

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-911 of 2024
(Mst. Musrat Vs. Province of Sindh & others)

DATE **ORDER WITH SIGNATURE OF JUDGE**

Before:

Adnan-ul-Karim Memon, J.

Amjad Ali Bohio, J.

Date of hearing & Order 23.09.2024

Petitioner Mst. Musrat a/w her advocate Mr. Nazeer Hussain Jarwar,
Respondents Falak Sher & Mst. Sughra a/w their advocate Mr. Abdul Waheed Lashari
Mr. Abdul Rauf Arain, advocate for Municipal Corporation Mirpurkhas
Mr. Muhammad Sharif Solangi, Assistant A.G Sindh
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ORDER

Adnan-ul-Karim Memon, J. The petitioner Mst. Musrat has filed this petition under Article 199 of The Constitution of the Islamic Republic of Pakistan, 1973, seeking pensionary benefits for her late husband, Ilyas Masih, who was a former Sanitary Worker with the Municipal Corporation Mirpurkhas.

2. The case of the petitioner is that her husband Ilyas Masih was working as sanitary worker in the respondent Municipal Corporation, Mirpurkhas, and after his retirement, he was getting a pension. However, in the intervening period, he passed away on 15.09.2023 by leaving behind the petitioner (widow), Samreen, Sawera, and Kanwal (daughters), and Maekael, (son) as his surviving legal heirs. Petitioner has averred that her late husband had contracted a second marriage with Mst. Sughra, and from that wedlock, he has one child namely Falak Sher, but later on, Mst. Sughran embraced Islam and contracted marriage with Muhammad Aqil Khan and now his son Falak Sher has attained the age of majority. Petitioner further averred that after spending the *Iddat* period, she approached the respondent department for releasing her pensionary benefits, but she was kept in hollow hopes and failed and neglected to release the pensionary benefits of her late husband. Per the petitioner, she is a poor widow, looking after and maintaining minor children after the

death of her husband and passing hard times and now is entitled to receive her monthly pension of her late husband as per service pension rules. She prayed for directions to respondent No.01 to 03 to release the current monthly pension of her husband Ilyas Masih in her name along with arrears, as well as back benefits.

3. The respondent's legal representative submitted that the deceased, Ilyas Masih, retired in 2022 and received a pension until his death in September 2023. Both Mst. Musrat and Falak Sher applied for family pensions but failed to provide the necessary documents (Family Registration Certificate and succession certificate). Consequently, the court ordered the pension cheque dated 23.08.2024 of Rs.1,95,535/- to be deposited with the Additional Registrar of this Court.

4. Learned counsel representing the intervener has submitted that the petitioner falsely claimed to be the wife of the deceased. He added that this claim was used to obtain a death certificate listing the petitioner as the deceased's wife. He further argued that under Christian law, a husband cannot marry again while his wife is alive. He next argued that the petitioner's actions were fraudulent and intended to benefit her and her children. As per counsel, the intervener was not included as a legal heir in the heirship certificate. He added that the family registration certificate and death certificate were obtained fraudulently. As per learned counsel, the petitioner's goal was/is to obtain pensionary benefits. The counsel requests that the petition may be dismissed.

5. The subject issue involves the intricacies of marriages of the parties, which is governed by the Christian Marriage Act 1872, The Divorce Act 1869, and the Muslim Family Laws Ordinance. The court underscored in [2003 YLR 400 Lahore-High-Court-Lahore] that Christian marriages in Pakistan are monogamous unions, setting them apart from Muslim marriages, which are seen as civil contracts. The Christian Marriage Act stringently prohibits polygamy, making any second marriage conducted without dissolving the first one void and punishable. At the same time, the legal validity of a marriage is largely determined by the religious backgrounds of the individuals involved, as is the second marriage of Mst. Sughran after converting to Islam. The Christian Marriage Act and the Muslim personal laws each have their specifications, and when the two

intersect, it leads to complex legal scenarios. Without touching on the merits of the case, I am of the tentative view that without resolving the prime question involved in the present proceedings is the validity of the marriage of late Ilyas Masih and his pensionary benefits which are required to be paid to the person entitled under the law and without such declaration by the competent Court of law, this Court is not in a position to take any view until and unless it is firstly determined about the entitlement of the pensionary benefits of late Ilyas Masih; therefore, this petition is disposed of leaving the parties to first approach the competent forum for their entitlement. However, the fate of the amount so deposited shall be subject to the final decision by the appropriate forum, if approached by the aggrieved party.

JUDGE

JUDGE

"Ali Sher"