

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6940 of 2017

Muhammad Iqbal Naseem Petitioner

Versus

The Province of Sindh and others Respondents

Date of hearing: 11.12.2017

Mr. Abdul Salam Memon Advocate for the Petitioner.
Mr. Abdul Jalil Zubedi, Assistant Advocate General
along with DSP Raza Mian (Legal) on behalf of
I.G.P. Sindh SIP Khalid of P.S. Jamshed Quarter,
SIP Muhammad Irshad of P.S. Baloch Colony.

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner is seeking declaration to the effect that the Impugned Committee Report dated 08.02.2017 issued by the office of Inspector General of Police Sindh Karachi/ Respondent No. 4 as illegal, violative of Notification dated 20.05.2009 issued by Government of Sindh for Shaheed grant and judgment dated 08.12.2016 passed by this Court (Circuit Court at Hyderabad) in Constitution Petition No. D-752 of 2015. Petitioner seeks further direction to the Respondents to immediately sanction / grant Shaheed compensation, monthly

salaries, other allowances and benefits to the Petitioner as admissible under the law.

2. The brief facts of the case are that the Petitioner is father of deceased Naveed Iqbal (Police Constable No. 31713) who left his home in uniform for official duty but he was deliberately hit by unknown driver of the vehicle. The FIR bearing No. 405 /2014 was lodged under section 302 PPC read with section 7 of ATA 1997 at Baloch Colony Police Station. The said FIR was disposed of as "A" Class by the Order dated 02.03.2015 passed by the learned Judge Anti-Terrorism Court No. III Karachi. Petitioner added that a letter has been written by Superintendent of Police, RRF Al-Falah Base, Karachi to the I.G.P. Sindh, with the request to declare Shahadat of PC Naveed Iqbal (since deceased) but no efforts have been made. Petitioner further added that on 01.06.2016 he filed Constitution Petition No. D-3250/2016 before this Court for consideration of the case of deceased PC Naveed Iqbal to the effect whether he embraced Shahahdat or not. Petitioner averred that this Court vide Order dated 21.09.2016 disposed of the aforesaid Petition with the following observation:-

"Keeping in view the available record we direct the Respondent No. 2 & 4 to constitute a committee to consider the case of deceased Syed Raees Abbas whether he embraced "Shahadat" or not. In case the committee recommends the case, the due compensation shall be paid to the petitioner/legal heirs of the deceased in accordance with law. This exercise should be completed within forty five (45) days. Copy of this order be transmitted to the learned AAG, Petition is disposed of in above terms."

Petitioner added that this Court vide order dated 07.10.2016 rectified the error in paragraph 4 of the order

discussed supra with red ink and instead of Syed Raees Abbas in the third line, the name Naveed Iqbal may be inserted. Petitioner added that this Court vide Order dated 06.03.2017 disposed of the contempt application being CMA No. 32583/2016 with the following observation:-

“Counsel states that since the abovementioned instructions were not complied with hence the alleged contemnor has entailed himself to be hauled up in contempt of Court proceedings. Thereafter comments were called from the alleged contemnor and it was apprised that in compliance of the order dated 21.09.2016 a high-officials meeting was held on 27.01.2017 and the case of the petitioner for declaring his father as “SHAHEED” is not found under the criteria of “SHAHEED” as defined in “The Shaheed Recognition and Compensation Act 2014”. Copy of the said order has been provided to the counsel for the petitioner, who after going through the said order states that he is not satisfied with the said decision and would adopt the legal procedure as available to him under the law against the said order. In our view, since compliance of the order has been made by the alleged contemnor and a decision in this regard has been taken, the petitioner, in our view may adopt the legal procedure as available to him under the law by challenging the said order, if so advised. Application stands disposed of”

Petitioner has asserted that the Respondents in compliance of the Order passed by this Court, constituted a Committee under the Chairmanship of the Additional IGP, CTD Sindh Karachi on 27.01.2017 to review the case of deceased Constable Naveed Iqbal. Per Petitioner the Committee unanimously decided that the case of deceased PC Naveed Iqbal does not fall under the criteria for Shaheed as defined in Shaheed Recognition and Compensation Act 2014. Petitioner being aggrieved by and dissatisfied with the

findings of the Committee dated 08.02.2017 has approached this Court on 14.10.2017.

3. Upon notice, the Respondent No. 4 has filed para-wise comments.

4. Mr. Abdul Salam Memon, learned Counsel for the Petitioner has argued that the Petitioner is the father of Shaheed namely Naveed Iqbal Police Constable No. 31713, of RRF Al-Falah, Karachi, who was martyred during the course of service, while performing his duty in Police Uniform by unknown driver/vehicle deliberately/willingly hit his motorcycle with intention to kill Shaheed namely Naveed Iqbal; that the Respondents are bound to grant/release forthwith all the dues/compensation and so also monthly salaries to the Petitioner, so as to enable the Petitioner to provide sustenance to the family of Shaheed, comprising of legal heirs including two minor children and also provide them all necessities of life; that despite the fact that the son of the Petitioner Shaheed namely Naveed Iqbal has been strongly recommended to be declared Shaheed by the officers concerned yet the matter is being unnecessarily delayed to the detriment of the Petitioner and family members of the Shaheed without any lawful justification such act on the part of the Respondents is not warranted under the law; that the Petitioner has legal right/interest in ensuring that the Respondents be dealt with in accordance with law and the illegal and unlawful acts & deeds of the Respondents amount to infringement of the fundamental rights of the petitioner and are amenable under writ jurisdiction.

