

# IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-1808 of 2020

(Mst. Razia Bibi v/s PTCL and others)

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1. For hearing of CMA No 8918/2020
2. For hearing of main case

## **PRESENT:**

**MR. JUSTICE MUHAMMAD FAISAL KAMAL ALAM**

**MR. JUSTICE NISAR AHMED BHANBHRO**

Petitioner :	Mst. Razia Bibi Through Syed Ansar Hussain Zaidi, Advocate.
Respondents No 1 to 3:	Pakistan Telecommunication Company Limited Through Mr. Muhammad Azhar Mehmood for
Respondent No 4:	Federation of Pakistan Through Mr. Raja Khaleeq-uz-Zaman Ansari, Assistant Attorney General
Date of hearing:	11.02.2025
Date of Order:	.05.2025

## **JUDGMENT**

**NISAR AHMED BHANBHRO, J:** The Petitioner, through instant writ Petition, has prayed to issue directions for release of Benevolent Grant, Group Insurance and an amount of Rs.6,28,070/- (Rupees Six Hundred Twenty-Eight Thousand Seventy) towards pension benefits of her deceased husband Muhammad Ramzan who was employed in erstwhile Pakistan Telecommunication Company Limited “PTCL”.

2. Per averments contained in Petition, it is stated that Mohammed Ramzan (deceased husband of Petitioner) was employed in “PTCL” in year 1982 and worked there until his retirement in year 2008 through Voluntary Surrender of Service (VSS) Scheme introduced by the Federal Government under Re-structuring policy. “PTCL” Employees including deceased Husband of Petitioner were given an offer by the Department to retire from services through VSS agreement, which determined the payable dues amounting to Rs 12,79,089/ including a monthly pension of Rs 5150. Husband of Petitioner accepted the offer and signed VSS agreement. Husband of Petitioner was paid agreed amount but monthly pension was declined on he as he fell short of qualifying length of 20 years’ service. Huband of Petitioner filed Suit No 194 of 2014 for determination of his Pensionary rights, but Learned Trial Court returned plaint of Suit under Order VII Rule 10 CPC for want of jurisdiction. Husband of Petitioner filed C.P. No. D 3770 of 2015 before this Court, which was disposed of vide Order dated

16.05.2016 by consent that the Respondents would consider the case of Petitioner and decide the same within four months. Respondents declined the case, and communicated such information to him through Letter dated 14.11.2016. Since Muhammad Ramzan died on 13.08.2015 and decision taken by Respondents was communicated afterwards, therefore, Petitioner being widow of deceased employee filed this Constitutional Petition.

3. Upon receiving notices, Respondents (PTCL) filed Reply taking objections as to the maintainability of instant Petition on the ground of laches and further responded that the deceased had availed VSS of his own will and accord in year 2007-2008 without raising any objection. The deceased employee was short of 20 years qualifying length of service to become eligible for monthly pension. Respondents introduced a revised scheme for benefit of employees not eligible to receive monthly pension by granting an extra benefit of Separation Bonus of Rs.450,000/- which was received by deceased employee Muhammad Ramzan. Prayed for dismissal of this petition.

4. Learned Counsel for Petitioner contended that husband of Petitioner served "PTCL" since year 1982 spanning over 26 years, but PTCL did not recognize period he served on contingency basis, but if non-permanent period of service is excluded, husband of the Petitioner remained in regular service since 1989 and he served for 19 years and 07 months, and was still qualified for receiving monthly pension of Rs 5158, as fraction of 7 months would be counted as a full year, as such the length of service of deceased for pension purposes would be counted as 20 years. That as per VSS Agreement signed by parties an amount of Rs.1,279,089.02/- was determined payable to husband of Petitioner with Monthly Pension of Rs.5,158/-. That Separation Bonus Agreement was neither signed by husband of Petitioner nor communicated to him but an amount of Rs.4,50,000/- was transferred in his Bank Account. There is no delay in filing of instant Petition as Petitioner is House Lady, she pursued her case before Respondents, she moved applications but remained unattended. Deceased husband of Petitioner contributed towards Benevolent Grant and Group Insurance during his entire service and after his death Petitioner was entitled to receive such amount which Respondents failed to pay. While relying upon the case of Mst Yasmeen Versus PTCL & others reported in SBLR 2023 Sindh 1123, Learned Counsel prayed for allowing the Petition.

