

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

C. P. No. D – 755 of 2020:	Karim Bux & Others v Province of Sindh & Others
C. P. No. D – 584 of 2019:	Rasool Bux Sial v Province of Sindh and Others
C. P. No. D – 672 of 2019:	Ashiq Hussain Naich v Province of Sindh & Others
C. P. No. D – 749 of 2019:	Himath Ali & Others v Province of Sindh & Others

Date of hearing: 05-10-2021

Date of order: 13-10-2021

M/s Nisar Ahmed Bhanbhro and Sajjad Hussain Dayo, Advocates for the Petitioners in C. P. No. D-755 of 2020.

Mr. Ghulam Shabbir Shar, Advocate for the Petitioners in C. P. No. D-584 of 2019.

Mr. Jalal-ul-Din M. Akbar Chandio, Advocate for the Petitioners in C. P. No. D-749 of 2019.

Mr. Sajjad Muhammad Zangejo, Advocate for Respondent-State Life Insurance Corporation.

Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

ORDER

Muhammad Junaid Ghaffar, J. – Through all these Petitions, the Petitioners seek directions to the Respondents to repay / refund the amount of insurance premium contributed by them towards Group Insurance, during their employment with the Government of Sindh.

2. Learned Counsel¹ leading the arguments on behalf of the Petitioners², has contended that all Petitioners were employees of the Government of Sindh, and during their service, Group Insurance Premiums were deducted compulsorily; that the same was purportedly done under the Sindh Civil Servants Welfare Fund Ordinance, 1979 ('the Ordinance') read

¹ Mr. Nisar Ahmed Bhanbhro,

² Duly adopted by all other learned Counsel for the petitioners

with the Sindh Civil Servants Welfare Fund Rules, 1980 ('the Rules'), which according to him, have been legislated to the detriment of the Petitioners; that the condition of the Insurance Company that the amount of Group Insurance would only be payable upon death during service; or up to 65 years of age is not in accordance with law and acts against the interest of the Petitioners; that the Petitioners have contributed all along their life and now post retirement and after crossing the age of 65 years have been left with no coverage or money; that the amount even otherwise would neither be paid to the Petitioners nor to the Government, whereas, the Insurance Company is getting the benefit; that the Law is discriminatory in nature and is in violation of the fundamental rights of the Petitioners including Article 4, 17, 18 and 25 of the Constitution; that it is the Petitioners' money, which has gone unclaimed and is liable to be paid back; that the Petitioners during their service had no choice but to contribute such amount under compulsion. In support, he has relied upon a judgment of the learned Peshawar High Court dated 03-11-2016 passed in **Writ Petition No. 1355-P/2013** in the case of Fida Muhammad Durrani and others v. The Government of KPK through Chief Secretary, Peshawar and others.

3. Learned AAG has opposed these Petitions and has argued that neither the Law nor the Rules and or its *vires* have been challenged; hence, no case is made out; that Group Insurance always matures on death; that in terms of the statute, the agreement between the Government and the Insurance Company is binding on all, and such contract specifically provides various conditions which does not entitle the Petitioners to claim any benefits after 65 years of age, either in the shape of refund of money or any further insurance coverage.

4. Counsel for Respondent-State Life Insurance Corporation has referred to the Agreement³ and Clause 3 thereof and submits that policy in question it only matures on death; that Section 8(1)(a) of the Ordinance read with Rule 10 of the Rules clearly provides that it only matures on death; that the judgment of the Peshawar High Court is not applicable as the Law has been amended in Khyber Pakhtunkhwa; that the learned Lahore High Court and the Islamabad High Court in identical terms have dismissed the Petitions, therefore, no case is made out. He has relied upon judgment of the learned Islamabad High Court announced on 13-09-2019 passed in

³ Between Provincial Welfare Board, Government of Sindh and State Life Insurance.

Writ Petition No. 4132 of 2016 in the case of Muhammad Rehan Khan v. Federal Government and 2 others.

5. in rebuttal, learned Counsel for the Petitioners submits that in the alternative this Court can always issue directions as given in Para No.13 of the judgment passed by the Islamabad High Court in the case of Muhammad Rehan (Supra).

