

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No.D- 1461 of 2022

(Mst. Sahibzadi v. P.O Sindh & others)

Present:

Zafar Ahmed Rajput, J.
Zulfiqar Ahmad Khan, J.

For the Petitioner : Mr. Badaruddin Memon, Advocate.
For the Respondents : Mr. Zulfiqar Ali Naich, Assistant A.G
a/w Dr. Altaf Ahmed Soomro, DHO,
Ghotki.
Date(s) of hearing : **17-05-2023**
Date of Order : **17-05-2023**

ORDER

Zafar Ahmed Rajput, J. The petitioner Mst. Sahibzadi widow of Basheer Ahmed seeks, through instant petition, the following relief(s):

“(a). That this Hon’ble Court may be pleased to direct the official respondents to release the pension since the death of her deceased’s husband and pensionery service benefits to the petitioner without any further delay, as the husband of the petitioner has been expired du ring service on08.02.2022.”

2. It is case of the petitioner that her deceased husband was working as Senior Clerk in Health Department, Government of Sindh; he was lastly posted at Government Taluka Hospital Ubauro under supervision of Medical Superintendent Officer, Taluka Hospital Ubauro / respondent No.4 and he expired on 08.02.2022 during his service due to illness in a hospital at Karachi. It is also alleged that deceased husband of the petitioner left the petitioner, four sons and four daughters as his legal heirs. It is case of the petitioner that despite approaching the concerned authorities with requisite documents, she has not been issued service / pensionery benefits of her deceased husband.

3. In response to the case of the petitioner, the respondent No.4 submitted his parawise comments to the petition; Paragraph-02 thereof being material is reproduced, as under:-

“That the contents of the para No.2 are partially admitted, further it is submitted that the husband of petitioner was working as Senior Clerk at THQ Hospital Ubauro, but during the year 2016 the Honorable Supreme Court of Pakistan Islamabad has taken Suo Moto case regarding the fake appointment therefore on the direction of Honorable Supreme Court Islamabad the Honorable District & Sessions Judge Ghotki conducted enquiry against the fake appointment of Health Department (46) employees and the name of deceased Bashir Ahmed husband of the petitioner was one of them, hence the department has placed under suspension with the direction to report at Health Department Karachi and declared headquarter at Health Department Karachi, hence he was relieved from THQ Hospital Ubauro on 02.04.2020 (Photostat copy of such letter is enclosed for kind perusal). Further it is submitted that the Health Department initiated disciplinary proceedings against deceased Bashir Ahmed and given show cause & final show cause up to personal hearing during course of proceedings husband of the petitioner became ill and died at Hospital therefore the proceeding after personal hearing became halt and matter is still pending before the respondent No.1 hence the role of respondent No.4 is not made at the stage because the present authority who decide the matter is Secretary Health Government of Sindh Karachi.”.

4. Today, learned AAG has submitted statement of Special Secretary Health on behalf of Secretary, Health Department, Government of Sindh / respondent No.1, wherein while reiterating aforementioned comments of the respondent No.4, it has further been stated in paras- v, vi & vii that :-

“v. The husband of the petitioner namely Bashir Ahmed Chadhar also filed the petition No.2844 of 2021 and C.P No.147 of 2022 against his suspension and Show Cause Notice but the same were dismissed by the Honourable Sindh High Court.

vi. That the Department proceedings becomes abated in the circumstances wherein person is died during Departmental proceedings but in the instant case the detail Inquiry Report was submitted by the District & Sessions Judge Ghotki before the Apex Court wherein it was declared by the Inquiry Officer that the husband of the petitioner namely, Bashir Chadhar was illegally appointed without fulfilling the codal formalities.

vii. There was no misconduct done by the husband of the petitioner namely, Bashir Ahmed Chadhar but his initial

appointment from very beginning was declared illegal and without following the legal procedure he was appointed. Hence, rule of abatement of proceedings under the circumstances is not applicalbe.”

5. Learned counsel for the petitioner states that since the petitioner died during Departmental Inquiry, he was not able to record his defence with supporting documents before the Inquiry Officer and the alleged Department Inquiry stood abated; hence, the petitioner and legal heirs of deceased employee are entitled to receive all service benefits in accordance with law.

6. On the other hand, learned AAG strongly opposes the relief sought by the petitioner on the ground that since detailed inquiry report in respect of fake appointment of deceased husband of the petitioner was already submitted before the Hon'ble Supreme Court, wherein his initial appointment was declared invalid by the Inquiry Officer, the question of abatement does not arise and the opinion rendered by the Inquiry Officer regarding his illegal appointment stood final.

7. Heard and record perused.

8. It appears that the deceased husband of the petitioner was initially appointed as Dental Assistant (BPS-05) vide appointment order dated 21.11.1990. He died on 08.02.2022 after serving more than 32 years, pending inquiry against him, as mentioned above, regarding his appointment without codal formalities. It is an admitted position that during his service period, the petitioner performed his duties regularly and to the satisfaction of his superiors. He died during pendency of alleged inquiry; hence, he could not bring his defence before the Inquiry Officer. As such, the Inquiry Officer did not have defence version of the deceased husband of the petitioner, which was necessary to conclude the Departmental Inquiry regarding his appointment. Even otherwise, the moment the husband of the petitioner died, the alleged

inquiry stood abated. Hence, we **allow** this petition directing the respondents to complete all the codal formalities to release service benefits of the deceased husband of the petitioner expeditiously and preferably within a period of 60-days hereof under compliance report to this Court through its Additional Registrar.

9. Instant petition stands **allowed** in the above manner.

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