

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.D-3212 of 2022

[Aftab Ahmed versus The Province of Sindh & Ors]

Before:-

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon

Petitioner : Through Raja Mohiuddin Panhwar advocate
Respondents No.3to5 : Through Mr. M. Arshad S Pathan advocate
Respondents No.1&2 : Through Mr. Rafique A. Dahri, Asstt: A.G
Date of hearing : 26.04.2023
Date of judgment : 26.04.2023

J U D G M E N T

ADNAN-UL-KARIM MEMON J:- Petitioner seeks directions against respondents No.3 to 5 to restart his 'Family Pension', which has purportedly been stopped by the respondent-University.

2. Raja Mohiuddin Panhwar learned counsel for the petitioner submits that the father of the petitioner namely Baqi Bux Khokhar was an employee of the respondent university, who passed away on 27.04.2001, during service, and a pension order dated 24.07.2001 was issued in favor of petitioner's mother (widow of deceased employee). The learned counsel submits that the mother of the petitioner also passed away on 04.12.2016 and thereafter pension order dated 13.12.2018 was issued in favor of his differently-abled brother Mehtab Ahmed, who also left this temporary in to the eternal abode on 08.03.2022 and then the petitioner moved applications for payment of family pension to him, which was sanctioned by the competent authority of respondent-university in his favor vide Order dated 13.05.2022, however, he was paid family pension as per West Pakistan Civil Services Pension Rules,1963, (**Pension Rules 1963**) up to 24 years i.e. till 07.03.2023 and thereafter it was stopped without assigning any reason. The learned counsel submits that the petitioner is entitled to a family pension according to the Pension Rules 1963, as such respondents may be directed to restart the family pension of the petitioner as per law.

3. Mr. Muhammad Arshad S Pathan learned counsel, representing Sindh University, however, objected to the maintainability of this petition by arguing that the petitioner was initially paid a family pension, however, due to amendment in the Pension Rules vide Notification dated 07.07.2022, whereby the age for payment of 'Family Pension' has been reduced from 24 years to 21; and, since the petitioner is 24 years of age, as such he is not entitled to family pension under the law. He prayed for the dismissal of the petition.

4. Learned AAG also adopted the arguments advanced by learned counsel for the respondent university and prayed for the dismissal of the petition.

5. We have heard the learned counsel for the parties and have gone through the relevant law on the subject.

6. In our view, the right to pension has a constitutional significance. It draws its strength from the right to life or the right to livelihood under Article 9 of the Constitution, therefore the objection to the maintainability of the petition is overruled.

7. Having dealt with the question of maintainability of the petition, the question involved in the present proceedings is whether the petitioner-son aged about 24 years is entitled to payment of family pension under the law and whether the amendment so brought in the Pension Rules vide Notification dated 07.07.2022 has retrospective effect and disentitled the petitioner to receive Family Pension after attaining the age of 21 years.

8. To appreciate the aforesaid proposition, it is expedient to have a look at the Rule 4.10 of the Pension Rules, 1963, which provides that no family pension shall be payable to the following categories of surviving legal heirs of deceased Civil Servant under this Rule:

(a) to an unmarried female member of a Government servant's family in the event of her marriage;

(b) to a widow female member of a Government servant's family in the event of her re-marriage;

(c) to the brother of a Government servant on his attaining the age of 21 years;

(d) to a person who is not a member of a Government servant's family.

9. Subsequently, family pension, in the case of a widow's death, was held to be admissible to the dependent sons until they attain the age of 24 years or till they were/are gainfully employed, whichever was/is earlier and to unmarried daughters till their marriage or they were/are acquiring the regular source of income whichever was/is earlier. For convenience's sake Rule 4.10. (2)(A), is reproduced as under:-

- “a) To the widow of the deceased, if the deceased is a male Government servant, or to the husband if the deceased is a female Government Servant.”*
- b) If the Government Servant had more than one wife, and the number of his surviving widows and children does not exceed 4, the pension shall be divided equally among the surviving widows and eligible children together if more than, the pension shall be divided in the following manner viz., each surviving widow shall get 1/4th of the pension and the balance (if any) shall be divided equally among the surviving eligible children. Distribution in the above manner shall also take place whenever the Government Servant leaves behind surviving children of a wife that has predeceased him in addition to the widow and her children, if any.*
- c) In the case of a female Government servant leaving behind children from a former marriage in addition to her husband and children by her surviving husband, the amount of pension shall be divided equally among the husband and all eligible children. In case the total number of beneficiaries exceeds four, the husband shall be allowed 1/4th of the pension, and the remaining amount distributed equally among the eligible children.*
- ii) Failing a widow or husband, as the case may be, the pension shall be divided equally among the surviving sons not above 24 years and unmarried daughters.*

