

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-4291 of 2015

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Petitioner Through Mr. Faiz H. Shah, Advocate.

Respondents No.1 Through Mr. Mr. Muhammad Aslam Butt, DAG.

Respondents No.2 Through Mr. Ameer-ud-Din, Advocate.

Date of hearing 27.02.2017

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- The Petitioner has approached this Court for the following reliefs:-

- a. To order and direct the Respondents including their respective Officials, legal representatives and Officers, to give, grant and pay all benefits specified under the Prime Minister "Family Assistance Package" notified vide Notification No.8/10/2013-E-2 dated 20.10.2014 to the Petitioner forthwith in respect of dues of deceased Shoukat Ali son of Sadiq Ali (an Officer of BPS-18);
- b. To order and direct the Respondents to give, grant and release the (i) balance amount of Rs.8.0 Million (i.e. Rs.7.02 Million after deduction of already paid Rs.8,00,000/-), (ii) full pension since the death of deceased i.e. 11.12.2012 with 8% interest for retention of amount till its realization alongwith (iii) Monthly Benevolent Grant and Group Insurance funds and (iv) cash in lieu of plot etc;
- c. Grant of other relief as deemed fit and proper;

2. The relevant facts of the case are that the Petitioner is the widow of Late Shoukat Ali, who was an employee of the University of Karachi (hereinafter referred to as, "Respondent No.2"), who was appointed in BPS-17 as Assistant Controller, Examination Department of Respondent No.2 vide Notification dated 01.03.2007. Subsequently, vide office order of the Registrar of the Respondent No.2, the post was upgraded from BS-17 to BS-18. However, on 11.01.2012, the husband of the Petitioner namely Shoukat Ali passed away when he met with an accident while he was in service with the Respondent No.2. After the death of deceased Shoukat Ali, Petitioner approached the Respondent No.2 and demanded benefits pursuant to the Family Assistance Packages and dues accrued to Deceased but she did not receive any response thereof from the Respondents. Ultimately, the Petitioner approached the Court of learned III-Additional District Judge, Karachi East by instituting Succession Misc. Application No.694/2012 (hereinafter referred to as the "Succession Petition") and the same was allowed vide Order dated 06.03.2013 (hereinafter referred to as "Order"). It was held in the Order that the Petitioner is entitled to get pensionary dues of the deceased Shoukat Ali and Respondent No.2 was directed to arrange the pensionary dues of the deceased on urgent basis as a Special Case, as the Petitioner is the mother of two suckling minors`.

3. The grievance of the Petitioner is that she is entitled to all the grants and benefits specified under the Prime Minister, Family Assistance Package notified vide Notification dated 20.10.2014

(hereinafter referred to as “the Notification”) in respect of dues of deceased Shoukat Ali. She further claimed that she is also entitled to grant and release of a balance amount of Rs.8.0 Million (Rs.7.02 Million) after deduction of already paid Rs.800,000/-, and full pension since the death of deceased i.e. 11.01.2012 with 8% interest for retention of amount till its realization along with monthly Benevolent Grant and Group Insurance Funds and Cash in lieu of Plot etc. The Petitioner being aggrieved and dissatisfied with the inaction on the part of Respondents has approached this Court through the instant Constitutional Petition.

4. The parawise comments on behalf of the Respondents No.1 and 2 were filed.

5. The learned counsel for the Petitioner Mr. Faiz H. Shah has contended that the instant case pertains to pensionery benefits of the deceased Shoukat Ali, which have not been paid by the Respondent No.2 without any rhyme or reason, thereby, compelling the Petitioner to approach this Court. The learned counsel next contended that the deceased was serving the Respondent No.2 continuously since 5 years prior to his demise and was entitled to pensionery benefits in accordance with the University of Karachi Act, 1972 (“the Act”) and pension Rules framed thereunder. He further emphasized that though the Petitioner has received an amount of Rs.800,000/- as part of the Family Assistance Package as per the Notification dated 20.10.2014 issued by the Respondent No.1. However, subsequent to the same the Respondent No.2 did not pay the amount as per the said Notification. He further claimed that the Petitioner is entitled to receive the amount. He further argued

that the Notification could have retrospective effect w.e.f. 15.06.2013 being beneficial in nature and that the Petitioner has been discriminated as the Respondent No.2 has already paid certain amount to the widow of one Professor Dr. Waheed ur Rehman. However, the Petitioner has not been meted out similar treatment. The learned counsel referred to pension Statute 14 of Respondent No.2 and argued that the Petitioner is entitled to claim pension as the husband of the Petitioner rendered his service more than five years with the Respondent No.2.

