

IN THE HIGH COURT OF SINDH AT KARACHI

Present:-
Mr. Justice Naimatullah Phulpoto
Mr. Justice Shamsuddin Abbasi

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Const. Petition No.D-185 of 2021

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| Petitioner | Ms. Syeda Asia Rizvi d/o Syed Nasir Hussain Rizvi through Mr. Afaq Ahmed & Mr. Arshad Qaiser Warsi, Advocates. |
| Respondents | The Federation of Pakistan through Secretary / Chairman, Pakistan Railways & others through Ms. Afsheen Aman & Mr. Muhammad Rustam, Advocates. Mr. Pir Riaz Muhammad, DAG a/w Mr. Imran Ahmed Khan, Senior Audit AGPR. Mr. Sarfraz Ali Metlo, Amicus Curiae a/w M/s Barkat Ali Metlo & Muhammad Avais Leghari, Advocates. |
| Date of hearing | 30.05.2023 |
| Date of order | <u>02.06.2023</u> |

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ORDER

Shamsuddin Abbasi, J:- By means of this Constitution Petition filed under Article 199 of the Constitution of Islamic of Pakistan, 1973, against respondents, the petitioner seeks following relief(s):-

“The petitioner respectfully pray that this Hon’ble Court may be pleased to issue writ of Mandamus by directing the Respondent No.02 to issue 50% family pension to the Petitioner by recalling pension order passed in favour of the Respondent No.04.

Any other relief or relives as this Hon’ble Court may deem appropriate and proper in view of the circumstances of the above petition.

Cost of the proceedings may also be granted”.

2. Petitioner Ms. Syeda Asia Rizvi claims to be the daughter of Syed Nasir Hussain Rizvi, who was serving in Pakistan Railways as Senior Chargman, and retired on 07.07.1995 on attaining the age of superannuation. It is stated that he had drawn pension and upon his death on 23.03.2016, the pensionary benefits were devolved upon his

widow Mst. Salma Parveen, who also expired on 14.03.2019. Thereafter, such benefits were converted to unmarried daughter Ms. Syeda Rubab Zehra. The petitioner claims that she was married to Muhammad Maysam, who during lifetime of her parents pronounced divorce to her on 30.01.2015, therefore, she besides her unmarried sister is also entitled to get equal share from the pensionary benefits of her deceased father, but the office of AGPR (Respondent No.3) is reluctant to distribute her share despite the fact that she did not contract second marriage.

3. Comments have been filed by the department (Pakistan Railways) raising plea that according to Office Memorandum No.1(13)-Reg.6/83 dated 23.10.1983 of Government of Pakistan, Finance Division (Regulation Wing-II) when an unmarried daughter of a deceased employee is alive, his divorced daughter cannot claim family pension as a right.

4. The learned counsel for the petitioner submits that petitioner being a divorced daughter of deceased employee is entitled to get 50% share from the family pension. It is next submitted that the act of the respondent No.3, refusing to distribute petitioner's share in her name is illegal and contrary to rules.

5. The learned counsel appearing on behalf of Pakistan Railways submits that as per rules a divorced daughter of deceased employee is not entitled to claim family pension and her application was rightly turned down by the competent authority. In support of her submission, she referred Policy framed by Finance Division (Regulation Wing-II) vide Officer Memorandum No.01(13) – Reg.6/83 dated 23.10.1983.

6. The learned DAG has admitted that Government of Pakistan, Finance Division (Regulation Wing) has issued Office Memorandum dated 19.06.2018 substituting paras 8(1)(2)(a)(ii)(iii)(iv)(v) of Finance Division O.M. No.F.1(13)-Reg.6/83 dated 23rd October, 1983 with new para 8(1)(2)(a)(ii) and has allowed unmarried daughter, widow daughter and divorced daughter of a civil servant for pensionary benefits till life or on contracting marriage/ re-marriage.

7. Mr. Sarfaraz Ali Metlo, Senior Advocate, was appointed as Amicus Curiae for rendering his assistance on the point that whether in presence of an unmarried daughter of a deceased employee, his divorced daughter is also entitled to claim family pension. Mr. Metlo submits that vide Office Memorandum dated 23.10.1983 the policy with regard to pension of civil servants was liberalized, whereby the widow was allowed to family pension for lifetime in case she did not contract second marriage. He also placed on record Office Memorandum No.F.13(16)-Reg.6/2017-516 dated 19.06.2018, whereby Government of Pakistan, Finance Division (Regulations Wing), Islamabad, further liberalized the rules with regard to family pension by way of substitution.

8. Heard learned counsel for the respective parties, learned Amicus Curiae and perused the entire material available before us minutely with their able assistance.

