

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
MR. JUSTICE NISAR AHMED BHANBHRO

C.P. No. D-3251 of 2024

(Sarwat Ghazi Uddin v/s Province of Sindh and others)

Petitioner : Through Mr. Ghulam Hussain Advocate
Respondents : Through Mr. Ali Safdar Depar, AAG.
Date of hearing : 03.03.2025
Date of Announcement: 10.03.2025

ORDER

Nisar Ahmed Bhanbhro, J. Petitioner has brought this Constitution Petition seeking directions to the official Respondents for release of Monthly Pension of her deceased Father among Petitioner being divorced daughter and her unmarried sister.

2. Facts of the case in brief are that father of Petitioner was employed as Assistant Professor in College Education Department, he retired from services on attaining age of superannuation in year 1990. Father of Petitioner was pensioner, he passed away on 29th January 2023, on his passing away Petitioner being divorced daughter along with an unmarried daughter (sister of the Petitioner) are entitled to receive monthly pension in equal shares. Petitioner has approached this Court when her request was not acceded to by the Official Respondents.

3. The Notice of Petition was given to the Respondents. Comments have been filed, the Official Respondents have raised a plea that deceased father of Petitioner left him behind an unmarried surviving daughter, which excluded Petitioner being a divorced daughter to receive share from monthly pension of their deceased father.

4. Mr. Ghulam Hussain Learned Counsel for the Petitioner asserted that Petitioner is a helpless lady, she was divorced on 28.08.2021 in the life time of her father (deceased pensioner) who looked after her. There is no other source of income to earn livelihood. Petitioner as a divorced daughter comes under the category of unmarried daughter, thus entitled to receive her share from monthly pension.

5. Conversely Mr. Ali Safdar Depar, Learned Assistant Advocate General Sindh, has vehemently objected this petition. He submitted that Petition was not maintainable as Petitioner has concealed the names of other legal heirs while making her representation before competent authority. Petitioner is not entitled to receive share from monthly pension of her deceased father as she is a divorced daughter and excluded to receive pension benefits in presence of persons mentioned under Rule 4.10(A) of the West Pakistan Civil Services Pension Rules 1963, he prayed for dismissing Petition.

6. We have heard Learned Counsel for Petitioner, Learned Assistant Advocate General and perused the material available on record.

7. We have examined the record and find that the executive authority has framed rules for distribution of the pension benefits of deceased employees to the bereaved family. Rule 4(10) of the West Pakistan Civil Services Pension Rules 1977 sets priorities for distribution of pension benefits. Under Sub Rule 2(A) of Rule 4(10) widow excludes all the other legal heirs from receiving pension benefits. In case deceased did not leave a widow as surviving legal heir than sons below the age of 25 years and unmarried daughters would receive the benefits. In case deceased pensioner did not leave behind any of the Legal Heirs mentioned in category A of sub Rule 2, Legal Heirs mentioned in

sub Rule 2(B) become entitled to receive pension benefits in the manner that father would receive the pension failing which the mother, failing which the eldest surviving brother below the age of 21 years, failing which the eldest surviving unmarried sister, failing which the eldest widowed sister, failing which the divorced daughter. The divorced daughter was kept in the above category in Rules of 1977.

8. Had the position referred in Para 7 above remained the same, Petitioner would have been non suited, as this Court cannot assume the role of executive authority empowered to make rules.

9. Finance Division Ministry of Finance Government of Pakistan realizing the miseries and hardships faced by divorced and widowed daughters of the deceased pensioners, liberalized the pension rules through Office Memorandum No FI(13)-Reg 6/83 dated 23rd October 1983 in the following manner:

(ii) failing widow or husband as the case may be, the pension shall be divided equal among the surviving sons not above 21 years and unmarried daughters/ widowed daughters / divorced daughters till marriage.

The above notification has changed entire scenario, in terms of liberalization made in pension rules of 1977, the status of divorced daughters has been made equal to unmarried daughters, bringing them within the bracket of category mentioned in sub Rule 2(A) of Rule 4(10) of the pension Rules.

10. In the similar circumstances, Learned Division Bench of this Court in the case of **Asia Parveen versus Federation of Pakistan** reported in **2024 PLC (CS) 364** and Single Bench of Learned Lahore High Court in the case of

Zakia Shoukat Rizvi Versus Controller Military Accounts and other reported in **2019 PLC (CS) Note 13** have been pleased to hold that the divorced daughter in terms of the notification referred in Para No 9 above is entitled to receive share from pension benefits of deceased parents.

11. We are mindful of the fact that the Office Memorandum referred supra has been issued by the Federal Government and the instant petition involves the question of distribution of pension benefits of an employee of Government of Sindh. A review of the Service Laws applicable in the provinces infers that the the same are borrowed from the Federal Legislature. The provincial legislature has adopted the federal service laws para materia for the reasons that article 25 and 27 of the Constitution placed bar on discriminatory treatment to individuals in the matters relating to civil services.

12. We are therefore of the considered view that benefit of office memorandum dated 23.10.1983 issued by Finance Division would be available to all the individuals across the Country. Pension being fundamental right of the bereaved family cannot be denied in slip shod manner as has been done by the Respondents in the case of Petitioner. The widowed daughters by no strength of imagination be placed in a different category to that of unmarried daughters. After divorce they cease to receive maintenance on expiry of Iddat Period, under such a situation they cannot be left deserted. If they are left at the whims of Society, the very concept of a welfare state would cease to exist. Government of Pakistan by subordinate Legislation rightly paved a way for divorced daughters to receive share from pension of their deceased parents, worth appreciable that divorced daughters have been given equal treatment under the law to reduce the burden of their routine expenses. In Our view, Office Memorandum dated 23.10.1983 equally applies to the case of Petitioner

entitling her to receive share from monthly pension of deceased father equal to that of her unmarried sister until their re-marriage.

13. Sequel to above discussion, a case for indulgence of this court is made out, We, therefore, allow this petition, hold that the Petitioner being divorced daughter is also entitled to receive share from monthly pension of her deceased father until her re-marriage. The Respondents are directed to act accordingly and disburse amount of monthly pension of deceased Pensioner Ghaziuddin to Petitioner being divorced daughter and other unmarried daughter(s)/ widowed daughter(s)/ divorced daughter(s) according to their shares preferably within a period of four months of the date of this Order.

The petition stands disposed of in above terms along with pending applications if any.

Judge

Head of Const. Benches

Jamil