada'

Hearing

1. For orders on office objection no.19
2. For hearing of main case

Date of hearing and Order: 05.11.2026

Mr. Hubdar, associate of Mr. Usman Farooq, advocate for the petitioner

Mr. Zohaib Ali Khan Sarki, Additional Advocate General Sindh

O R D E R

RIAZAT ALI SAHAR, J.— Through the instant Constitutional Petition, the petitioner, claiming to be the widow of late Feroze Anwar Khan (hereinafter referred to as the "deceased"), seeks directions to respondents No.2 and 3 for disbursement of the pensionary benefits and other outstanding dues of the deceased amongst his lawful heirs, including the petitioner, in accordance with the applicable Pension Rules and Muhammadan Law.

2. Briefly, the case of the petitioner is that the deceased was appointed as Laboratory Technician (BS-16) at Dr. Ruth K.M. Pfau Civil Hospital, Karachi, on 29.06.1981 and retired from government service upon attaining the age of superannuation on 04.03.2021. During his lifetime, he received his retirement benefits and subsequently passed away on 24.03.2022. The deceased was initially married to Mst. Perveen Akhter (respondent No.4), from whom four children, namely, Urooj Fatima, Uroosa, Muhammad Sheroz Khan and Muhammad

Behrooz Khan, were born. Thereafter, on 21.02.2014, the deceased contracted a second marriage with the petitioner. Following his demise, both the petitioner and respondent No.4 submitted their respective claims for family pension. However, owing to the competing claims, the hospital authorities referred the matter to the Accountant General, Sindh, who declined to determine the controversy and advised the petitioner to approach the competent Court. Hence, the instant petition.

3. Learned Additional Advocate General, Sindh, while referring to the statement filed on behalf of respondent No.1, submits that the official respondents do not dispute the entitlement of the lawful beneficiaries to the admissible pensionary benefits and other outstanding dues of the deceased. According to him, the controversy is confined to the competing claims of the petitioner and respondent No.4. He further submits that, pursuant to the order dated 12.03.2026 passed by this Court, the Medical Superintendent of the concerned hospital was directed to coordinate with the Accountant General, Sindh, for depositing the pensionary benefits with the Nazir of this Court. It is maintained that respondents No.2 and 3 have no personal interest in the controversy and are merely responsible for processing and disbursing the admissible benefits in accordance with law.

4. Conversely, respondent No.4 has filed her counter-affidavit, wherein she does not dispute the subsequent marriage of the deceased with the petitioner. However, she maintains that although the deceased had earlier pronounced talaq upon her, the same was subsequently revoked, whereafter their matrimonial relationship was restored and continued until his demise. In support of her contention, she relies upon certain photographs depicting the deceased's participation in family gatherings, including the marriage ceremony of their daughter, Urooj Fatima, as well as medical documents relating to his

treatment at the National Institute of Cardiovascular Diseases (NICVD). She further asserts that their daughter, Uroosa, suffers from mental disability and remains dependent upon the family for her maintenance and care. According to respondent No.4, she and the eligible children are entitled to receive the family pension. She also alleges that the deceased contracted marriage with the petitioner upon an understanding that a residential house would be provided to her and that a house situated in Surjani Town, Karachi, was subsequently gifted to the petitioner. On this premise, she contends that the petitioner has already received sufficient benefits and is not entitled to claim any further amount.

5. We have heard the learned counsel for the parties, the learned Additional Advocate General, Sindh, and have carefully examined the material available on record. The controversy essentially revolves around the following questions:

> (i) Whether the petitioner, being the admittedly married wife of the deceased at the time of his death, is entitled to family pension and other admissible benefits;
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> (ii) Whether the children of the deceased are entitled to receive pensionary benefits and shares in his estate;
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> (iii) Whether respondent No.4 has established that her matrimonial relationship with the deceased subsisted at the time of his death, notwithstanding the admitted pronouncement of talaq; and
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> (iv) In what manner the pensionary benefits and other outstanding dues are required to be disbursed amongst the lawful beneficiaries.

6. Before examining the rival claims, it is necessary to distinguish between family pension payable under the applicable Pension Rules and other outstanding dues forming part of the estate of a deceased government servant. Family pension is a statutory benefit regulated by the relevant Pension Rules, and entitlement thereto must be determined strictly in accordance with the eligibility criteria prescribed therein. Such

pension does not necessarily constitute part of the deceased's inheritable estate merely because it becomes payable following his death. Conversely, unpaid amounts which had accrued and become payable to the deceased during his lifetime, and which legally form part of his estate, are liable to be distributed amongst his lawful heirs in accordance with the applicable law of inheritance. The two categories cannot be treated interchangeably.

