

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-1070 of 2023

(Arif Masood Vs. Federation of Pakistan & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Adnan-ul-Karim Memon, J;
Mohammad Abdur Rahman, J;

Date of hearing and order: 23-04-2024.

Mr. Imtiaz Ali Abbasi, advocate for the petitioner.
 Mr. Muhammad Aslam Jatui, Assistant Attorney General.

ORDER.

MOHAMMAD ABDUR RAHMAN, J; Through this Petition, maintained under Article 199 of the Constitution of the Islamic Republic of Paksitan, 1973, the Petitioner seeks directions to be issued to the Respondents to pay to the Petitioner, what he alleges are “pensionary benefits” in the form of payments on a Group Life Insurance Policy, the premiums of which were contributed to by the Petitioner’s late father Mazhar Ali Shaikh, during a period of his employment with the Sukkur Electric Power Company (hereinafter referred to as “SEPCO”) and which organisation is administered by the Federation of Pakistan.

2. The facts of this Petition are not in dispute. It is admitted that the (late) Mazhar Ali Shaikh was an employee of SEPCO and who had retired from that organisation on 29 May 2016 and who died about 4 years later on 10 June 2020. During the period of his employment with SEPCO, the (late) Mazhar Ali Shaikh was by virtue of various provisions of the Federal Employees Benevolent Fund and Group Insurance Act, 1969 (hereinafter referred to as the “Act, 1969”) and the rules made thereunder i.e. the Federal Employees Benevolent Fund and Group Insurance Rules, 1972 (hereinafrer referred to as the “Rules, 1972”), statutorily obligated to contribute a portion of his salary towards the payment of a premium for a Group Life Insurance Policy that had been settled by SEPCO for the benefit of its employees.

3. Mr. Imtiaz Ali Abbasi entered appearance on behalf of the Petitioner and contended that the payment made by the (late) Mazhar Ali Shaikh in the form of premiums towards Group Life Insurance Policy entitled the Petitioner to be paid an amount on the demise of the (late) Mazhar Ali Shaikh and which amount was liable to be distributed amongst the legal heirs of the (late) Mazhar Ali Shaikh according to the Muslim Law of Inheritance. He next argued that having paid such premiums in the context of his employment with SEPCO, the benefit of the Group Life Insurance Policy should be considered as “pensionary benefits” and which having been claimed by the (late) Mazhar Ali Shaikh from SEPCO during his life time would be regarded as his property and which would constitute a part of his estate and which would therefore be subject to being distributed as between his legal heirs on his demise.

4. Mr. Imtiaz Ali Abbasi thereafter referred us to Sub-Section (5) of Section 17 and Section 19 of the Act, 1969 and argued that a discretion vests in the Board of Trustees, constituted under Section 4 of the 1969, Act, to make such payments *“connected with the benefit of the employees, **including retired employees**, and their families, as the Board may direct”*. These amounts he contends can be paid by the Board if any amount is saved in the Insurance Fund after paying the expenses referred to in sub-section (4) of Section 17 of the 1969, Act. The Petitioner therefore contends that while he may not be entitled to payments under Section 15 of the 1969, Act as clearly the (late) Mazhar Ali Shaikh did not die “during the continuance of his employment”, as payments for premium had been made by him during his lifetime, he being part of the family of a “retired employee” was entitled to a payment under Sub-Section (5) of Section 17 of the 1969, Act.

5. Mr. Muhammad Aslam Jatoy, the Learned Assistant Attorney General has opposed this Petition and has argued that neither the 1969, Act nor the 1972, Rules provide for such relief to be paid to the family of the deceased employee for Group Life Insurance Allowance as the only payment that can be made is under Section 15 of the 1969, Act and which is payable in the event that the employee dies during the term of his employment. He concluded that neither the father of the Petitioner nor the Petitioner are entitled to any payment under the schemes created by the 1969 Act, and hence no case for relief was made out and sought that this Petition should be dismissed.

6. We have heard the learned counsel for the parties and have perused the record.

7. The preamble of the 1969 Act identifies the purpose of that statute to be:

“ ... WHEREAS it is expedient to establish a benevolent fund for the common benefit of the employees of the Federal Government and certain autonomous bodies and to provide for their group insurance.”

As is apparent, the intentio of Parliament through the 1969, Act, was to create a “benevolent fund” for employees of the Federal Government and autonomous bodies and additionally provides for the creation of a scheme for such employees to contribute a certain portion of the salary for the adoption of a Group Life Insurance Policy for the mutual benefit of such employees. Each of the schemes created are controlled by a statutorily constiuted Board of Trustees and who are governed by the provisions of the 1969, Act and the 1972, Rules. The relevant provisions of the 1969, Act which relate to the the scheme for the subscription to and the payment of the Group Life Insurance Policy are reproduced hereinunder:

“ ... **CHAPTER-IV GROUP INSURANCE**

15. *Insurance of Employees. –*

Subject to the provisions of this Act and the rules, in the event of the death of an employee, occurring by whatsoever cause, during the continuance of his employment, the Board shall pay to the family of the deceased employee a sum as may be prescribed.