6. On the other hand, the learned counsel for the Respondent No. 2 Mr. Ameer-ur-Din has raised the question of maintainability of instant petition under Article 199 of the Constitution, however, he argued that Respondent No.2 has non-statutory, Statutes, Regulations and Rules. He further argued that the deceased Shoukat Ali did not possess minimum length of service viz. 10 years to be entitled for pension and admittedly the deceased has less than 10 years' service, as such he was not entitled to be granted such relief under Section 26 of University of Karachi Service Pension Statute. He next contended that the lump sum grant, leave encashment, Provident Fund and Group Insurance have already been paid to the Petitioner and there is no provision for monthly Benevolent Grant in Karachi University Act, 1972 and statutes framed thereunder. He next argued that the Notification has not been adopted by the Respondent No.2, however, it was decided in the meeting that if funds are provided by the Respondent No.1 under the said scheme the Respondent No.2 will implement the Notification. He further argued that the Respondent No.2 is an Autonomous Body and runs its financial

affairs on the budget allocated by the Respondent No.1 through Higher Education Commission. He lastly argued that the Petitioner is not entitled for any further amount, full pension and other benefits and that the amount to which she was legally entitled to has already been paid. He prayed for dismissal of the Petition. The learned counsel has relied upon the case of Muhammad Zahid Maqsood versus University of Karachi and others (2013 MLD 09).

7. Mr. Muhammad Aslam Butt, learned DAG has adopted the arguments of learned counsel for the Respondent No.2. However, he argued that the Assistance Package issued by the Establishment Division/Respondent No.1 was meant for families of Federal Government Employees, who die during Service. He further submitted that the additions/amendments in the Package issued under Notification dated 20.10.2014 had been held in abeyance by the Competent Authority vide letter dated 09.02.2015. He lastly argued that the deceased passed away in the year 2012 and whereas the Notification was issued after his death, as such this Notification will not have retrospective effect and the Petitioner is not entitled for such benefits.

8. Mr. Faiz H. Shah learned counsel for the Petitioner, in exercising of his right of rebuttal has argued that the Notification dated 20.10.2014 is silent with regard to the factum of conditions of ten years as prescribed in Section 26 of the University of Karachi Statute. The said condition prescribed above is not applicable in the case of the Petitioner, however, there are two categories mentioned in the Notification i.e. "In Service Death and "Security Related Death" and the case of the Petitioner falls

within the ambit of “In Service Death”. He further argued that this Notification has already been given retrospective effect w.e.f. 15.06.2013. He further argued that the Petitioner is also entitled for pension as per Notification dated 15.01.2008. He next argued that Section 26 of Karachi University Statute is not applicable. He lastly argued that the case of the Petitioner relates to the pensionary benefits, and the Petitioner has been deprived of the same, which is in violation of the fundamental rights of the Petitioner, as such the instant Petition is maintainable under Article 199 of the Constitution. In support of his contention, he has relied upon the case of Defence Housing Authority versus Lt. Col Jawaid (2013 SCMR 1707) and Muhammad Rafi and other versus Federation of Pakistan and others (2016 SCMR 2146).

9. We have heard learned counsel for the Petitioner, learned counsel for the Respondent No.2 and learned DAG and have perused the entire material available on record as well as case law cited at the bar.