7. Adverting to the claim of the petitioner, it is an admitted position that the deceased contracted marriage with her on 21.02.2014. Respondent No.4 has neither denied the solemnization of such marriage nor produced any material suggesting that the matrimonial relationship between the petitioner and the deceased was subsequently dissolved. Consequently, the petitioner's status as a widow of the deceased stands established, subject to verification of the relevant matrimonial record. Her entitlement to family pension shall, however, be regulated by the applicable Pension Rules.

8. The objection raised by respondent No.4 that the petitioner had already received a residential house situated in Surjani Town, Karachi, and therefore stands disentitled to further benefits, is misconceived. A gift made by a person during his lifetime does not, by itself, extinguish the independent legal rights of the donee arising upon his death. No legally enforceable relinquishment, release or settlement affecting the petitioner's lawful entitlement has been established on record. Even otherwise, a purported arrangement concerning a future right of inheritance cannot automatically be treated as a valid surrender of such right. Therefore, the alleged gift of a residential property cannot constitute a lawful basis for excluding the petitioner from the benefits otherwise admissible to her.

9. As regards the children of the deceased, their relationship with him is not disputed by either party. Indeed, the petitioner herself has acknowledged all four children as legal heirs in paragraph 4 of the petition. Their respective rights in the inheritable estate of the deceased are independent of the controversy concerning the matrimonial status of respondent No.4 and cannot be defeated merely on account of the competing claims between the two women. However, their eligibility for family pension must be determined separately under the applicable Pension Rules, having regard to their respective ages, marital status, dependency and other prescribed conditions. In particular, the claim relating to Uroosa, who is stated to be suffering from mental disability, requires consideration under the provisions governing pensionary benefits for children with disabilities, subject to verification through the prescribed procedure.

10. The principal controversy concerns the claim of respondent No.4 that the talaq admittedly pronounced by the deceased was subsequently revoked and that their matrimonial relationship continued until his death. The petitioner, on the other hand, relies upon the registered divorce documents and Talaqnama to dispute the subsistence of that relationship. In this regard, Section 7 of the Muslim Family Laws Ordinance, 1961, provides the statutory framework governing the effectiveness of talaq and its revocation before becoming effective. Whether a particular talaq was lawfully revoked, and whether the matrimonial relationship consequently subsisted, are questions requiring examination of the relevant documents, dates, circumstances and evidence.

11. Respondent No.4 has relied upon photographs of family gatherings and medical documents to demonstrate that the deceased continued to maintain relations with her and their children. However, such material, by itself, does not

conclusively establish that the earlier talaq was lawfully revoked within the prescribed period. Participation in family ceremonies, maintenance of cordial relations or provision of medical assistance may demonstrate continued familial association, but cannot, without further evidence, conclusively determine the legal status of the matrimonial relationship. Furthermore, the counter-affidavit refers to medical treatment allegedly received by the deceased in the year 2025, although his death admittedly occurred on 24.03.2022. This discrepancy also requires clarification through appropriate evidence.

12. Nevertheless, we are conscious of the fact that the question of revocation of talaq involves disputed questions of fact, which ordinarily cannot be conclusively determined in proceedings under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, particularly where recording of oral and documentary evidence may be necessary. It would, therefore, be inappropriate to finally pronounce upon the matrimonial status of respondent No.4 on the basis of the limited material presently available. At the same time, the admitted rights of the petitioner and the children of the deceased cannot be kept in abeyance indefinitely merely because respondent No.4 asserts a competing claim. The ends of justice would, therefore, be adequately served by protecting the disputed entitlement for a reasonable period while permitting respondent No.4 to seek adjudication from the competent forum.

13. Insofar as the distribution of the inheritable estate is concerned, under Muhammadan Law, where a deceased Muslim leaves children, the surviving widow is entitled to one-eighth of the estate, whereas the remaining seven-eighths devolve upon the children, with each son receiving twice the share of each daughter, subject to the existence of any other lawful heirs and satisfaction of prior liabilities of the estate. Where two widows are legally entitled to inherit, the prescribed one-eighth share is

divided equally between them. Accordingly, on the presently disclosed family composition, and subject to verification that no other lawful heirs exist, the respective shares would be as follows:

Legal heir	Share
Petitioner, if sole surviving widow	1/8
Petitioner, if respondent No.4 is also declared a widow	1/16
Respondent No.4, if declared a surviving widow	1/16
Muhammad Sheroz Khan (son)	7/24
Muhammad Behrooz Khan (son)	7/24
Urooj Fatima (daughter)	7/48
Uroosa (daughter)	7/48

These fractions relate exclusively to amounts legally forming part of the inheritable estate and shall not automatically govern the distribution of statutory family pension.

