

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-4177 of 2016

Parveen ShaukatPetitioner

Versus

Province of Sindh and othersRespondents

Date of hearing: 07.11.2017

Mr. Muhammad Rafiq Kalwar and
Mr. Ghulam Muhammad Dars Advocates for the Petitioner.
Mr. Abdul Jalil Zubedi, AAG along with Mr. Shakeel Ahmed,
Deputy Secretary and Mr. Faizullah Tunio, Section Officer Legal
Finance Department.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:-Through the instant petition, the
petitioner has sought following relief(s).

- i) Declare that the impugned Notification dated 26.07.2006 is in violation of law, equity, policy and principles of natural justice.
- ii) Declare that the Respondents' act of counting of petitioner's deceased husband's services only till the date of his missing i.e. 09.05.1999 through impugned Notification rather than till the expiry of seven years from the date of his missing is illegal, unlawful and void ab-initio.

- iii) Declare that the services of the husband of the Petitioner shall be counted till the expiry of seven (7) years from the date of his missing i.e. 09.05.1999 and all the benefits shall be calculated accordingly;
- iv) Direct the Respondents to release the benefits with immediate effect while calculating the seven (7) years missing period towards Petitioner's husband service.

2. Brief facts of the case are that husband of the petitioner namely Shoukat Ali Panhwar was appointed as Mukhtiarkar in BPS-16 vide Notification No. 12-223-1978- Estt.III dated 10th May 1978, issued by the Respondent No.4. Petitioner has averred that her late husband was promoted, on ad-hoc basis, as Assistant Commissioner in BPS-17 vide Notification dated 23.12.1984 and was further promoted as Deputy Secretary / equivalent in BPS-18 on regular basis vide Notification dated 22.06.1998. Petitioner has further added that due to enmity the dacoits in revenge kidnapped her husband on the fateful day of 09.05.1999. The incident of his missing was reported at Police Station Gulshan-e-Iqbal Karachi East vide FIR lodged on 14.01.2000. The petitioner further averred that she came to know, later on that her husband had been killed by the dacoits. Petitioner added that after expiry of 7 years of missing of her husband, the respondent No.3 issued the impugned Notification dated 26.07.2006, whereby, the Competent Authority retired her missing husband and allowed the family pension to his legal heirs for the period of service rendered by him till date of his missing viz 09.05.1999. The petitioner contends that principally the services of her husband should have been counted till the expiry of seven (7) years from the date of his missing i.e. 09.05.1999 and the entire pensionary benefits should have been calculated accordingly. Petitioner further added that due to non-counting of seven years missing/waiting period the family pension

of the petitioner was calculated at Rs. 2057/- for service rendered by him till the year 1999, thus the Petitioner has suffered substantial loss in the pension, insurance, Benevolent Fund and G.P. Fund. The petitioner contends that she received the gratuity in the year 2008, but did not receive Insurance, Benevolent fund and G.P. Fund. As such, the Petitioner filed Civil Suit No. 1005/2009 in the Court of IXth Senior Civil Judge Karachi East, for declaration of death of her husband. Per petitioner the learned Senior Civil Court vide Judgment dated 19.03.2010 decreed the suit of the petitioner as prayed and in compliance with the judgment and decree dated 19.03.2010 passed by the Court, the Chief Secretary, Government of Sindh notified 09.5.1999 (missing date) as the date of death of the petitioner's husband (Shoukat Ali Panhwar) vide obituary / declaration of death. Petitioner further added that she moved an application to the worthy Chief Minister Sindh for grant of Rs. 300,000/- (Rupees three lac) on humanitarian grounds and the same was allowed. Due to financial constraints, the petitioner again moved an application to the worthy Chief Minister Sindh in year 2009 with request to consider 07 years missing/waiting period towards duty for the purposes of pay Group Insurance/Benevolent Fund and Group Pension Fund, according to the pay scale of 2006; but, the Competent Authority declined the request of the petitioner. However, the petitioner was granted Rs. 200,000 on humanitarian grounds. Petitioner being aggrieved of and dissatisfied with the impugned Notification dated 26.07.2006 filed the instant petition on 28.07.2016.

3. Upon notice, the Respondents filed para-wise comments.

4. Mr. Muhammad Rafiq Kalwar, learned counsel for the Petitioner argued that the impugned action of respondents by not counting the services of her husband till the expiry of seven (7) years missing period w.e.f. 09.05.99 is illegal, unlawful and unconstitutional and void ab-initio. He continued that the date of death of his deceased husband was uncertain and mystery; hence, benefit of doubt should go in his favour and missing period allowed towards pensionary benefits. The Counsel continued and contended that the petitioner has sought declaration of the death of her deceased's husband namely Shoukat Ali Panhwar from the competent court of law in Civil Suit No. 1005/2009 filed by her, which was decreed vide judgment dated 19.03.2010 and decree passed on 25.03.2010. Therefore, the respondents have no option, but to count service of the petitioner's husband for the missing period of seven years with effect from 9.5.1999 till the issuance of impugned notification. Learned counsel in support of his contention relied upon the judgment passed by the learned single Bench of High Court of India in the case of Mst. Amrana Begum Mazumdar Vs. State of Assam and others reported in (2006) 2 CLR 527 and argued that for her husband cannot be presumed to be dead on the date of his missing; but, he must be presumed to alive till the date he was declared as dead i.e. 26.7.2006 by the Competent Authority, which date in the instant case would be 26.7.2006. The Counsel for the petitioner asserted that presuming the petitioner's husband as dead on 09.5.1999 (date of his missing) is illogical and in violation Article 124 of the Qanoon-e-Shahdat Order 1984. Having narrated his case as above, he prayed for allowing the instant petition.