10. Foremost, we would address the question of maintainability of instant Petition under Article 199 of the Constitution. Admittedly, the University of Karachi Services, Pension, Statutes have been framed under Section 28(1) of the University of Karachi Act, 1972 by the Competent Authority of Respondent No.2. We have to see whether or not the statutes referred to above are statutory in nature, which requires an approval of the Government making them statutory and rather it deals with instructions for internal control or management of Respondent No.2. Perusal of Section 28 of the University of Karachi Act, 1972, reveals that these statutes are for the internal use, control and management of

Respondent No.2. Beside this, there is no approval of the Government as such these statutes are non-statutory in nature. The Reference is safely placed on the case of Muhammad Zahid Maqsood versus University of Karachi and others (2013 MLD 09) and another unreported case of Muhammad Zaman etc versus Government of Pakistan (Civil Appeal No.1313/2014).

11. The second question that arises is as to whether a Constitutional Petition can be filed against the Respondent No.2 which has non-statutory rules. In this respect, we are fortified with the dicta laid down by the Hon'ble Apex Court in an unreported case of Muhammad Zaman etc versus Government of Pakistan (Civil Appeal No.1313/2014).

“We are of the opinion that the above view applies to and is correct vis-à-vis the Regulations in the instant matter as well. Furthermore, as matters stand (since the omission by Act II of 1994), and as mentioned above, the regulation-making power lies solely in the hands of the Board with no intervention or approval of the Federal Government, and this reflects the intention of the Legislature. In this context, as highlighted above, even the structure of the Board as provided for in the Act renders it autonomous, with the Members, save for the Secretary, Finance Division, Government of Pakistan, being private individuals, independent from the Federal Government. In fact, where the legislature wanted the intervention of the Federal Government, it has specifically provided for the same, and in this regard the proviso to Section 54 (1) of the Act is relevant, which states that “the terms and conditions of service of Governor and Deputy Governor shall be determined by the Federal Government”, clearly suggesting that the legislature’s intention was to exclusively clothe SBP with the power to frame regulations to carry out the objects and purpose of the Act. Furthermore, Section 46B (2) of the Act (inserted by the State Bank of Pakistan (Amendment) Act, 1997 (Act No.XIII of 1997), provides that “the Bank, the members of the Board or they staff of the Bank, shall not take instructions from any other person or entity. Including the government or quasi-government entitles. The autonomy of the Bank shall be respected at all times and no person or entity shall seek to influence the members of the Board and Monetary Policy Committee or the staff of the Bank in the performances of their functions or interfere in the activities of the Bank.” It may be added that to give maximum autonomy to SBP, Section 52 (1) of the Act, which empowered the

Federal Government to supersede the Board and entrust the general superintendence and direction of the affairs of SBP to such agency as it (Federal Government) may determine was omitted by the State Bank of Pakistan (Amendment) Act, 2012 (Act No.IX of 2012 dated 13.03.2012). All the above aspects point towards the growing autonomy of SBP.

According to the judgment delivered in Civil Appeal No.654/2010 etc. titled **Shafique Ahmed Khan, etc, Vs. NESCOM through its Chairman, Islamabad, etc** the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to Section 54(1) of the Act and Section 54 (2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving the generality of the power under Section 54 (1) of the Act]. Out of all the matters listed in Section 54 (2) of the Act, clause (i) is the most relevant which pertains to the “recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank’s contribution, for the officers and servants of the Bank; their welfare’ providing amenities, medical facilities, grant of loans and advances, their betterment and uplift.” A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and, therefore, it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. **Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore, non-statutory. Hence, the appellants could not invoke the constitutional jurisdiction of the learned High Court, which was correct in dismissing their writ Petition (emphasize added).**

Since it has been held above that the Regulations are non-statutory, therefore, we do not find it necessary to dilate upon the point of laches.

In light of the above, this appeal is dismissed.”

12. We therefore, are of the considered view that issue in hand is fully covered by Para above of the Judgment passed by the Hon’ble Apex Court announced on 21.02.2017, referred to hereinabove, which provides

that the Constitutional Jurisdiction of this Court cannot be invoked against the Department having non-statutory rules.