14. In view of the foregoing discussion, we are of the considered opinion that the petition can appropriately be disposed of by issuing directions which safeguard the admitted rights of the lawful beneficiaries, preserve the disputed claim of respondent No.4 and ensure disbursement of the admissible benefits strictly in accordance with law. Consequently, the instant petition is disposed of in the following terms:

> (i) Respondents No.2 and 3, in coordination with the Medical Superintendent, Dr. Ruth K.M. Pfau Civil Hospital, Karachi, shall, within fifteen (15) days from receipt of this order, prepare and submit to the Nazir of this Court a complete and verified statement specifying the nature and amount of all pensionary benefits, arrears and other outstanding dues of the deceased. The statement shall separately identify the amounts payable as statutory

family pension and those which legally form part of the deceased's inheritable estate.

(ii) Respondents No.2 and 3 shall ensure that all amounts already directed to be deposited pursuant to the earlier order of this Court are duly accounted for. Any remaining amount required to be deposited under the said order shall be deposited with the Nazir within fifteen (15) days, subject to proper reconciliation and verification.

(iii) The Accountant General, Sindh, shall process and determine the entitlement of the petitioner and other eligible family members to monthly family pension strictly in accordance with the applicable Pension Rules, without unnecessary delay. The claim of Uroosa shall receive particular consideration under the relevant provisions applicable to children with disabilities, subject to verification of the prescribed requirements. The eligibility of the other children shall likewise be determined independently under the relevant Rules.

(iv) In respect of the amounts forming part of the inheritable estate of the deceased, the Nazir shall, after verification of the legal heirs and their respective entitlements, release the undisputed shares in accordance with Muhammadan Law. For the present, the petitioner shall receive one-sixteenth (1/16) of such estate dues, whereas the shares of the two sons and two daughters shall be distributed in the proportions specified in paragraph 13 above, subject to verification of the complete list of lawful heirs.

(v) The remaining one-sixteenth (1/16) share, representing the amount which respondent No.4 may become entitled to receive if her status as a surviving widow is established, shall be retained by the Nazir in an appropriate profit-

bearing account for a period of ninety (90) days from the date of this order. Respondent No.4 shall be at liberty to approach the competent Court for determination of her matrimonial status and consequential entitlement. In the event that such proceedings are instituted within the prescribed period and proof thereof is furnished to the Nazir, the disputed amount shall remain protected until determination by the competent Court or until further orders. If no such proceedings are instituted within ninety (90) days, the retained amount shall, after due verification, be released to the petitioner, without prejudice to any remedy otherwise available to respondent No.4 under the law.

(vi) The shares of the adult children shall be released directly to them upon verification of their identities and entitlement. Insofar as any minor child or Uroosa is concerned, where she is legally incapable of managing her financial affairs, the respective share shall be safeguarded through an appropriate profit-bearing account or National Savings scheme. Any withdrawal or utilization of the principal amount shall be subject to authorization by the competent Court in accordance with the applicable law. Respondent No.4 may, if so advised, approach the competent forum for appointment or recognition as guardian for the management and protection of such funds.

(vii) It is clarified that the observations made herein regarding the alleged revocation of talaq and the matrimonial status of respondent No.4 are tentative in nature and confined to the disposal of the instant Constitutional Petition. The competent Court, if approached, shall decide the controversy independently, strictly in accordance with law and the evidence brought

before it, without being influenced by any observation contained in this order.

(viii) The Nazir shall ensure compliance with the directions relating to the amounts deposited with this Court and shall submit a compliance report before the Additional Registrar (Judicial) within thirty (30) days, indicating the amounts received, released and retained. Respondents No.2 and 3 shall extend full cooperation to the Nazir and shall not cause any unnecessary delay in processing the lawful claims.

15. Before parting with this order, we deem it appropriate to observe that pensionary benefits are intended to provide financial security to the family members of a deceased government servant. Their lawful disbursement ought not to be unnecessarily obstructed by administrative indecision, particularly where the identity of the beneficiaries is undisputed and only a limited question of entitlement remains to be adjudicated. The concerned authorities are, therefore, expected to discharge their statutory obligations with due diligence, fairness and promptitude, while ensuring that no person legally entitled to receive such benefits is deprived thereof.

16. The instant Constitutional Petition stands ***disposed of*** in the above terms, along with all pending application(s), if any.

Let a copy of this order be transmitted to the Accountant General, Sindh, and the Medical Superintendent, Dr. Ruth K.M. Pfau Civil Hospital, Karachi, for information and necessary compliance.

JUDGE

JUDGE

Nadir*