5. Mr. Abdul Jalil Zubedi, learned A.A.G Sindh, representing the Respondents has contended that the case of Petitioner's deceased's son was put up before the Committee that was constituted in pursuance of Home Department Government of Sindh vide letter dated 29.12.2011. The Committee held on 16.04.2015 & 27.01.2017 reviewed the case of Petitioner's son and unanimously decided that the case of deceased PC/31713 Naveed Iqbal does not fall under the criteria for Shaheed as per existing applicable rules i.e. Sindh Shaheed Recognition and Compensation Act-2014.

6. We have heard learned counsel for the parties and perused the material available on record.

7. Important questions of law involved in the subject Petition is as follows:

- i) **Whether the case of Petitioner's son namely Naveed Iqbal (deceased police constable) can be declared as Shaheed under Sindh Shaheed Recognition and Compensation Act-2014.**

8. We have perused the rejection letter dated 08.02.2017 issued by the Committee headed by Additional IGP Sindh, which is reproduced as follows:

"In pursuance of Hon'ble Sindh High Court, Karachi Order dated 24.12.2016 passed by the Honorable Sindh High Court, Karachi in C.P. No.3250 of 2016 filed by Muhammad Iqbal Naseem, the meeting of Declaration Committee was held under the Chairmanship of the Additional IGP, CTD Sindh Karachi on 27.01.2017, to review the case of deceased Police Constable No. 31713 Naveed Iqbal of RRF Al-Falah Base, Karachi in purview of Shaheed Declaration / compensation:-

The following attended the meeting:-

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| 1. Dr. Sanaullah Abbasi, PSP
Addl: IGP CTD Sindh, Karachi. | Chairman |
| 2. Mr. Munir Ahmed Shaikh, PPM, PSP
DIGP H. Qts Sindh Karachi | Member |
| 3. Mr. Imran Yaqoob Minhas, PSP
DIGP Finance Sindh Karachi | Member |
| 4. Mr. Abdul Salam Shaikh, PPM, PSP
AIGP Welfare, Sindh Karachi | Secretary |

3. In this regard, the case of deceased PC-31713 Naveed Iqbal was put up before the committee held on 27.01.2017. the committee after interviewing the investigation officer and discussion at length, unanimously decided that the case of deceased PC-31713 Naveed Iqbal of RRF Al Falah Base, Karachi does not fall under the criteria for Shaheed as defined in Shaheed Recognition and compensation Act-2014” as well as Government of Sindh, Finance Department Order dated 05.2009.

The report may please be submitted before the Honourable Sindh High Court Karachi.

9. In view of the findings of the Committee, we are of the considered view that the Committee has rightly rejected the claim of the Petitioner. Besides, Petitioner has failed to establish case of discrimination and/or violation of any Law.

10. In order to clarify the legal position that has emerged in the present case we first take up legal issue regarding declaration Petitioner’s son as Shahheed under Sindh Shaheed Recognition and Compensation Act 2014 (Sindh Act No. XVI of 2014) published in Sindh Government Gazette on 11.06.2014. Upon perusal of the Act 2014, prima facie the case of Petitioner’s son

does not fall within the ambit of definition clause (f) of Section 2 of Sindh Shaheed Recognition and Compensation Act, 2014, provides definition of Shaheed which reads as under:-

“Shaheed” means a person who offered sacrifice of his life in line of duty in counter terrorism or becomes victim of an act of terrorism operation or targeted and killed by terrorists group and declared Shaheed in the manner prescribed by Government.”

11. During the course of arguments learned counsel for the petitioner has emphasized and heavily relied upon the Order dated 08.12.2016 passed by this Court in C.P. No. D-752/2015. He also referred to the Notification dated 20.05.2009 issued by the Finance Secretary Government of Sindh and argued that the similar treatment may be given to the Petitioner. We have perused the Order dated 08.12.2016 passed in the case of Mst. Parveen (supra) but the case of deceased PC Naveed Iqbal is not falling within the observation made by this Court as well as within the ambit of Notification No. FD-(SR-33) 10(06)/2006, therefore it would be conducive to refer instant Notification which is that:-

“No. FD (SR-III) 10 (06) /2006. Consequent upon to approval of Chief Minister Sindh the following enhancement in compensation to the officers/ officials of Sindh Police with effect from 01.06.2009, irrespective of grades killed/ incapacitated in encounters including bomb blasts, riots, watch and ward duties or terrorist activities but not including road accidents are notified.”

12. In the light of above discussion we are of the considered view that Police Department cannot circumvent the law to declare any

official of Police department to be Shaheed without declaration as Shaheed as provided under section 2(f) of Sindh Shaheed Recognition and Compensation Act, 2014.

13. In view of what has been discussed above, the instant Constitutional Petition is dismissed along with pending application(s).

Karachi
Dated:

JUDGE

JUDGE

Shafi Muhammad