13. We have gone through the Order passed by learned III-Additional District Judge Karachi East in the Succession Petition, wherein it was categorically held in the last paragraph that the Petitioner is entitled to get pensionary dues of the deceased Shoukat Ali. Record reveals that summary for payments were prepared by the Respondent No.2 and calculated amount through cheque was deposited with the Nazir of learned III-Additional District Judge Karachi East, in Succession Petition No.694/2012 and balance amounting to Rs.370,000/-, through cheque dated 30.06.2015 was issued in favour of the petitioner, by the Respondent No.2.

14. Admittedly, the Petitioner has already received all the dues payable as on 14.11.2012, which were to be paid to her deceased husband. The basic arguments of the learned counsel for the Petitioner is that the deceased served the Respondent No.2 for five years and therefore, qualified for full pension since his death, in addition to the monthly Benevolent Grant and Group Insurance. We do not agree with the contention of the learned counsel for the Petitioner that the deceased having service tenure of 5 years with the Respondent No.2 was entitled for full pensionary benefits and monthly Benevolent Grant, which were only admissible to the pensioners, who qualify conditions as prescribed under the law. Since the deceased did not qualify the minimum years of service as laid down under Section 26 of the University Statute, whereby the qualifying service for being entitled to pensionary benefits is

minimum of 10 years, whereas, it is an admitted fact that the deceased was an employee of the Respondent No.2 and had served it only for a period of 5 years, as such the deceased was not entitled for regular pensionary benefits and monthly Benevolent Grant.

15. As per Section 19 of University of Karachi Service Pension Statute, there are four classifications of pension, which are as under:-

1. **Compensation pension:-** *if a permanent University servant is selected for discharge owing to the abolition of his permanent post or owing to a change in the nature of the duties of that post, he shall, unless his is appointed to another post the conditions of which are deemed to be at least equivalent to those of his own, have the option:-*

(a) of taking any compensation pension or benefit to which he may be entitled for the service he has already rendered; or

(b) of accepting another post of transfer to another establishment even on lower pay, if offered, and continuing to count his previous service for pension.

2. **Invalid pension:-** *(1) An invalid pension is awarded on his retirement from University service, before reaching the age of superannuation, to a University servant who by bodily or mental infirmity is permanently incapacitated for further service, on production of a medical certificate from the Medical Authority.*

(2) A university servant who wishes to retire on invalid pensions should apply to the Vice-Chancellor through the Head of his Department who may direct him to present himself before the relevant Medical Authority for obtaining a medical certificate on incapacity for further service in the following form:-

.....
.....

3. **Superannuation pension:-** *A Superannuation Pension is granted to a University servant who retires or has retired after 1st July, 1972 or attaining the age of 60 years.*

4. **Retiring pension:-** A Retiring Pension is granted to a servant, who not being eligible for Superannuation Pension:-

- (i) Opts to retire after 25 years qualifying service or such less time as may for any special class of University servant be prescribed ; or
- (ii) Is compulsorily retired, by the competent authority, after 25 years qualifying service;
- (iii) Is compulsorily retired from service by the authority competent to remove him from service on grounds of inefficiency, misconduct or corruption;

16. As per section 26 of University of Karachi Service Pension Statute, which provides that “Amount of Full Pension:- (1) After a qualifying service of not less than 10 years, full superannuation, retiring, invalid or compensation pension may be granted not exceeding the maximum limit prescribed at Annexure-1.” (Emphasis added)

17. From a bare perusal of the above cited section, we are of the affirmative view that the same is applicable and the case of the Petitioner’s deceased husband does not meet the requisite criteria stipulated in the said Section. As far as Section 14 is concerned, on which reliance has been placed by the learned counsel for the Petitioner, the same is reproduced here for the sake of convenience:-

“Section 14 Temporary & officiating service:- (i) University servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension, and

- (ii) temporary and officiating service followed by confirmation shall also count for pension.

