

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-862 of 2016

Present:

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon**

Mst. Jami ----- Petitioner

VERSUS

Province of Sindh
& others

----- Respondents

Dates of hearing: 07.03.2019

Date of decision: .03.2019

Mr. Samiullah Rind, advocate for the petitioner.

Mr. Nadeem Ahmed Khan, advocate for respondent No.2.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J.- Through the captioned petition, the petitioner is seeking direction to the respondents for payment of pension on account of demise of her husband.

2. The relevant facts of the case are that the Petitioner is widow of late Nabi Bux, who was an employee of Local Government Department, Government of Sindh, who was appointed in BPS-1 as Naib Qasid vide order dated 20.08.1995. However, on 11.05.2012, the husband of the Petitioner passed away, while he was in service with the Respondent No.2. After the death of her husband, Petitioner approached Respondent No.2 and demanded benefits pursuant to the Family Assistance Packages and dues accrued to deceased but she did not receive any response from the Respondents. Finally the respondents paid her only gratuity, amounting to Rs.38, 250/-.

3. The grievance of the Petitioner is that she is entitled to all the grants and benefits in respect of dues of her husband. She further

claimed that she is also entitled to release of family pension since the death of deceased i.e. 11.05.2012. The Petitioner being aggrieved by and dissatisfied with the inaction on the part of Respondents has approached this Court through instant Constitutional Petition.

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

5. Mr. Samiullah Rind, learned counsel for the Petitioner has contended that the instant case pertains to pensionary benefits of the deceased Nabi Bux, which have not been paid by Respondent No.2 without any rhyme or reason, thereby, compelling the Petitioner to approach this Court. Learned counsel next contended that deceased was serving with the Respondent No.2 continuously since last 18 years prior to his demise and was entitled to pensionary benefits in accordance with the law. Learned counsel for the petitioner next argued that respondents are not cooperating with the petitioner with regard to payment of family pension and creating hurdles in the way. He prays for direction to the respondents to release her family pensionary benefits.

6. On the other hand, Mr. Nadeem Ahmed Khan learned counsel for Respondent No. 2 has raised the question of maintainability of instant petition under Article 199 of the Constitution, however, he argued that deceased Nabi Bux, did not possess minimum length of service viz. 10 years to be entitled for pension; that admittedly the deceased has less than 10 years' service, as such he was not entitled to be granted such relief under the law. He next contended that lump sum amount of gratuity has already been paid to the Petitioner. He lastly argued that the Petitioner is not entitled for full pension and other benefits and that the amount to which she was legally entitled to, has already been paid, hence this petition may be dismissed.

7. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh has adopted the arguments of learned counsel for Respondent No.2.

8. Mr. Nadeem Ahmed Khan learned counsel for the Petitioner, while exercising his right of rebuttal has argued that the case of the Petitioner relates to 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.

9. We have heard learned counsel for the Petitioner, learned counsel for Respondent No.2, learned AAG and perused the entire material available on record.

10. Admittedly, the Petitioner has already received Rs.38, 250/- as gratuity on 11.05.2012. Per learned counsel for the respondents this being the only dues payable to her deceased husband. The basic arguments of learned counsel for the Petitioner are that the deceased served Respondent-department for 18 years, therefore, qualified for full family pension since his death. We do agree with the contention of learned counsel for Petitioner that deceased having service tenure of 18 years with Respondent No.2 was/is entitled for full family pension for the simple reason that petitioner's case was submitted to the Director, Local Fund Audit Sindh Karachi for fixation of family pension, gratuity & others commutations vide letter dated 12.06.2012 along with deceased's service record. In our view for the purpose of fixation of gratuity, pension & other commutation, the respondents have wrongly calculated the service benefits of her deceased husband on the wrong assumption that her husband served the respondents five years only and therefore the family pension is not liable to be paid to petitioner. The record reflects that petitioner's husband was appointed as Naib Qasid by the then