9. There is no denial of the fact that the petitioner is a divorced daughter of deceased employee Syed Nasir Hussain Rizvi. Before 1983, only widow of a civil servant was entitled to family pension for 10 years from the date of death of civil servant, but vide Office Memorandum No.1(13)-Reg.6/83 dated 23.10.1983, issued by Government of Pakistan, Finance Division (Regulation Wing-II), Islamabad, the rules were liberalized and substituted as under:-

8. *(1) Family for the purpose of payment of pension at 50 per cent of gross or net pension as the case may be under para 6(b) of this Division O.M. No.F.6(1)Rev.I/75 dated 7th January, 1977, will be as defined in para 5(1) above. It will also include the Government servant's relatives mentioned in sub-para (2) of paragraph 6 above.*

(2) (a) A pension mentioned under this section will be allowed to:-

(i) Widow of the deceased for her life, if the deceased is a male Government servant. 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 widow for life and children. If the member of surviving widows and children together is more than four, 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 children. For the purpose of this clause, the term 'children' exclude sons above the age of 21 years;

- (ii) failing a widow or husband, as the case may be, to the eldest surviving son till he attains the age of 21 years;*
- (iii) failing (i) and (ii) to the eldest surviving unmarried daughter till she attains the age of 21 years or till her marriage whichever is earlier; if the eldest daughter marries or dies then the next eldest daughter till she attains the age of 21 years or until her marriage whichever is earlier;*
- (iv) failing (i) to (iii) to the eldest widowed daughter for 10 years or unexpired portion of 10 years;*
- (v) failing (1) to (iv) to the eldest widow of a deceased son of the Government servant for 10 years or unexpired portion of 10 years;*
- (vi) failing (i) to (v) to the eldest surviving son below 21 years of age of a deceased son of the Government servant for 10 years or unexpired portion of 10 years;*
- (vii) failing (i) to (vi) to the eldest unmarried daughter below 21 years of age of a deceased son of the Government servant for 10 years or unexpired portion of 10 years;*
- (viii) failing these, to the eldest widowed daughter of a deceased son of the Government servant for 10 years or unexpired partition of 10 years.*

10. The Government of Pakistan, Finance Division (Regulation Wing), Islamabad vide Office Memorandum No.F.2(2)-Reg.6/96-IX-700 dated 07.07.2015, issued by Deputy Secretary (R-III) further liberalized the rules relating to family pension of civil servants by way of amendments as follows:-

"The undersigned is directed to refer to Finance Division's O.M. No.F.1(13)-Reg.6/83 dated 23rd October, 1983 on the above subject and to state that the President has been pleased to extend the benefit of family pension to the widowed daughter/divorced daughter of deceased pensioner by making following amendments, applicable w.e.f. 01.07.2015, in para 8(2) of the above referred O.M.

- (iv) "failing (i) to (iii) to the widowed daughter for life or till her remarriage".*

(v) *“failing (i) to (iv) to the divorced daughter for life or till her remarriage”.*

11. A bare perusal of Office Memorandum No.F.13(16)-Reg.6/2017-516 dated 19.06.2018 reveals that Government of Pakistan, Finance Division (Regulations Wing), Islamabad, in the light of directions issued by the learned Lahore High Court in the case of *Zakia Shaukat Rizvi v Controller Military Accounts and others* (2019 PLC (C.S.) Note 13 substituted paras 8(1)(2)(a)(ii)(iii)(iv)(v) of Finance Division O.M. No.F.1(13)-Reg.6/83 dated 23rd October, 1983 with new para 8(1)(2)(a)(ii) as under:-

“(ii) failing widow or husband, as the case may be, the pension shall be divided equal among the surviving son(s) not above 21 years and unmarried daughter(s) /widow daughter(s) /divorced daughter(s) till marriage/remarriage”.

12. The issue relating to family pension of civil servants has already been decided by the Government of Pakistan by way of substitution in paras 8(1)(2)(a)(ii)(iii)(iv)(v) of Finance Division O.M. No.F.1(13)-Reg.6/83 dated 23rd October, 1983. The petitioner being a divorced daughter of deceased employee seeks pension as per rules. It may be observed that pension is a fundamental right. We, therefore, in exercise of our constitutional jurisdiction, direct the Respondents No.1 to 3 to act in accordance with Office Memorandum No.F.13(16)-Reg.6/2017-516 dated 19.06.2018, issued by Government of Pakistan, Finance Division (Regulations Wing), Islamabad, and divide the family pension of deceased employee Syed Nasir Hussain Rizvi amongst the surviving unmarried daughter Ms. Syeda Rubab Zehra and divorced daughter Ms. Syeda Asia Rizvi equally till marriage /re-marriage.

13. The Constitution Petition No.D-185 of 2021 stands allowed in the above terms.

JUDGE

JUDGE