6. We have heard all the learned Counsel as well as learned AAG and perused the record.

7. The precise case of the petitioners is that while in Government service they were making contributions in respect of Group Insurance which was being compulsorily deducted from their monthly salaries and they had no other option but to contribute for such Group Insurance. According to them, this contribution was not paid voluntarily, and the mechanism adopted by the Government with the Insurance Company was also without their involvement and consent; hence the condition that the amount of insurance can only be paid either upon death during service; or at the maximum age of 65 years, is not proper and legal. It is their case that the law as well as the rules in this regard are confiscatory in nature and act to the detriment of the petitioners as now the amount contributed by them is neither being paid to them; nor to the Government; rather, the Insurance Company is benefiting from such amount of premium paid by the petitioners. This according to them is their hard earned money. Before proceeding further as to examination of the provisions of the law as well as the rules in question, first, one needs to understand the concept of Group Insurance. As is clear from the term used here, it is not an individual insurance but an insurance of a group of persons. The insurance in question is only available to a Group of persons who either approach the Insurance Company collectively as a Group for such insurance; or in the alternative, it is the Employer who comes forward and arranges such an insurance as an incentive to its employees by negotiating with the Insurance Company. Mostly, and not always, in private sector, this being an incentive, it is the Employer who takes responsibility of paying the premium. However, as noted, this is not always so, and at times depends upon the Company and its policy who is arranging search Group Insurance for its employees. For the present purposes, the relationship of the Petitioners, Government of Sindh and the Insurance

Company is governed by the Ordinance and the Rules. The relevant provisions of the Ordinance and Rules in question are as follows;

The Sindh Civil Servants Welfare Fund Ordinance, 1979

4. Payment of contribution. – (1) A civil servant shall be liable to pay as his contribution to the Fund such sum of money as may be prescribed and the amount of such contribution shall, as far as possible, be deducted at the source from his pay and credited or remitted to the Fund.

(2) Where the contribution cannot, for any reason, be deducted from the pay of the civil servant, he shall remit the amount payable by him to the prescribed officer.

(3) When any contribution remains unpaid due to inadvertence or negligence of the civil servant, or such other reason, it shall be recoverable from him together with interest thereon.

5. Utilization of fund. – The Fund shall first be utilized for paying the premia for insurance of the civil servants to the insurance company or any other insurer and meeting other expenses on the arrangements made with such company or insurer, and thereafter if any amount is left in the Fund, it shall be utilized for such welfare and benefits of the civil servants as may be prescribed.

8. Arrangement with insurance company. – **[(1)]* Where the arrangement has been made with the insurance company or other insurer under clause (a) of sub-section (3) of section 6, the sum in which a civil servant is insured shall, on his or her death be paid.

- (a) to such member or members of his or her family as is or are nominated by him or her in full or in such shares as are specified, by the deceased civil servant at the time of making the nominations; or
- (b) where no valid nomination of the civil servant exists at the time of his or her death, to his family, and in absence of the family, to his surviving relatives, if any, in the manner and in the shares in which the gratuity of a deceased civil servant is payable under the Pension Rules; or
- (c) in absence of the persons referred to in clauses (a) and (b), to the holder of succession certificate obtained from a court of competent jurisdiction.

The Sindh Civil Servants Welfare Fund Rules, 1980

2. In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say : -

- (c) “Pay” means the amount drawn monthly by a Civil Servant as –
 - (i) pay which is sanctioned for a post whether held by such Civil Servant in substantive or officiating capacity;
 - (ii) overseas pay, technical pay, personal pay and special pay; and
 - (iii) any other emolument which may specifically by classed as pay by the competent authority;

3. **[(1)]* Every civil servant shall contribute towards the Fund sum of Rs.7.43 (Seven rupees forty-three paisa) only per annum per thousand

rupees of the sum which he is insured; provided that fifty percent of the contribution in respect of a civil servant in BPS-1 to 15 shall be made by the Government.]

(2) The contribution under sub-rule (1) shall be made in twelve equated monthly instalments.

5. (1) All contributions made under section 4 shall be credited in the minor head "Sindh Civil Servants Welfare Fund", in sub-head "Part-I" in the case of civil servants in Grade 16 or above and in sub-head "Part-II" in the case of other civil servants.

(2) All moneys credited into the Fund shall be kept in the Government treasury in the name of the Chairman of the Provincial Welfare Board No. I or the Provincial Board No. II, as the case may be.

(3) The account of the Fund shall be kept in rupees and all payment from it shall be made in rupees.

(4) The contributions, towards the Fund shall be checked by the Accountant-General, Sindh, Karachi, in the case of payments made in Karachi and by Treasury Officers in the case of payments made in their respective districts.

8. (1) Within three months of the coming into force of these rules every civil servant below sixty years of age shall nominate, in the form set out in Annexure 'A', a member or members of his family to whom he desires the sum assured to be paid in the event of his death specifying in case the sum assured is to be paid to more than one member of his family, the proportion in which such sum is to be paid to them, and in case the nominee is a minor the civil servant shall further nominate a person or persons through whom such sum should be paid.

(2) A civil servant in Grade-16 or above shall forward the nomination form to the Insurance Company with whom the civil servant is insured whereupon the Company shall assign a nomination number and furnish a receipt for the record of the civil servant.