5. Mr. Muhammad Abdul Jalil Zubedi, learned AAG, representing the Respondents No.1 to 4 argued that the petitioner lodged FIR on 14.01.2000 with P.S Gulshan-e-Iqbal Karachi, whereby, she reported that her husband namely Shoukat Ali Panhwar was missing since 09.05.1999 and the Department after waiting for seven years as required under Article 124 of Qanoon-e-Shahadat Order 1984 issued Notification dated 26.07.2006 impugned by the petitioner. Learned AAG further added that after investigation by local police, the whereabouts of petitioner's husband could not be traced out, therefore, in view of Finance Department circular letter No. FD(SR-III)3/35-93-II dated 16.01.1994 read with Article 124 Of Qanoon-e Shahadat Order 1984, which provide that if an employee remained missing or untraced for a period of seven years to the satisfaction of the department, family pension may be allowed to his legal heirs as admissible under the prescribed rules. He continued that after completion of prescribed period of seven years, the family of deceased Shoukat Ali Panhwar applied for family pension, which was allowed to them for the period of service rendered by deceased Shoukat Ali till the date of his missing viz. 09.05.1999. Titled for pensionary benefits of a period from date of declaration of death of deceased but from the date of his missing viz 09.05.1999. He further stated that the petitioner had already been compensated by the Competent Authority by sanctioning Rs. 300,000/- (Rupees three lac) and subsequently 200,000/- on humanitarian grounds in addition to pensionary claim / benefits including grant of pay of 180 days of pension/ gratuity/ Benevolent Fund and Group Insurance. Learned AAG further added that the impugned

Notification dated 26.07.2006 was issued in accordance with Article 124 of Qanoon-e-Shahdat Order 1984, therefore petitioner is not entitled for the relief prayed.

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

7. The foremost point in this petition is whether the services of the husband of the Petitioner is to be counted in pensionary benefits till the expiry of seven years (statutory period) i.e. 26.07.2006 or from the date of his missing i.e. 09.05.1999?

8. Perusal of record reveals that the husband of the Petitioner was appointed as Mukhtiarkar in Grade 16 vide Notification dated 10th May 1978 and was promoted on ad-hoc basis as Assistant Commissioner in BS-17 vide Notification dated 23.12.1984 and was further promoted as Deputy Secretary / equivalent in BS-18 on regular basis vide Notification dated 22.06.1998.

9. As per FIR registered under Section 364 / 34 PPC at Police Station Gulshan-e-Iqbal, Karachi, the husband of the Petitioner was allegedly kidnapped on 09.05.1999 and he never returned back to home. Record further reveals that after investigation and efforts by local police and other agencies, whereabouts of the petitioner's husband could not be traced; hence, "A" Class report was submitted by the police. Petitioner moved an application for release of seven years pay / GP Fund/ BF gratuity / pension as per pay scale 2006 in favour of Mr. Shoukat Ali Panhwar with effect from missing date of 09.05.1999 to his family on humanitarian grounds; but the same was not allowed on the

premise that under Article 124 of Qanoon-e-Shahdat Order 1984 seven years waiting period is mandatory requirement; thus, the contention that the statutory period can be waived and service period counted from the date of his missing, is untenable under the law. As per record Petitioner filed Civil Suit No. 1005/2009 before the Court of IXth Senior Civil Judge Karachi East for declaration of death of Shoukat Ali Panhwar, which was required by the petitioner for release of insurance amount. Learned trial Court after examining the material available on record, decreed the suit of the petitioner as prayed vide Judgment dated 19.03.2010 and death obituary / declaration was issued by the Chief Secretary, Government of Sindh on 17.01.2011, which contained 09.5.1999 as date of the death of petitioner's husband. As such, this judgment and decree do not support the petitioner's contention.

10. Petitioner's claim that she is entitled for family pension, w.e.f. 26.7.2006, which is date of issuance of the impugned notification, which was allowed on 26.07.2006; which is not sustainable in law, as enshrined in Article 124 of the Qanoon-e-Shahadat Order 1984. In view of the issue under consideration which does not require any further deliberations.

11. The claim of petitioner is refuted by the learned AAG by relying upon the Finance Department, Government of Sindh circular letter dated 16.01.1994, which provides as under:-

"If an employee remains missing, or unheard of for a period of 7(seven) years to the satisfaction of the Department concerned, family pension may be allowed to his heirs as admissible under the prescribed Rules".

12. On perusal of above provision of law, we are clear in our mind that petitioner herself lodged FIR dated 14.01.2000 with Police Station Gulshan-e-Iqbal, Karachi and reported that her husband Shoukat Ali Panwhar was missing w.e.f 09.05.1999. Accordingly, the respondent / department concerned being satisfied, issued notification dated 26.07.2006 and released family pension to the petitioner from the date of missing of her husband as per Finance Department Circular dated 16.01.1994, after waiting of statutory period of seven years and the claim of the petitioner is misconceived.

13. In the light of above discussion, we are of the view that the respondent No. 1 has rightly issued the notification dated 26.07.2006 in accordance with law and the petition is devoid of merits, hence, is hereby dismissed.

Karachi
Dated

JUDGE

JUDGE

Shafi P.A