16. *Arrangements with Insurance Company, etc. –*

The Board may from time to time arrange for the insurance of the life of the employees in sums as may be prescribed with such insurance company or other insurer and for such period as it deems fit, and where any such arrangement subsists, the liability to pay the said specified sums shall directly devolve upon the insurance company or other insurer.

17. *Federal Employees Insurance Fund.*

(1) *There shall be established a fund to be called the Federal Employees Insurance Fund which shall vest in and be held and administered by the Board.*

(2) *All sums received from the employees as premia for the group insurance of the employees and any interest or profit accruing thereon shall be credited to the Insurance Fund.*

(3) *The moneys credited to the Insurance Fund shall be kept in such bank as may be prescribed.*

(4) *All payments made under section 15, the expenses on any arrangement entered into by the Board with any insurance company or other insurer as provided for in section 16 and all expenses on the*

administration of the Insurance Fund shall be defrayed from the Insurance Fund.

(5) Any sums remaining in the Insurance Fund after defraying the expenses referred to in sub-section (4) may be utilized for such purposes connected with the benefit of the employees including retired employees, and their families as the Board may direct.

18. Payment of premia.

(1) Every employee shall be liable to pay to the Insurance Fund such sum of money as may be prescribed as premium for the insurance of his life as provided for in this Chapter and the amount of such premium shall as far as possible be deducted at the source from his pay and credited or remitted to the insurance Fund.

(2) Where the amount of premium cannot for any reason be deducted from the pay of the employee, the employee shall remit to the prescribed officer the sum of premium payable by him and any premia remaining unpaid due to inadvertence or negligence of the employee or otherwise shall be recoverable from him in such a manner as may be prescribed.

(3) Default in the payment of premia either for the reason that the pay of the employee was not drawn or due to his negligence or fault or for any other reason whatsoever shall not affect the right of his family to receive the sum assured in the event of the death of the employee, but the premium remaining unpaid at the time of his death may be recovered from the assured amount.

19. Payment of the sum assured. –

(1) On the death of an employee, the sum assured shall be paid to such member or members of his family as he might have nominated in accordance with the rules in full or in the shares specified by him at the time of making the nomination.

(2) Where no valid nomination made by the employee subsists at the time of his death, the sum assured shall be paid to such member or members of his family subject to such conditions imposed with a view to ensuring that the sum is justly and equitably utilized for the maintenance and benefit of all the members of the family as may be prescribed or may consistently with the rules, be determined by the Board or any officer authorised by the Board in that behalf"

8. It is seen that as per Section 15 of the 1969, Act the factual incidence for payments to be made to beneficiaries on the Group Life Insurance Policy occurs only where an employee dies during the "continuance of his employment". As such, the risk that is sought to be insured against is to ensure that a financial provision is made for the person nominated by the employee as the beneficiary on the Group Life Insurance Policy so as to financially assist them at a time when they would be financially compromised by the demise of the employee. To our mind this provision is to be read in conjunction with Sub-Section (2) of Section 19 of the 1969 which prescribes the manner in which payment on the policy is to be made on the death of the employee and to the person or persons nominated in accordance with 1972, Rules or to persons in proportions as may be indicated by the employee at the time of making the nomination. Sub-

Section (1) and Sub-Section (2) of Section 18 of the 1969, Act, mandates the deduction of an amount as premium from the salary of the employee and clarifies that in the event that such an amount cannot be deducted, then the amount would be recoverable from the employee in such manner as may be prescribed i.e. in accordance with 1972, Rules. Importantly, under Sub-Section (3) of Section 18 of the 1969 Act, a default on payment of the premium would not disentitle the persons nominated under the Group Life Insurance Policy from receiving payments on that policy as the provision to that section clarifies that if any premium had not been paid or deducted, then such amount could be deducted from the assured amount payable to the beneficiary.

9. Sub-Section (1) of Section 17 of the 1969 creates a fund known as the “*Federal Employees Insurance Fund*” and as per Sub-Section (4) of Section 17 of the 1969 Act, all payments to be made on the Group Life Insurance Policy i.e. the assured amount, are to be deducted from that fund. In addition to the payments to be made on the Group Life Insurance Policy, the expenses incurred for maintaining the Federal Employees Insurance Fund and all expenses incurred in respect of the administration of the Insurance Fund are also to be deducted from the fund and thereafter any amounts that remain “*may be utilized for such purposes connected with the benefit of the employees including retired employees, and their families as the Board may direct.*” It would therefore seem that in addition to the payments made on the demise of an employee, during the continuance of his employment, under Section 15 of the 1969, Act after paying all expenses as identified in Sub-Section (4) of Section 17 of the 1969, Act if any amounts are lying in surplus with the Board of Trustees, such amounts can be used by the Board of Trustees for the benefit of:

- (i) current employees;
- (ii) retired employees; and
- (iii) families of current employees and retired employees.