(3) A civil servant in Grade-15 or below shall submit the nomination to the Head of his Office or Department, as the case may be, who shall place the same in the service book of such civil servant.

(4) A civil servant may, at any time, cancel a nomination by sending a notice in writing to the appropriate authority and submitting revised nomination.

10. (1) As soon as may be after the death of a civil servant the Head of Office or Department shall furnish to the Insurance Company –

(i) a certificate in the form set out in Annexure 'B' or 'C', as the case may be, certifying the death of the civil servant indicating the Grade in which he was placed immediately before his death;

(ii) where the deceased was a civil servant in Grade-15 or below one copy of the nomination form referred to in sub-rule (3) of rule 8;

(iii) a certificate specifying the names of the members of his family, and in the absence of any member of his family, the names of his surviving relatives, to whom the sum assured is payable under the provisions of clause (b) of section 8, and the shares in which the sum is payable to each member of the family or surviving relative as the case may be; and

(iv) *in the absence of the persons referred to in clause (ii) and (iii) a certificate specifying the name of the holder of succession certificate obtained from the court of competent jurisdiction.*

(2) *On receipt of the documents referred to in sub-rule (1) the Insurance Company shall make arrangement for immediate payment of the assured sum.*

8. Perusal of section 4 of the Ordinance reflects that every Civil Servant as defined⁴ in the Ordinance, shall be liable to pay his contribution to the Fund as one part pursuant to section 3(3)(a); and is compulsory in nature and if for some reason it has not been deducted; it has to be paid by the employee on his own and even interest shall also be recoverable from him in case of delay. It may be noted that this provision was never challenged in any manner by the petitioners during their service; nor even in the present set of petitions. Section 8 *ibid* provides where the arrangement has been made with the insurance company or other insurer under clause (a) of sub-section (3) of section 6, the sum in which a civil servant is insured shall, on his or her death be paid to the person(s) nominated by the employee in terms of section 8(a), (b) & (c) *ibid*. Similarly, in terms of the Rules framed under the Ordinance, Rule 2(b) defines “Pay”; Rule 3 stipulates that every Civil Servant shall contribute towards the Fund for payment of the insurance premium⁵ for which he is insured under the Group Insurance; Rule 5 provides for head of Fund for Civil Servants of all grades; Rule 8 deals with the nomination of a person by the employee for the purposes of receiving the amount of insurance in case of his death and finally in terms of Rule 10 the mode and manner of payment of insurance upon death of an employee has been dealt with. After going through the above provisions of the Ordinance and the Rules it appears that insofar as the present status of the petitioners is concerned, the law provides for compulsory deduction of premium against such Group Insurance, and in fact is an implied consent and arrangement of the employees with the Government. When they accept the employment and the terms of conditions of such employment, it is deemed to be an implied consent. They start making contribution for payment of Group Insurance being Civil Servants pursuant to the Ordinance and the Rules. The Petitioners before us during the entire service period, have never objected to such payment and contribution of premium. And this is naturally so, as it was, (till their retirement), an incentive giving coverage and benefit to their families in case of sudden death during the employment

⁴ 2.(aa) “civil servant” means a civil servant as defined in the Sindh Civil Servants Act, 1973;

⁵ Presently Rs.7.43 per annum per thousand rupees for the sum insured or 0.743% of the sum insured.

period. Not only this, in fact such coverage according to the contract between the Government and the Insurance Company is even extended up to 65 years of age. In terms of clause 3 of the Agreement, if at any time during validity of the agreement, any member dies, then subject to exceptions, with the consent of the Welfare Board and the Insurance Company, the amount has to be paid to the person so entitled. Similarly, in clause 4, coverage of Group Insurance has been provided to all employees, during their service and even thereafter for a period of 5 years, whereas, during the post retirement period no contribution has to be made by such retired employees; however, they shall remain covered for the sum assured as applicable to in-service members of the equivalent grade at the time of retirement. One must not forget to take note that all these provisions of law, rules as well the agreement in question, were in favor of the petitioners and they not only accepted the same with their conduct and implied consent; but also enjoyed the benefit of the Group Insurance Policy. Now the petitioners, (in most of the cases) have crossed the age of 65 years (in fact one petitioner in CP No. 584-2019 has even expired after attaining the age of 65 years) and want the amount of their contribution in respect of Group Insurance to be refunded. This apparently is an afterthought on their part as during the validity of their Insurance coverage, they never objected to; and now once they are no more covered under the Group Insurance Policy, nor are making any contribution after retirement but still got insurance coverage for 5 extended years; have come forward and want to retract from their implied consent and back away from such understanding. It may be true that there is no direct contract between them and Insurance Company as contended by the Petitioners Counsel; but then at the same time, the contribution made by them is covered and protected under a valid law, which for the present purposes is not under challenge before us. And the only relief which is being sought is, that the contribution made by them be refunded.