5. Controverting the assertions made at Bar, Learned Counsel for "PTCL" argued that Petition suffers from laches as the impugned order has been challenged after period of four years. Deceased Husband of Petitioner initially entered into VSS Agreement, wherein only those employees having 20 years' length of service qualified for monthly Pension. Later on, Respondent Company in order to benefit the employees falling short of 20 years mandatory qualifying length of services, launched Separation Bonus Scheme, through which the employees were paid an additional bonus of Rs 450,000. Separation Bonus Scheme was availed by deceased Muhammad Ramzan, no amount is outstanding against "PTCL" payable to Petitioner, he contended that soon after acceptance of VSS, deceased Muhammad Ramzan disputed VSS, he was informed vide Letter dated 19.06.2008 to Re-Join PTCL by depositing amount of VSS and Separation Bonus Package but he did not. He further contended that Group Insurance and Benevolent Grant is not payable to Petitioner as the said amount is payable in case an employee incapacitates or dies while in service. He asserted that issue in hand stands resolved by the Honorable Apex Court in the case of Mst. Tasneem Fatima & others Vs PTCL & others [Civil Appeal No. 2506 of 2016], wherein the identical claims of the employees availing VSS were declined. He relied upon unreported judgment of Honorable Supreme Court in case of Asadullah Khan & others Versus PTCL & others (Civil Appeal No 68 – K of year 2020), Judgment of Division Bench of this Court in the case of Jameel Ahmed Versus

PTCL reported as 2022 PLC (CS) 481, Qari Allah Bux and others Versus Federation of Pakistan and another reported as 2011 PLC (CS) 488, and case of Mohammed Usman versus PTCL & others reported as 2020 PLC (CS) 895. Respondent Counsel prayed for dismissal of petition.

6. Heard Learned Counsel for the parties and Learned Assistant Attorney General, perused material available on record.

7. We have considered the submissions of Parties made through their Learned Counsels. The contention of Counsel for Petitioner that deceased Employee Muhammad Ramzan completed 20 years of service in PTCL and was entitled for monthly Pension of Rs.5158/- per terms and conditions of VSS agreement has force. If the admitted period of service of 19 Years and 07 Months is taken into account for the purposes of Pensionary Benefits, under Rule 2 of Pension Rules 1963 department is empowered to condone a delay of Six months to bring the service of an employee within the bracket of qualifying length of Service. Husband of Petitioner fell short of Five months which could have been condoned to bring him in threshold of qualifying length of 20 years' service, which did not happen. Husband of Petitioner Late Muhammad Ramzan by his own act and conduct conceded to the calculation done by Respondent "PTCL" that he was falling short of 20 years' service and accepted additional Separation Bonus amount of Rs 450,000, signed such Waiver Form. If deceased employee was desirous of receiving monthly pension, he should have refused to accept Separation Bonus Scheme and returned the amount back to "PTCL". The bereaved family at this stage is precluded from claiming such benefits under the well settled notion of law known as "Estoppel."

8. This controversy was agitated by other similarly placed employees of PTCL and Petitions for grant of such benefits were filed before Learned Islamabad High Court at Islamabad, which were dismissed. Aggrieved employees Mst. Tasneem Fatima & others filed Civil Appeals No. 2506 of 2016, before Hon'ble Supreme Court of Pakistan, appeals were dismissed with following observation in Paras-6 and 7:

*"6. We have noted that the appellants did not disclose the amounts received by them pursuant to VSS and particularly the amount of four hundred and fifty thousand rupees on account of the Separation Bonus. The appellants could only receive the Separation Bonus if they had less than twenty years of Qualifying Length of Service. The appellants also did not disclose that they had voluntarily participated in the VSS, accepted the calculations made by the Company and had executed the Waiver Form. This constituted nondisclosure of material facts. The appellants had instead projected themselves to have been wronged and embarked upon unnecessary litigation with a view to obtaining a benefit to which they were not entitled to. The fora below however mostly considered whether or not the appellants could have filed grievance petitions without considering whether they had a grievance. In our opinion the appellants did not have a grievance as they had voluntarily severed their relationship with the Company by availing of the VSS, which included a substantial amount received on account of Separation Bonus which only an employee who had less than twenty years of service could receive. The case of P.T.C.L. v Masood Ahmed Bhatti, which has been relied upon by the learned counsel for the appellants, stipulates that where an organization is governed by statutory rules then any action taken by such organization in derogation of or in violation of such rules would, if it is prejudicial to an employee, may be*

