

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D-570 of 2022**

Nasreen Bibi  
Petitioner through : Mr. John William, advocate

Respondents  
Through : Mr. Ali Safdar Depar, AAG alongwith Inspector  
Pervez Bhatti, SHO New Town, DSP Legal Raza  
Mian and DSP PHQ East Zareen Shah.

Date of hearing : **27.05.2022**  
Date of announcement : **01.06.2022**

**JUDGMENT**

**Adnan-ul-Karim Memon, J.** Through the captioned constitution petition, petitioner is seeking the declaration to the effect that her late husband Shahenshah Police Head Constable (HC) of Sindh Pollice, embraced Shahadat, during service; and, he may be declared as Shaheed (martyr) and all the benefits as admissible under the beneficial law may be granted to her being a widow, inter-alia on the ground that on 20.05.2017, Head Constable Shahenshah was on duty with ASI, Iftikhar and HC Raja Mohammad Younas, on police mobile and at about 0500 suddenly they were ambushed by terrorists, resultantly, they all received gunshot injuries, however two of them, succumbed to injuries and embraced Shahadat, whereas Head Constable Shahenshah had subsequently died during the Medical treatment in Agha Khan University Hospital Karachi because he had received many gunshot injuries with Spinal Head Injury at C-5 and C-6, and become completely paralyzed; such FIR No.77/2017 of the incident was lodged at PS CIA/CID Karachi, and the Challan No.18/2017 was also submitted on 18.06.2017 under 'A' (untraced) class.

2. Mr. John William, learned counsel for the petitioner, has argued that the petitioner's husband who was Police Head Constable in Sindh Police and was targeted by unknown militants/terrorists while performing duties on a fateful day; and died subsequently during medical treatment, was/is thus fully entitled to the status of Shaheed, in terms of The Sindh Shaheed Recognition and Compensation Act-2014. Learned counsel referred to section 2(a) of The Sindh Shaheed Recognition and Compensation Act-2014 and submitted that the petitioner-widow is fully entitled to the benefits of her late Shaheed husband. Learned counsel next submitted that the failure of the Respondent to declare her husband as Shaheed is discriminatory and violates the fundamental rights of the widow of Shaheed. He next submitted that preamble of the Act of 2014 provides that the legislature has passed the said Act to honor and recognize the services of persons who sacrificed their lives in acts of terrorism while performing duty and to provide compensation to their legal heirs; and, the Provincial Government could declare those

persons as Shaheed who offered to sacrifice their lives in the line of duty in counter-terrorism or becomes a victim of an act of terrorism operation or targeted and killed by the terrorist group. He added that The Act of 2014 further defines "persons" (subsection (e) to Section 2) as a government servant posted to or serving under the Government and includes personnel of the Sindh Police Department or officials of any law enforcement agency transferred to serve under or working for the Government, thus petitioner-widow is fully entitled to the terms of beneficial legislation discussed supra. He lastly prayed that competent authority of respondents may be directed to award the compensation as that of 'shaheed' to the petitioner-widow under the schedule of Payment, i.e. Rs.10 million for Shahadat in the encounter, bomb blast, riots, watch & ward duty, terrorist activities.

3. Mr. Ali Safdar Depar, AAG while referring the comments filed on behalf of the respondent No.6 submitted that on 19.08.2020 the abovenamed HC submitted an application for issuance of retirement order after completion of 25 years' service; that he was retired from service vide office order dated 02.09.2020 on his own request; that on 23.11.2020 the petitioner widow of late HC Shahenshah submitted an application to the IGP Sindh for issuance of Shaheed declaration in respect of her late husband; that there is no provision to declare a retired official as Shaheed, therefore, the Committee decided that widow of deceased official may be advised to submit an application for withdrawal of retirement order and if such order is withdrawn, then case may be placed before the Committee for consideration; that another application was submitted by widow for withdrawal of the retirement order dated 02.09.2020; that the same was submitted to the DIGP East Zone Karachi vide letter dated 20.05.2021 for issuance of necessary guideline to proceed further in the matter. He further submitted that under the law if the Government servant who intends to retire after completing (25) years of qualifying service for pension shall be final and shall not be allowed to be modified. He further submitted that discretionary Jurisdiction under Article 199 of the Constitution cannot be exercised in a vacuum. It must be grounded on a valid basis of violation of specific and enforceable legal or constitutional rights. He added that the discretion must be exercised in a structured and calibrated manner with due regard to parameters put in place by the Constitution as well as by the Hon'ble Supreme Court of Pakistan. He lastly prayed for the dismissal of the instant petition.

