

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -63 of 2021

Muhammad Iqbal Naseem

Versus

Province of Sindh through Home Secretary and another

Date of hearing &
Decision : 23.02.2021

Mr. Jam Shahid Iqbal, advocate for the petitioner.
Mr. Ali Safdar Depar, AAG.

ORDER

ADNAN-UL-KARIM MEMON, J. - Petitioner is seeking a declaration to the effect that the Impugned Committee Report dated 18.11.2020 issued by the Office of Inspector General of Police Sindh Karachi/ Respondent No.2 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, other allowances, and benefits to the Petitioner as admissible under the law. He also claims that his son namely Naveed Iqbal, Police Constable (PC) embraced *Shahadat*, during service on 09.12.2014 and restore the office order dated 19.9.2019 issued by the Office of Inspector General of Police Sindh Karachi/ Respondent No.2, whereby he was declared as Shaheed (martyr).

2. The brief facts of the case are that the Petitioner is the father of deceased Naveed Iqbal (Police Constable No. 31713) who left his home in uniform for official duty but he claimed to have been deliberately hit by the 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.

3. Mr. Jam Shahid Iqbal, 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 was 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. He further argued that the petitioner's son who was constable died while performing duties and was thus fully entitled to the status of Shaheed however a committee in terms of The Sindh Shaheed Recognition and Compensation Act-2014 not competent to do so decided against granting him such status vide letter dated 18.11.2020. Learned counsel refers to section 2(a) of The Sindh Shaheed Recognition and Compensation Act-2014 wherein the competent authority for this Act is Chief Minister and not the committee which decided the fate of petitioner's son and his family; that committee even otherwise was factually incorrect in holding that petitioner's son died due to road accident without assigning reason in the findings; that committee erred in holding above; that petitioner is fully entitled to the benefits of Shaheed. In support of his contentions, he relied upon the order dated 08.12.2016 passed by the learned Division Bench of this Court in CP No. D-752 of 2015 and argued that the son of the petitioner was performing his duty and he was hit by the vehicle hence he

received serious injuries and subsequently succumbed. He lastly prayed for allowing the instant petition.

4. At the very outset, Mr. Ali Safdar Depar, learned AAG has opposed this petition to re-consider his case as to whether Police Constable Naveed Iqbal embraced *Shahadat* during service on the premise that respondent-Police Department vide letter dated 18.11.2020 canceled/reviewed the recommendation of the Committee held on 29.8.2019 for the reason that his case does not fall within the ambit of The Sindh Shaheed Recognition and Compensation Act-2014.

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

6. Important question of law involved in the subject Petition is 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.?

7. 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 to 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 P0lice 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.”

8. We repeatedly asked the learned counsel for the petitioner whether the Sindh Shaheed Recognition and Compensation Act, 2014 was taken into consideration while deciding the lis concerning declare the Police Constable as martyred, he candidly conceded that though the provision of the Act 2014 has not been discussed, however, the same decision has persuasive force. We do not agree with the contention of learned counsel for the petitioner for the reason that decision of the Division Bench of this Court has a binding effect if the lis is decided on the pure question of law, whereas the aforesaid decision was based on the notification dated 01.06.2019, however, no the law on the subject was not discussed due to non-providing proper assistance to the learned

Division Bench of this Court and in this view of the matter the decision can be termed as per incuriam.

9. We have noted that the impugned order dated 18.11.2020 does disclose the reasons for not considering the case of Police Constable Naveed Iqbal son of Muhammad Iqbal (petitioner) under the criteria for Shaheed, therefore the order dated 18.11.2020 is well-reasoned, which cannot be declared a nullity in the eyes of law.

10. To clarify the legal position that has emerged in the present case we first take up legal issues regarding the declaration of Petitioner's son as Shaheed 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 the definition of Shaheed which reads as under:

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

11. Adverting to the point raised by the learned counsel for the petitioner that the act of the unknown driver of the vehicle, hitting the deceased Naveed Iqbal, falls within the ambit of terrorism as defined under Section 6 of the Anti-Terrorism Act, 1997. We have minutely considered the case of the petitioner, in the instant case, the incident of the accident is being demonstrated as an act of terrorism. If it is disclosed as an accident, it cannot be stretched down as an act of terrorism and if it is terrorism it cannot be termed as an accident; and, despite the incident being described as an accident, prima facie, we do not see any element of terrorism to bring the case of the petitioner under Clause (f) of Section 2 of Sindh Shaheed Recognition and Compensation Act, 2014 as discussed supra.

12. In view of the above legal position of the case as well as findings of the Committee dated 18.11.2020, we are of the considered view that the Committee has rightly rejected the claim of the Petitioner. Besides, Petitioner has failed to establish the case of discrimination and/or violation of any Law.

13. In the light of the above discussion we are of the considered view that Police Department cannot circumvent the law to declare any official of the Police department to be Shaheed without declaration as Shaheed as provided under section 2(f) of Sindh Shaheed Recognition and Compensation Act, 2014.

14. In view of the above, this petition is dismissed along with the pending application(s) with no order as to costs.

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