*set aside. However, in the present case the Company did not take any action prejudicial to the appellants. On the contrary the appellants had voluntarily availed of the VSS, received payments thereunder, including the Separation Bonus which was only payable to those employees who had less than twenty years of Qualifying Length of Service.*

*7. If the appellants genuinely believed that their training period should have been counted towards their length of service, and consequently, they were entitled to pension then they were not entitled to receive the Separation Bonus amount. And, even if we presume that the Separation Bonus was paid to them by mistake it was incumbent upon them to have stated this and to have returned / refunded it to the Company before proceeding to claim a pension on the ground that they had served the Company for twenty years or more. Significantly, the appellants at no stage, including before us, have submitted that they were not entitled to receive the Separation Bonus, let alone offering to return it. The appellants' actions are destructive of their claim to pension, because if they had twenty years or more of service they should not have received the Separation Bonus. Therefore, leaving aside the jurisdictional point which forms the basis of the judgments of the learned judge of the High Court and of the learned Judge of the Labour Court the appellants had by their own actions demonstrated that they had no grievance and that they were not entitled to pension.”*

Case of the Petitioner falls in the same category as has been decided by the Honorable Supreme Court in the case of Mst. Tasneem Fatima & others (Supra). Petitioner in our view is not entitled to receive any amount on account of Monthly Pension. The case laws relied upon by Learned Counsel for Respondent “PTCL” are also fully attracted to the case in hand as far as grant of monthly pension is concerned.

9. Taking up the next issue, regarding payment of Benevolent Grant and Group Insurance, it is worthwhile to mention that the Parliament enacted “The Federal Employees Benevolent Fund and Group Insurance Act, 1969” (hereinafter referred as “the said Act”) for the common benefit of the employees of Federal Government and Autonomous Bodies working under Federal Government. Section 11 of the said Act enumerates different stream of revenue for fund. The Benevolent Grant has been made payable under section 13 of “the said Act”, sub section 2 of section 13 being relevant, is reproduced for the sake of convenience:

**13. Benevolent Grants to be paid from the Benevolent Fund:**

(1) .....

(2) *Where on or after the fourth day of September 198, an employee is declared by the prescribed medical authority to have been completely incapacitated physically or mentally to discharge the duties of his employment and for that reason is retired or removed from service, he shall be entitled to receive for life such benevolent grant from the Benevolent Fund as specified in Column (4) of the Second Schedule, or where the employee dies during the continuance of his employment or during retirement before attaining the age of Seventy Years, his spouse shall be entitled to receive for life such benevolent grant from the Benevolent Fund as specified in Column (4) of the Second Schedule.*

*Provided Further .....*

Section 17 of “the said Act” required the Federal Government to establish “Federal Employees Insurance Fund” consisting of the sums received from employees as Premia for

the Group Insurance deducted at source from monthly pay. Section 18 of “the said Act” even protects the rights of family in case of default of payment of premia and makes the sum assured payable to the nominated member of family, whereas in case of no nomination payment of sum assured to be made in equitable and just manner for maintenance and benefit of all family members. The Federal Government for carrying out the purposes of “the said Act” has framed “The Federal Employees Benevolent Fund & Group Insurance Rules, 1972” (the said Rules), Rule 12 of the said Rules casts a duty upon the Head of Department to forward the application of bereaved family on Form B to Board of Trustees for grant of benefits accrued in terms of section 13 and 19 of “the said Act”.