18. As per the above, an University employee, who have rendered temporary service for less than 10 years at a temporary establishment is

allowed to count the period of temporary service for the purposes of his pension (or gratuity), but temporary service must be continuous and excludes broken period of temporary service rendered previously. This section cannot be used to override the condition for qualifying service for pension and the employee has to have the bare minimum number of years in service for being entitled to pension. Section 14 (ii) provides that University employee who have rendered temporary and officiated service for less than five years immediately followed by confirmation shall also count for gratuity or pension (as the case may be), which (service) must also be continuous. By way of illustration, where University Employee rendered continuous temporary or officiating service for three years and was subsequently immediately confirmed, those three years would be counted towards his service for the purposes of pension.

19 It is further observed that the word “Count” has been used as opposed to “qualify” or “illegible”. The Chambers 21st dictionary defines “Count” as “to find the total amount of (items), by adding up item by item; to include”. Concise Oxford English Dictionary (Twelfth Edition) defines “Count” as “to determine the total number of.” “recite numbers in ascending order”.

20. Thus in the light of above, the service rendered for more than five years as contemplated by Section 14 (i) & (ii) would only be added, included, or taken into account for the purposes of pensionary benefits when the employee serves minimum number of years for grant of pension.

21. This proposition is further supported in the case reported as PLD 2013 SC 829, in which it has been held that:-

“Pension is not a bounty from the State / employer to the servant / employee, but is fashioned on the premise and the resolution that the employee serves his employer in the days of his ability and capacity and during the formers debility, the latter compensates him for the services so rendered. Therefore, the right to pension has to be earned and for the accomplishment thereof, **the condition of length of service is more relevant and purposive** (Emphasis added).

22. Thus, we are of the candid view that Section 14 of University of Karachi Service Pension Statute would not entitle employee of Respondent No.2 rendering temporary service in a temporary establishment of less than ten years would be entitled to grant of regular pension, rather such period would only be counted towards pension if the employee is otherwise entitled to pension. This principle is elucidated in the case of Chairman Pakistan Railway Government of Pakistan Islamabad and others Versus Shahjahan Shah and others (PLD 2016 SC 534).

23. Progressing to the next question raised before this Court as to whether the Notification could have any bearing on the case of the Petitioner, we are of the view that the same does not benefit the Petitioner because the same could not be applied retrospectively to the case of the Petitioner, as the husband of the Petitioner passed away on 11.01.2012, whereas the Notification issued by the Respondent No.1 on 20.10.2014.

24. Reverting to the plea raised by the learned counsel for the Petitioner with respect to the decision of the Syndicate of the Respondent No.2 in adopting the Notification is concerned, we are of the view that the same was conditional and subject to the provision of funds by the Federal Government to the Respondent No.2. Therefore, the plea of the Petitioner cannot be considered firstly, because the same cannot have retrospective effect and secondly, because the Family Package was kept in abeyance by the Respondent No.1 vide Office Memorandum dated 09.02.2015 and even if the same had not been kept in abeyance, the same was applicable only to those employees who had demised on account of being a victim of a terror attack, whereas the deceased passed away in an accident and not on account of any terrorist attack.

25. So far as the plea raised by the learned counsel for the Petitioner that the Respondent No.2 has paid certain amount to the widow of one Professor Dr. Waheed-ur-Rehman is concerned, Mr. Qamar Iqbal Khan Chief Account, University of Karachi submitted statement in Court which is available in the Court file that an amount of Rs.10,00,000/- paid to the widow of Professor Dr. Waheed-ur-Rehman was on account of Financial Assistance Package for families of Karachi University Employees dated 24.08.2007 due to her husband's security related death. Perusal of the statement reveals that widow of Professor Dr. Waheed-ur-Rehman was not given pensionary benefits under the said Financial Assistance Package, due to non-availability of funds or under pension Rules, for not qualifying minimum length of service of her husband at the time of his death. The case law cited by the learned

counsel for the Petitioner is quite distinguishable from the facts and circumstances of the present case.

26. In the light of the above facts and circumstances of the case, the instant Petition, being devoid of any legal standing, is hereby dismissed along with pending application.

JUDGE

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