

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-4193 of 2022

Mst. Farzana

Petitioner: Through Mr. Qadir Hussain Khan, advocate

Respondents No.1&4: Through Ms. Wajiha Mehdi, DAG

Respondent No.2&3: Through Mr. Moiz Ahmed, advocate

Date of hearing
& Decision: 02.02.2023.

ORDER

The gist of the matter is that father of the petitioner namely Abdul Ghafoor had worked in a private company i.e. Karachi Shipyard & Engineering Works Limited ('KS&EW') with effect from 29th November 1966 to 15th May 1998, later on, he passed away on 15.05.1998 and his monthly contribution was duly paid by the aforesaid company to Employees' Old-Age Benefits Institution ('EOBI'). Petitioner has averred that her stepmother Mst. Zarina Khatoon was getting the family pension, thereafter she contracted second marriage and her pension was stopped by EOBI.

2. The petitioner being the unmarried daughter of deceased Abdul Ghafoor moved the application to the Chairman/ Director KS&EW for releasing of family pension in terms of section 22-B (3) (ii) of EOBI Act, 1976, *inter alia*, on the ground that she acquired vested right in the terms of law being surviving legal heir of deceased Abdul Ghafoor to claim pension which right cannot be taken away from her under section 22-B (3) (ii), of EOBI Act, 1976;

3. The adjudicating authority vide order dated 24.06.2022 requested EOBI to issue pension in favor of the petitioner on the premise that she is still the unmarried daughter of the deceased has lungs disease and is unable to earn a livelihood, however, nothing has been done on the part of EOBI, rather petitioner

was refused to surviving pension on the ground that she has crossed the age of 18 years thus EOBI is unable to release surviving pension under section 22-B (3) (ii), of EOBI Act, 1976. The petitioner being aggrieved by and dissatisfied with the inaction on the part of the respondent-EOBI has preferred this petition.

4. Conversely, Mr. Moiz Ahmed, learned counsel for respondent No.2, refuted the claim of the petitioner and submitted that the Employees Old-Age Benefits Institute (EOBI) has been established under the Employees Old-Age Benefits Act, 1976 according to the mandate of Article 38 of the Constitution of the Islamic Republic of Pakistan 1973, EOBI Authority must provide Old Age, Invalidity Pension to the workers, their widows and orphans. According to learned counsel, the EOB Act, 1976 has prescribed certain benefits in terms of Old-Age Pension under section 22, Survivor Pension under section 22(b), Old-Age Grant under section 22(a), and Invalidity Pension under section 23 *ibid.* learned counsel contended that the payment of pension to insured persons is regulated under section 22 read with the schedule of the EOB Act, 1976 which provides that the insured person is entitled to a monthly old-age pension at the rate specified in the schedule if he is over sixty years of age or fifty-five in case of woman and contribution in respect of him has been paid for not less than fifteen years, however, qualifying age shall be reduced by five years in case of an insured person employed in occupation of mining for not less than ten years.

5. Learned counsel submitted that this petition is not maintainable as the remedies provided under sections 33, 34, and 35 of The EOB Act, 1976 have not been exhausted before invoking the jurisdiction of this court under article 199 of the Constitution of the Islamic Republic of Pakistan.

6. Learned counsel admitted that a letter dated 24.06.2022 was received by the respondent and the case of the Petitioner was carefully examined and deliberated upon internally whereby it transpired that the petitioner is the daughter of the deceased insurer, having been more than 18 years of age, thus not entitled for pension, in terms section 22- B of Employees' Old Age Benefits Act 1976. Per learned counsel, the female child is entitled to survivor pension on behalf of the parent until she attains eighteen years of age or until marriage

which is earlier, since she is an adult, though unmarried, is not entitled to claim the pension.

7. We have heard learned counsel for the parties and have also gone through the documents, annexed with this petition.

8. The question raised in this petition is whether the unmarried daughter is entitled to survivor pension on behalf of the parent under section 22B (1) (3) (ii) of the EOB Act, 1976, or not. For better appreciation, Section 22B (1) (3) (ii), is extracted hereunder:

“22B. Survivors' Pension.--

(1) In the case of the death of an insured person while in insurable employment but after he had completed not less than thirty-six months, insurable employment, the surviving spouse, if any, shall be entitled to a life pension.

2[(1A) -----

(2) -----

(3) In case the deceased of the surviving spouse in receipt of a survivor's pension, the minor children of the deceased insured person, if any, shall be entitled to the survivor's pension, in the following equal shares, namely;-

(i) -----

(ii) In case of female child, until she attains eighteen years of age or until marriage, whichever is earlier?”

9. Prime object of the Employees Old-Age Benefits Scheme, administered by the Employees' Old-Age Benefits Institution, is to provide subsistence pension to workers, employees/insured persons from the private sector who retire after completing a minimum period of insurable employment.

10. In the present case, the petitioner is claiming the pensionary benefits under Section 22B (1) (3) (ii) of the EOB Act, 1976. The petitioner emphasizes that the daughter of the insurer is entitled to surviving pension until marriage and since the petitioner has not contracted marriage, she is entitled, on the contrary, the respondent claim that since the petitioner has crossed the age of 18 years, which period is earlier thus not entitled for surviving pension.

11. It appears from the record that the late Abdul Ghafoor, father of the petitioner (unmarried daughter) gave the best years of his life to KS&EW from 29th November 1966 to 15th May 1998, later on, he passed away on 15.05.1998

and the petitioner being unmarried daughter claims surviving pension under Section 22(b) of the EOB Act, 1976 on the premise that she is suffering from various ailments including lung disease thus unable to earn and depend upon the pension of her late father which was earlier paid to her stepmother later on she remarried and the EOBI stopped the pension, now she claims her entitlement to receive the surviving pension under 22B(1)(3)(ii) of the EOB Act, 1976.

12. The expression whichever is earlier used in section 22B (1)(3)(ii) of the EOB Act, 1976 simply connotes that surviving pension is admissible to minors till attaining the age of 18 years or until contracting marriage, whichever occurs first. Since the petitioner is no more a minor child thus prima-facie not entitled to surviving pension in terms of law, however, the respondents shall look into the case of the petitioner for reasonable compensation based analogy that she is suffering from various ailments and unable to earn her livelihood in these hard times.

13. In the light of the above facts and circumstances of the case, the instant Petition is disposed of in the above terms.

JUDGE

JUDGE