Administrator on 20.08.1995 and he terminated his service on 01.11.1995 without assigning any reason. Finally, he was reinstated in service by the Secretary Local Government Department on 21.03.2009 and there was no observation that his remaining period would not be considered in service. In absence of such remarks by the Competent Authority, the respondents' decision not to include the intervening period into service of deceased is against the law. After death of petitioner's husband on 11.05.2012 during service, his case for pensionary benefits was prepared & forwarded to the office of Land Fund Audit Sindh, which was verified and an amount of Rs.38,250/- as family pension/ gratuity dues was paid to the petitioner vide a cross cheque No.63229586 NBP dated 17.08.2012. Again the family of deceased requested to include the intervening period w.e.f. 01.11.1995 to 20.03.2012 for the purpose of pension/ gratuity and financial assistance but the same was not finalized. Service Pension Statute, 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." From bare perusal of the above cited section, we are of the view that the same is applicable and the case of Petitioner's deceased husband does meet the requisite criteria stipulated in said Section. Our view is supported by the case reported in PLD 2013 SC 829; that "Pension is not a bounty from the State / employer to the servant / employee, but is fashioned on the premise that the employee serves his employer in the days of his ability and capacity and during the former's 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. In our view, the petitioner is fully entitled for full family

pension and salary of the intervening period as provided under Rule 152 of the Sindh Civil Services Rules. An excerpt of the same is reproduced as under:-

“152. *When the suspension of a Government servant is held to have been unjustifiable or not wholly justifiable [he may be allowed full allowances to which he would have been entitled if he had not been suspended; or]*

When a Government servant who has been dismissed [or removed] is reinstated;

The revising or appellate authority may grant him for the period of his absence from duty-

[(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to this dismissal, or removal.]

(b) if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribed.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so directed.

Note 1.- *In deciding whether any pay and allowances should be granted under this rule to Government servants in temporary employ the period for which the temporary appointment has been sanctioned should be taken into consideration.*

Note 6.-*When the period of absence from duty is treated as duty and at the same time less than the full pay is allowed for it by the revising or appellate authority, it should count as duty for increments in the same way as when full pay is allowed.”*

Perusal of Rule 54 of Fundamental Rules read with Rule 275 of Sindh Civil Service Regulations makes it clear that Government is

bound to sanction the grant of a family pension to the family of government servant who dies during service. Our view is further supported by Pension Rules, 1977. An excerpt of the same is reproduced as under:-

“E. FAMILY PENSION

6. (a) In the case of death of a civil servant while in service, gratuity in lieu of one-fourth of the gross pension will be allowed at existing rates. In addition, family pension shall be admissible for a period of 10 years at 50% of the gross pension.

(b) In the case of death within 10 years of retirement, family pension for the unexpired portion of 10 years at 50% of the pension (net, or gross, as the case may be) shall be admissible.

11. We are not convinced with the argument of learned counsel for the Respondents that the Petitioner is not entitled to family pensioner benefits with effect from the date of her deceased husband's termination from service on 01.11.1995, rather from the date of his reinstatement in service i.e. 21.03.2009 . We are of the view that Petitioner's husband was appointed on regular basis in the Respondent-department and his service was dispensed with in cursory manner without assigning any reason, finally his service was reinstated on 21.03.2009 without deciding the fate of intervening period, thus the benefits accrued in the intervening period cannot be denied.

12. In view of forgoing discussion, this petition is allowed in the terms whereby the competent authority of Respondents is hereby directed to re-calculate the family pensionary benefits of intervening period of service of the Petitioner husband as discussed in the preceding paragraph and other benefits as admissible under the law.

Such amount must be deposited with the Additional Registrar of this Court within a period of 30 days from the date of receipt of this Order and paid the same to the Petitioner on proper verification and confirmation.

13. This petition stands disposed of in the above terms alongwith listed applications.

JUDGE

JUDGE

Irfan Ali