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

5. Primarily, the personnel of security agencies tasked with the maintenance of peace in the society is involved in a sacrosanct as well as the onerous duty with the omnipresent risk to their lives. Therefore, if a higher level of discipline in the law enforcement agencies and their personnel lies at the one end of the spectrum, the appreciation and compensation for their services certainly lie at the other end. While the former helps to maintain discipline in the law enforcement agencies, the latter works as a necessary impetus for the personnel to perform their duties with full zeal and zest and be watchful.

6. Principally, this case involves the latter category where the deceased Head Constable who was the husband of the petitioner, while admittedly on watch and ward duty, was badly injured due to gunshot injuries at the hands of a terrorist and paralyzed, which is virtually a death. Ever since then, the petitioner-widow has been roaming from pillar to post and she has been dealt with bureaucratic apathy, which moves up another scale given the fact that the deceased Head Constable belonged to them who was virtually dead after receiving the gunshot injuries to the spinal head injury C-5 and C-6.

7. Prima facie, the long ordeal of the petitioner widow in getting her husband declared "Shaheed" without seeing any daylight so far can be seen from the facts of the present case. Even otherwise, there is unequivocal statutory conferment of being declared as "Shaheed" upon an official of the Sindh Police Department by section 2(a)(f) of The Sindh Shaheed Recognition and Compensation Act-2014 as amended from time to time which reads as under:

*"2(f) "Shaheed" means a person who offered the sacrifice of his life in the line of duty in counter-terrorism or becomes a victim of any of terrorism operation or targeted and killed by the terrorist group and declared Shaheed in the manner prescribed by Government."*

8. Above quoted rule has been couched in a simple and plain language and is free of any ambiguity and makes it clear that if the official/officer of police is killed in encounters including death in bomb blasts, riots, watch and ward duties or terrorist activities, he is entitled to be declared as 'Shaheed' with all the benefits attached to such status. In the instant case, the petitioner's husband was admittedly on watch and ward duty when badly injured, while being in uniform which fact has been admitted. It is well settled that if a police official dies during the performance of watch and ward duties, the said official is entitled to a grant of compensation in the category of "Shaheed" under the beneficial legislation. The denial of according the status of 'Shaheed' to the petitioner's Husband is not sustainable as the said order of early retirement, fails to take into account the spirit of the law, which is to confer such status on police officers/officials who are killed in the performance of their functions in such eventualities as envisaged by the aforesaid law that includes the loss of life during watch and ward duty.

9. So far as the purported application of the deceased Head Constable on 19.08.2020 for early retirement is concerned, prima facie, the same application is not signed by him as he was on his deathbed and became completely paralyzed; however, his purported thumb impression was affixed on the application for early retirement. Besides that, per the Certificate of Death of the deceased Head Constable Shahenshah issued on 12.10.2020 by the Agha Khan University Hospital Karachi explicitly shows that the deceased suffered quadriplegia (inability to move a body) secondary to gunshot spinal injury at C5-C6 at Bedsores secondary to quadriplegia and died due to cardiopulmonary arrest, septic shock secondary to infected bedsores and aspiration pneumonia.

10. In view of the above medical record, the order dated 02.09.2020 passed by the Superintendent of Police PHQ East Zone Saudabad Complex Karachi whereby the deceased was allowed to proceed on early retirement from service with effect from

01.09.2020 at his request was/is the erroneous decision, which is converted to the compensation as enumerated in the schedule of Payment for Shahadat in the encounter, bomb blast, riots, watch & ward duty, terrorist activities and the widow of the deceased is fully entitled to the compensation under the Act-2014, and other benefits as admissible law, for the reason that on 20.05.2017, he suffered fatal gunshot injuries with a spinal head injury at C-5 and C-6 and was completely paralyzed and subsequently was taken to the Agha Khan University Hospital Karachi where during treatment he died on 03.10.2020 at 22.44 hours. Besides that, the colleagues of the deceased who also suffered the gunshot injuries died on the spot and were subsequently compensated in terms of The Sindh Shaheed Recognition and Compensation Act-2014 as amended up to date, whereas the petitioner was left in the lurch at the behest of police hierarchy which acts on their part is apathy and not appreciable at all, therefore, the petitioner widow is entitled to the same treatment as meted out with other two police officials. Since this is a continuous cause with effect from the date when the deceased received the gunshot injuries with spinal head inquiry at C-5 and C-6 and during medical treatment he died, thus his case squarely falls within the ambit of the term "Shaheed" as defined under the Act-2014.

11. In view of the above discussion, the competent authority of the respondent-police department is directed to allow the service benefits/compensation of her late husband Shahenshah Head Constable who embraced Shahadat strictly in terms of The Sindh Shaheed Recognition and Compensation Act-2014 as amended up to date. The aforesaid exercise shall be completed by a speaking order within one week from today.

12. The petition stands allowed in the above terms. Let notice be issued to the Chief Secretary and IGP Sindh for compliance.

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Nadir\*