

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

CP No. D- 3157 of 2017

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing
& decision:

10.11.2021

Petitioner:

Sh. Nenu Bheel through Mr. Ahmed Nawaz
Chang, Advocate

Mr. Ayaz Ali Rajpar, Asstt: A.G.

ORDER

ADNAN-UL-KARIM MEMON, J: - The petitioner in the instant
petition has prayed as under:-

Direct the respondents to pass reinstatement in service
order of PC/ 623 Dujo Mal and release the pension,
gratuity, insurance, benevolent fund, and other pension
benefits, etc. of late PC / 623 Dujo Mal within the
shortest possible time.

OR

Direct the respondents to convert dismissal from service
order dated 15.09.2014 into retirement of late PC/623
Dujo Mal and release the pension, gratuity, insurance,
benevolent fund, and other pension benefits, etc. of late
PC/ 623 Duo Mal within the shortest possible time.

2. The case of the petitioner is that her late husband Dujo Mal
was appointed as Police constable in Sindh Police Tharparkar on
17.7.1984; her husband was falsely implicated in Crime No. 91 of
2011 under Section 302 & 324 PPC of police station Mithi; despite
the fact that at the time of incident her husband was on duty in
police line Mithi; after lodgment of above FIR the husband of
petitioner was arrested and incarcerated in jail; subsequently on
27.2.2013 show-cause notice was issued to her husband which was
duly replied from jail to the effect that he was/is victim of enmity,
otherwise he has nothing to do with the alleged crime as on the day
of alleged incident he was on duty ; later on he was dismissed from
service vide order dated 15.9.2014 without providing an opportunity

of hearing and right of appeal being confined in jail was not availed; and during confinement, he became ill and died on 25.5.2016, leaving behind the petitioner, three daughters and six sons; that due to dismissal from service pensionary benefits are not being released to the family of deceased inspite of the fact that her husband had served in police department for 27 years; petitioner has averred that her husband moved an application on 1.8.2011 for his retirement; whereas the FIR was registered against him on 13.9.2011; that since her husband could not file appeal against his dismissal from service, therefore, she approached respondents 3 and 4 and requested them for reinstatement of her husband for the purpose of pensionary benefits but no heed was paid; she submits that she has no source of income and no one is present to support her family, therefore, she has filed the instant petition.

3. learned A.A.G. has submitted that due to involvement of the husband of the petitioner in heinous case; and, remaining long time absent from duty, he was issued a show-cause notice on 20.9.2011 as well as DIGP Mirpurkhas Range vide letter dated 27.2.2013; the reply of show-cause notice was not found satisfactory and he was awarded a major penalty of dismissal from service on 15.9.2014; and, he was left at liberty to file an appeal against the impugned order within thirty days; that subsequently neither any family member of Ex- PC Dujo Mal, approached SP Mithi nor applied for releasing his GP Fund amount and further that the husband of the petitioner had not applied for his early retirement.

4. This matter pertains to the pensionary benefits of the petitioner which is of paramount consideration. We have heard learned counsel for the parties on the issue. Prima-facie the punishment awarded to the police constable Dujo Mal during his tenure of service vide order dated 15.9.2014 was/is harsh under the law on the premise that no material has been placed on record before this Court to suggest that there was any cogent material against the Police constable Dujo Mal Bheel to substantiate the allegations leveled against him and on that basis no punishment could have been awarded to him during incarceration in jail under the law, and subsequently he passed away inside the jail on 25.5.2016.

5. From the facts and the reasons mentioned above, we are of the view that the order of dismissal from the Service order dated

15.9.2014 is not sustainable under the law as the inquiry to probe the allegations as discussed supra was not held under the procedure as laid down under (E&D) Rules 1973. Thus judicial propriety demands that the subject punishment i.e dismissal from service needs to be converted into Compulsory Retirement from Service for pensionary benefits only.

6. Prim facie, the Deceased Police constable Dujo Mal Bheel has a qualifying length of service to his credit as per the calculation worksheet. It is well-settled law that pension could not be stopped under Pension Act, 1871 and the rules framed there-under; however, if the civil servant is convicted of an offence, the department shall reserve right to stop the pension. Learned counsel for the petitioner has pointed out that the entire pension of the petitioner has not been paid to the family of the deceased who was never convicted by the competent court of law during his trial. However, he died during incarceration and during the intervening period he was dismissed from service without hearing him in violation of the principle of natural justice.

7. Be that as it may, this is a matter of grave concern that for several years, the long and unjustified delay in the payment of pension has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite the strictures and orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay persist.

8. In view of the above facts and circumstances of the case, we may observe that pensionary benefits cannot be stopped on account of criminal charges; prima-facie there was/is no conviction in his credit, and pensionary benefits cannot be stopped on that score. In our view pensionary benefits cannot be stopped on account of any charges; and, is violative to the law laid down by the Honorable Supreme Court in the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35). Thus, the competent authority of police department is liable to release the pension amount and other ancillary benefits to the family of deceased police constable Dujo Mal to which he was/is entitled under the law within two weeks from the date of receipt of this order as he has 27 years' service in his credit, which is a qualifying length of service for pensionary benefits and submit such

compliance report to this court through Additional Registrar of this Court.

9. This petition in the above terms stands disposed of with no order as to costs.

JUDGE

JUDGE

Karar_hussain/PS*