10. Per record, Muhammad Ramzan deceased employee was born on 02.04.1966, he died on 13.08.2015 at the age of 49 years and 4 months. Petitioner has attached death certificate issued by NADRA specifying the date of death, which fact has not been denied by Respondents, record further transpires that Petitioner through application dated 15.11.2018 (available at page 65 of memo of Petition) made a request to Respondent No 1 on Form B as prescribed under Rule 12 of 1972 Rules (supra) for approval of Benevolent Grant and Group Insurance after the death of her husband, but no action to date has been taken by Respondents. Provisions of “the said Act” entitled Petitioner to receive Benevolent Grant for her life for a period starting from the date of death of her husband Muhammad Ramzan as he died after retirement but before attaining the age of 70 years. She is also entitled to receive sum assured on account of premia contributed towards Group Insurance in terms of section 13 and 19 of “the said Act”.

11. Lastly, addressing the objection of Learned Counsel for Respondents that instant Petition was not maintainable and liable to be dismissed under the doctrine of laches being filed after 12 years of VSS agreement. The objection of laches in filing the petition is without force for the reason that doctrine of laches is not a law of universal application. The doctrine of laches cannot be applied in every case as a hard and fast rule without examining dictates of justice, equity and fair play. In the case of Petitioner, Respondents No 1 to 3 were required to act fairly and justly to discharge their duties by forwarding the application of Petitioner to Board of Trustees for payment of Benevolent Grant and Group Insurance if found entitled. Use of word “shall” as embodied in Rule 12 of the Federal Employees Benevolent Fund & Group Insurance Rules 1972 clears the intent of law that in case of death of a retired or serving employee, only information is to be conveyed to Department, on receiving such information Head of the Department is burdened to forward the application of bereaved family to Board and under no circumstances they can be absolved of such duty. Inaction on the part of the Respondents to act upon application dated 15.11.2018 filed the Petitioner has created a recurring cause of action in her favor for which no limitation applies. If we place an embargo of laches for non-suiting the petitioner on that account it will amount to perpetuate injustice and would amount denial of a right to a bereaved family. Payment in lieu of Group Insurance and Benevolent Grant would not in any manner put any financial burden on Respondents as the amounts were deducted at source from monthly pay of deceased employee. We are of the considered view that there is a recurring cause of action for the petitioner to knock at the doors of justice and petition cannot be dismissed on account of mere delay which in our view is not applicable to the facts and circumstance of the instant case. The dictates of justice demand that a right should be given to a party to which it belonged without any excuses, in the present case a right in favor of Petitioner subsists and ought to be given to her.

12. The view arrived at by this Court also finds support from the Judgment of **Honorable Supreme Court in the case of Ummar Baz Khan & others Versus Jahanzeb Khan &**

**others reported in PLD 2013 Supreme Court 268**, wherein Honorable Apex Court has held as under:

“No Court could dismiss a lis on the ground of laches if it defeated the cause of justice and thereby perpetuated an injustice. Bar of Laches could not be over emphasized in a case where the relief claimed was based on a recurring cause of action”

13. In the case of **Director General Civil Aviation Authority Versus Abdul Touheed Khan reported in 2010 SCMR 468** the Honorable Apex Court was pleased to grant pension benefits to the retired employee over ruling the objection of maintainability on the doctrine of laches.

14. With due reverence the case laws relied upon by the Parties related to grant of pension benefits and did not relate to payment of Group Insurance and Benevolent Grant thus are distinguishable. As far the issue of monthly pension of “PTCL” employees opting VSS is concerned the same has been settled at rest by Honorable Supreme Court in the case of Mst. Tasneem Fatima & others Vs PTCL & others (Civil Appeal No. 2506 of 2016)

15. For what has been discussed herein above, we partly allow this petition and hold that the Petitioner being widow of deceased employee Muhammad Ramzan is entitled to receive Benevolent Grant for life as her husband died after retirement but before attaining the age of 70 years, she is also entitled for grant of Group Insurance for the sum assured against the life of her deceased husband. The Respondents are directed to make payment of Group Insurance and Benevolent Grant to Petitioner as per rules and procedure within a period of six weeks from today. Petitioner has failed to make out case for grant of monthly pension and to that extent the petition is declined.

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

JUDGE

JUDGE

Karachi

Dated : .05.2025

Jamil