10. Hence, the bar of 21 years of age was done away and the age was enhanced from 21 years to 24 years for the son. Now, the Sindh Government vide Notification dated 07.07.2022 has amended Rule 4.10 of Pension Rules, 1963 whereby figure 24 has been substituted to figure 21; and, because of such amendment, the respondent university has stopped the family pension to the petitioner after the cutoff date, which action is impugned in the instant petition. An excerpt of the aforesaid Notification is reproduced below:

“AMENDMENTS

(i) **In Rule 4.10-**

(i) for sub-rule(1), the following shall be substituted:

“Family for the purpose of payment of family pension shall be as under:”

(ii) in sub-rule (2) (A) -

- (a) in clause (ii), for the figures “24”, the figures “21” shall be substituted;
- (b) in the Note appearing under clause (ii), for the word “paisa”, the word “rupee” shall be substituted;
- (c) Clause (iv) to (vii) shall be omitted;

(iii) in sub-rule (2) (B)

- (a) for clauses (i) and (ii), the following shall be substituted:-
 - “(i) to the mother in case when a civil servant dies without getting married or otherwise having no family as described in rule 4.10(2) (A)”
 - “(ii) failing the mother, to the father in case when a civil servant dies without getting married or otherwise having no family as described in rule 4.10 (2) (A).”
- (b) clauses (iii) to (v) shall be omitted;
- (c) for clause (vi), the following shall be substituted:-

“(vi) failing the mother and the father, to the divorced daughter.”

- (d) clause (vii) shall be omitted

(iv) in sub-rule (3), clause (c) shall be omitted.”

11. Primarily, a Civil Servant after retirement and after his or her death, family is entitled to receive his or her pension, as prescribed in the Pension Act and Rules framed thereunder. In this regard, family pension is admissible to the surviving legal heir of the deceased employee as discussed in the preceding paragraph, in this case, the son until the age of 24 or until he is gainfully employed.

12. In this case, the petitioner has admitted that he crossed the age of 24 years on 7.3.2023, however, his family pension was abruptly stopped by the respondent university in 2022, before attaining the age of 24 years under the garb of the notification dated 07.07.2022, issued by the Government of Sindh on the premise that petitioner was/is not entitled to Family Pension after amendment in the Pension Rules.

13. Prima-face, this apathy on the part of respondent-university, for the simple reason that the respondent university cannot take away a right of a pensioner under the garb of such an Amendment, however, without prejudice to the above stance, the amendment made in the pension rules vide Notification dated 07.07.2022 cannot operate retrospectively and adversely affect the right to the family pension that had accrued to the petitioner when he became entitled to a family pension under the Pension Rules, just after the death of his father, mother, and differently-abled brother; and, his right to pension continued to accrue under the Pension

Rules, depriving the petitioner to such fundamental right is unconstitutional act on the part of respondent-university.

14. In principle, the pension can only be refused in the manner as provided in the Rules and not otherwise. In our view, the amendment will not affect the accrued right of the petitioner already protected under the Rules 1963.

15. Additionally, the disqualification mentioned in the amendment brought about in the Rules vide notification dated 7.7.2022 cannot constitute a valid ground to the respondent university for disqualification of the petitioner to receive a pension up to the age of 24 years as per pension rules 1963 which rules have been adopted by the respondent-university.

16. To take away the benefit of family pension, under the amended rules by construing the meaning of Rule 4.10 of the Rules, 1963 in a narrow manner would defeat the purpose of the beneficial legislation and would unfairly deprive the petitioner of the benefit of un-amended Rule 4.10 of the Rules; and, every financial benefit accrued on or before such date as discussed supra, entitles the petitioner-son to receive under the law. On the aforesaid proposition, we are guided by the dicta laid down by the Supreme Court of Pakistan in the case of *The Government of NWFP through the Secretary to the Government of NWFP, Communication and Works Department, Peshawar v. Mohammad Said Khan and another* (PLD 1973 SC 514), *Federation of Pakistan v. I.A. Sharwani* (2005 SCMR 292) and *H.R.C. No.40927-S of 2012* (PLD 2013 SC 823).

17. Since the petitioner has been receiving a family pension regularly up to March 2022 and was/is entitled to receive the pension till the age of 24 years upto 07.3.2023; and, the amendment so brought in the pension rules vide Notification dated 07.07.2022 will not have an adverse effect to his accrued right to the family pension. On the aforesaid proposition, we seek guidance from the decision rendered by the Supreme Court in the case of *The Province of Punjab through the Secretary, Finance Department, Government of the Punjab, Lahore, etc Vs. Kanwal Rashid* 2021 SCMR 730.

18. In this background, we see a valid reason to interfere in the matter. The pension of the petitioner shall continue strictly under the Pension Act and the Rules, while the impugned stoppage of the family pension of the petitioner by the respondent university is struck down as being illegal and

unconstitutional. The petitioner will, however, be disentitled from drawing a pension, when he attains and/or attained the age of 24 years, which period as per record has already expired on 07.03.2023.

19. This petition is allowed in the above terms.

JUDGE

JUDGE

Sajjad Ali Jessar