9. One needs to understand and appreciate that there is a fixed mechanism for issuance of Group Insurance policy. Group life insurance is a type of life insurance in which a single contract covers an entire group of people. Typically, the policy owner is the Employer and not the individual employee, whereas, the policy issued in the name of the employer covers the employees or members of the group. The significant advantages of a Group Insurance policy include Customized plans with lower premiums. As compared to an individual life insurance policy, the contribution in a Group Insurance is bare minimum. And this is the sole advantage of entering into

such arrangement. It gives coverage and protection and at the same time costs much less. There is another aspect which is also very crucial that the employee has little, or no control over their individual coverage. And in most cases the coverage does not continue or follow the employee if he leaves his job. It is seldom transferred in the same manner to a new organization. It is also very important to note that unlike individual policies, premiums of which are relatable to an individual's age and health issues as well, in Group Insurance, healthier individuals also pay the same premiums as those who are considered to be at a higher risk within the Group Policy. Similarly, in case of death of an insured employee, his death claim is paid to the Employer for onward payment to the nominee of the insured. In this case a Master Policy is signed by the Employer with the Insurance Company and there is no direct connection between the employee and the Insurance Company. And most importantly, no Life Group Insurance, in the entire insurance business has any concept of its maturity; payment of any bonus; surrender value; payment of benefits at or after retirement. It has only one beneficial condition and i.e. it matures upon death of the employee, either before retirement; or during the agreed period after retirement, which in the present case is 65 years of age or 5 years after retirement. It is the employer who selects and purchases the policy. The premium is (may be through contribution) paid by the employer to the insurance company. This concept is a worldwide accepted concept, and has been arrived at by the Insurance Companies as an incentive for individuals who are not in a position to pay individual insurance premiums for such coverage. It is relatively inexpensive as compared to individual life insurance. As a result, participation is always high. Lastly, it is wrong to compare such group insurance with fixed term insurance, which in addition to coverage of death, also matures after a fixed period, resulting in return of investment in many ways including bonus; encashment prior to maturity and so on.

10. As to reliance on the judgment of the learned Peshawar High Court in the case of Fida Muhammad Durrani (Supra) is concerned, it would suffice to observe that the law⁶ in consideration had been amended by the KPK Government, and the amended law⁷ very clearly provided that the

⁶ Khyber Pakhtunkhwa Civil Servants Retirement Benefits and Death Compensation Act, 2014 alongwith Khyber Pakhtunkhwa Act No. V of 2016 commonly, named as Khyber Pakhtunkhwa Civil Servants Retirement Benefits and Death Compensation (amendment) Act No. V of 2016

⁷ Amendment of section-9 of the Khyber Pakhtunkhwa Act No. XXVIII of 2014. – In this Act, in section-9 for sub-section (1), the following shall be substituted namely;

amount in question shall be paid to the retiring employee in accordance with formula pursuant to the amendment carried out in the year 2014; hence, the ratio of the said judgment is not applicable to present petitioners case, as the provisions of both the laws are not *pari materia*.

11. Insofar as the judgment of the Islamabad High Court in the case of Muhammad Rehan Khan (Supra) is concerned, the same is applicable on all fours to the case of the Petitioners insofar as merits of the case is concerned. However, as to reliance on Para 13 of the said judgment by the Petitioners Counsel, as an alternate plea regarding issuance of directions for amending the law, we may observe that issuance of directions for legislating something in a prescribed manner, is not the domain and authority of this Court as it is always the prerogative of the legislature to do so. There is no impediment for such purposes, coupled with the fact that one Province has already done so way back in 2014. At best, the Petitioners could approach the Government and seek redressal of their grievance regarding any amendment in the law.

12. In view of hereinabove facts and circumstances of the case, we do not see any reason to exercise any discretion in favor of the Petitioners as they have failed to make a case for indulgence, as the law is very clear on the subject, whereas, such law by itself is not under challenge before us; hence, all the listed petitions stand dismissed with pending applications, if any.

Dated: 13-10-2021

J U D G E

J U D G E

Abdul Basit

“(1) At the time of retirement of civil servant, the amount shall be paid to him with the following percentage;

- (a) The amount of benefit on retirement during the first five years, on the commencement of this Act, shall be twenty five percent;
- (b) The amount of benefit on retirement during the second five years on commencement of this Act, shall be fifty percent;
- (c) The amount of benefit on retirement during the third five years, on the commencement of this Act, shall be seventy five percent; and
- (d) The amount of benefit on retirement after fifteen years, on commencement of this Act, shall be hundred percentage”.