While clearly the Board of Trustees have been conferred with such discretion to utilise such a surplus lying within them in the Federal Employees Insurance Fund we are clear that the discretion vested in the Board of Trustees is not an absolute discretion and must be structured. The Supreme Court of Pakistan in the decision reported as **Aman ullah Khan and others vs. The Federal Government of Pakistan through Secretary**

Ministry of Finance, Islamabad and others¹ has held that where discretion has been conferred on an authority it must act in manner to structure its discretion by:

“ ... *Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Text by Kenneth Culp Davis (page 94) that the structuring of discretion only means regularising it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure. Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalise it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times.*”

Clearly, the Board of Trustees of the Federal Employees Insurance Fund , when exercising such discretion under Sub-Section (5) of Section 17 of the 1969, Act have to fetter their discretion and must disburse any amount lying in surplus in the Federal Employees Insurance Fund in accordance with the 1972 Rules. We have examined the 1972, Rules and note that two types of payment can be made by the Board of Trustees out of the Federal Employees Insurance Fund and which are clarified in Rule 23 and 25 of the 1972, Rules as hereinunder:

“ ... 23. *Payment of lump sum grant on invalid retirement. –*

(1) A sum specified in column (3) of the Fifth Schedule shall be paid out of Group Insurance Fund to an employee who retires on or after the first day of January, 2006, on medical grounds in terms of rule-22...

25. *Payment of stipends to outstanding children. –*

(1) Education stipends shall be paid to outstanding children of the eligible employees out of the Group Insurance Funds subject to the conditions hereinafter prescribed.

(2) The student for the purpose of the said stipends shall be regular student of the institution who has obtained at least eighty per cent marks in the immediately last held board or university examination. In case sufficient students in a particular category do not qualify, the Board may change the percentage of marks:

Provided that maximum two children of an eligible employee shall be entitled to the said stipends in a financial year.

¹ PLD 1990 SC 1092

(3) The stipends shall be paid for post-matric studies, at college or university level excluding Ph.D and M.Phil Studies. The Board in this context may prescribe categories. The amount of stipends shall also be fixed by the Board from time to time according to the availability of budget."

As per the 1972, Rules the Board of Trustees has exercised its discretion under Sub-Section (5) of Section 17 of the 1969, Act to confer two different types of benefits. The first is a "*lump sum grant on invalid retirement*" under Rule 23 of the 1972, Rules for the benefit of persons who retire on medical grounds and the second is "*Payment of stipends to outstanding children*" under Rule 25 of the 1972, Rules. Aside from these two benefits we have not been able to see any additional heads in the 1972, Rules under which payments can be made by the Board of Trustees pursuant to the discretion vested in them under Sub-Section (5) of Section 17 of the 1969, Act. We are equally clear that the Board of Trustees do not have an absolute discretion to release an amount to every person who comes within the perimeters of the classification contained in Sub-Section (5) of Section 17 of the 1969, Act as such an interpretation would lead to claims being made by every employee, retired employee and their family members and which if permitted would amount to the Federal Employees Insurance Fund being exhausted. To our mind the Board of Trustees have correctly structured their discretion under Sub-Section (5) of Section 17 of the 1969, Act by clarifying the heads under which such payments can be made in the 1972, Rules. It is not contended by the Petitioners that they falling within the ambit of Rule 23 or Rule 25 of the 1972, Rules so as to be entitled to such benefits. We are therefore clear that the Petitioners not falling within the heads contained in Rule 23 and Rule 25 of the 1972, Rules have no absolute right to maintain a claim for payments to be made to them from the Federal Employees Insurance Fund and Mr. Imtiaz Ali Abassi contention in this regard is to our mind not sustainable.

10. The second argument that was made by Mr. Imtiaz Ali Abassi was that as the (late) Mazhar Ali Shaikh had made contributions to the Federal Employees Insurance Fund, the entitlement thereto would constitute a portion of the estate of his estate. We regret that we are also unable to agree with this contention. An insurance policy is a subscription made by an individual to mitigate as against a risk and entitling them or their beneficiaries to financial compensation in the event that the risk occurs. However, if the risk does not occur, then the value of the subscription made i.e. the premium is not recoverable by the person making such payment and

is forgone. In the case of the (late) Mazhar Ali Shaikh, the risk that was being insured was that in the event of his demise during the “continuance of his employment” his family should not be rendered destitute and which admittedly did not happen and hence there can be no question of any amount having to be paid to either him or for that matter any of his legal heirs. The Petition is therefore not sustainable.

11. For the foregoing reasons, we are of the opinion that the Petitioner neither had any entitlement to any assured amount under Section 15 of the 1969, Act nor to any discretionary amount under the provisions of the Sub-Section (5) of 17 of the 1969 Act. This Petition being misconceived is accordingly dismissed, along with all listed applications, with no order as to costs.

Judge

Judge

Nasim/P.A