

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 342 of 2021

Date of hearing	Order with signature of Judge
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Hearing of case (priority)

1. For orders on office objections at Flag-A
2. For hearing of CMA No.1577/2021 (S/A)
3. For hearing of main case

04-11-2021

Mr. Abdul Hafeez Irfan, Advocate for the petitioner.
Mr. Ghulam Abbas Akhtar, Advocate for Respondents-Railways.
Mr. Ali Raza Baloch, Assistant Advocate General Sindh.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

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Through this Petition, the Petitioner has impugned order dated 15-07-2019 passed by the Sindh Labour Appellate Tribunal, Karachi, whereby, the judgment dated 04-05-2018 passed by the Sindh Labour Court No. VII, Sukkur, through which the order dated 14-12-2017 of the Commissioner, Workmen's Compensation Act, 1936 ("Authority") was set aside, has been maintained.

It appears that Petitioner's deceased husband Muhammad Murad was removed from service by Pakistan Railways, who in his lifetime challenged such removal before the Federal Service Tribunal by way of Appeal No.347(K)(CS)/02, and during pendency of that Appeal, Muhammad Murad had expired. On 07-05-2005, the Tribunal passed an order by observing that the Appeal stands abated and relied on various judgments of the Hon'ble Supreme Court. The Petitioner, instead of seeking the remedy before the Civil Court and getting the order of removal from service set aside, approached the Authority under the Payment of Wages Act, who passed an order in favour of the Petitioner. Such order was challenged in Appeal by Pakistan Railways and the order of the Authority was set aside and in Revision as well the order of the Appellate Court has been maintained. Though now the Petitioner seeks restoration of the order of the Authority passed under the Payment of Wages Act, for retirement and pensionary benefits; however, apparently the Authority lacked jurisdiction to do so, inasmuch as the matter pertains to the jurisdiction of the Federal Service Tribunal and the deceased had himself sought such remedy before the Tribunal.

Be that as it may, recently the Hon'ble Supreme Court in the case reported as Regional Operation Chief, National Bank of Pakistan, Human Resource Department, Regional Office, Sargodha and others v. Mst. Nusrat Perveen and others (2021 SCMR 702), has been pleased to hold that not only the pecuniary and pensionary benefits of a deceased employee survive; but so also the right to restore one's reputation is also a survivable right and flowed down to the legal heirs to pursue and take the same to its logical conclusion. In that case the Service Tribunal had allowed an application of legal heirs of a deceased employee to be joined as Appellants, and being aggrieved, National Bank of Pakistan had impugned it before the Hon'ble Supreme Court.

In view of this position and the recent pronouncement of the Hon'ble Supreme Court as above, the Appeal pending before the Federal Service Tribunal has to be pursued by the Petitioner and or legal heirs of the deceased employee seeking support from the aforesaid judgment of the Hon'ble Supreme Court and after seeking restoration of the same can argue the appeal on merits.

As to the order of the Authority regarding grant of service benefits and pension as noted hereinabove, we have no doubt in our minds that the Authority had no jurisdiction under the Payment of Wages Act to direct Pakistan Railways to pay any such benefits to the Petitioner. To that extent the orders of the Labor Court duly affirmed by the Appellate forum are correct in law and no exception can be drawn to that.

With these observations, the Petition stands **dismissed** with pending application.

J U D G E

J U D G E

Abdul Basit