

**HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

**CP No. D- 1343 of 2023**

[ Mst. Zubaida v. Province of Sindh & others]

**BEFORE:**

**MR. JUSTICE MUHAMMAD SALEEM JESSAR**

**MR. JUSTICE NISAR AHMED BHANBHRO**

Petitioner:

Mst Zubaida

Through, Mr. Inam Ali Malik, Advocate

Respondents 3 & 4

SSIC

Through Mr. Ayaz Ali Chandio, Advocate

Mr. Rafiq Ahmed Dahri, Asstt: A.G. Sindh

Date of hearing:

& Decision:

21.10.2025

**ORDER**

**NISAR AHMED BHANBHRO, J** - The Petitioner through instant Petition has claimed the following relief:

- (i) *Direct the Respondent No.3 to 5 to pay the Group Life Insurance claim of the petitioner as her husband was expired during his service in SSIC and Respondents No.3 & 4 further be directed to pay the death claims/funeral expenses of deceased.*
- (ii) *Direct the Respondent No. 1 & 2 to take serious action against the Respondent No.3 & 4, who are responsible for discontinuation of the Group life Insurance Policies of the employees/officials of SSIC and recover said amount from them.*
- (iii) *Direct the respondent No.5 to pay/release the Group Life Insurance claims of the petitioner.*

- (iv) *Direct the Respondent No.4 to pay the Contributory Provisional Fund (CPF) own subscription to the petitioner, deducted from the salaries of the deceased with profit thereon.*
- (v) *This Honourable Court kindly be pleased to Direct the respondents No.3 & 4 to prepare services Dues of the Deceased Employee after awarding up-gradation the post Deceased Employee i.e. Clerk from BPS-7 to BPS-11 which was generally allowed government of Sindh through Finance Department Government of Sindh with effect from 1-07-2016.*

2. Learned counsel for the Petitioner submits that husband of the Petitioner namely Fida Hussain was appointed as Clerk in Sindh Small Industries Corporation (SSIC) in the year 2008 and was upgraded to BPS-7 later on; that the husband of the Petitioner died natural death on 20.10.2018 while in service; that petitioner filed CP No. D- 2739 of 2021 praying for release of service benefits of her deceased husband which was disposed of with directions to adopt proper procedure as laid down by Division Bench of this Court in CP No. D- 6344 of 2019; that the Petitioner submitted application before the department but without any fruits. He further argued that in year 2016 SSIC upgraded the post of clerk to grade 11 but such benefit was not granted to husband of the Petitioner. He therefore, prays for allowing of this Petition.

3. Learned counsel for respondent-SSIC submitted that the Petitioner died while in service and her earlier Petition was disposed of as withdrawn on account of the statement given that her grievance was redressed; therefore, this Petition was bad under the law being hit by the principle of *res judicata*; that the husband of Petitioner failed to contribute fully towards group insurance fund; therefore, he was not entitled to receive the death claim. He prays for dismissal of the Petition.

4. Heard arguments, perused the material available on record.

5. As to the maintainability of instant Petition, the contention of learned counsel for respondent-SSIC that it was hit by the doctrine of *res judicata* is not attracted in the instant case as the earlier Petition was not decided on

merits and was withdrawn without any proceeding. No doubt the principle of *res judicata* is a principle of peace. It places check on multiple proceedings on the same subject matter between the same parties. In the present case Petitioner claims service benefits of her deceased husband, which respondents are avoiding to pay and failed to fulfill the obligation cast on their part to make payment of group insurance to the bereaved family which is a right granted under the Statue and cannot be curtailed in any manner on account of any slip-ups on the part of the counsel; as the petitioner being layman cannot understand the adverse effects of any statement made by the counsel before the court. Moreover; it appears from record that the Petition was disposed of vide order dated 21.12.2021 and a Review Petition was filed before this court wherein following observations were made:

*“We have gone through the Order dated 07.12.2021, which reflects that attorney of petitioner was present in person and order dated 07.12.2021 was passed in his presence, as such there is no apparent error on record. Even otherwise, the contention of learned counsel that no such statement was made by the attorney of petitioner carries no weight, as admittedly the grievance agitated in prayer (a) & (d) has already been redressed and the same prayer clauses were not pressed by the attorney of the petitioner vide order dated 24.11.2021 and in remaining prayer clause the petitioner has sought direction to respondents for payment of other service benefits. However, petitioner has not mentioned that what kind of other service benefits she is entitled for. Be that as it may, since the petition was dismissed as not pressed in presence of petitioner's attorney, hence the order dated 07.12.2021 requires no review. Accordingly, listed application stands dismissed being not maintainable. Petitioner; however, is at liberty to agitate fresh cause of action, if any, strictly in accordance with law”.*

6. This Court vide its order dated 21.12.2021 while disposing of the application seeking review of the earlier order dated 07.12.2021 left the Petitioner at liberty to agitate fresh cause of action strictly in accordance with law and the cause of action which has accrued at the time of death of the husband of petitioner still subsisted and was recurring cause of action which cannot be buried without rendering a decision on merits. The Petition therefore is held not falling within the scope of Section 11 CPC which defines the *res judicata* in following manner.

*“ 11. **Res Judicata.** No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”*

7. It transpires from the record that the claim of the Petitioner as to Group Life Insurance has not been denied; however, it has been stated in reply that the husband of Petitioner defaulted in its contribution. This objection on the part of the department was without substance as under Section 4 of the Welfare Fund Ordinance 1979 it was the responsibility of the department to deduct at source the contributory fund. Section 4 reads as under:

4. *Payment of contribution. (1) A civil servant shall be liable to pay as his contribution to the fund. Such sum of money as may be prescribed and the amount of such contribution shall as far as possible be deducted at the source from his pay and credited or remitted to the fund.*

*(2) Where the contribution cannot for any reason be deducted from the pay of the civil servant, he shall remit the amount payable by him to the prescribed officer.*

*(3) When any contribution remains unpaid due to inadvertence or negligence of the civil servant or such other reasons, it shall be recoverable from him together with interest thereon.*

8. From the plain reading of above provision of the law it is vivid and crystal that contribution to fund was deductible at source. If the contribution to fund remains defaulted due to the inadvertence or negligence of the civil servant or such other reason it was recoverable from him together with interest thereon. In the case of the Petitioner, her husband has died, he was no more in service. Nothing has been placed on record to hold that the husband of the Petitioner was guilty of failure in contribution to the fund, rather legislation made it explicitly clear that contribution to the fund should be deducted at source, thus any omission to pay towards fund squarely fell

on the shoulders of the department, which has been realized and the department has already forwarded summary to the Chairman SSIC which has been filed along with comments which reads as under:

*"In preview of the above-mentioned paras it is also stated that the premium amount of Rs. 13.740(m) is much higher as compared with the death claims amounting to Rs.5.920 (m) as mention in the letter of M/s State Life Insurance Corporation at Flag "B" which means SSIC bearing a loss of Rs.7.820(m) and in current circumstances SSIC not in the position to bear a loss of Rs.7.820(m) as SSIC facing acute financial crisis since long.*

*In this connection it is stated that approval may be solicited from Honourable Chairman SSIC for payment of 23 death claims of deceased employees through own resources of SSIC as per rates of M/s State Life Insurance Corporation and the amount of Group Insurance deducted from the salaries during stipulated period may be refund accordingly and taken-up new/fresh policy of Group Insurance. (Copies of previous summaries attached for ready reference).*

*Furthermore, it is pertinent to mention here that SSIC facing acute financial crisis since long, currently Finance Department. Government of Sindh allocate Rs. 400.000 (million) as Grant-In-Aid for the year 2024-25 and the expenditure of salaries and pension amounting to Rs 703.475 (m) per annum due to which SSIC facing Rs.303.475 (m) shortfall for current financial year, while Rs.230.859 (m) also pending on account of Outstanding Liabilities.*

*Now, it is pertinent to mention here that the DAC meeting was held on dated 31-10-2024 on the subject noted above in which DAC directed to the management for made new agreement with insurance company and deposit the requisite amount on their own level and submit report to Secretary within 07 Days (minutes of the meeting attached for ready reference).*

*Therefore, permission may be accorded for the new agreement policy from M/s State Life Corporation on account of Group Insurance for settle the above mention issue once for all.*

9. Vide notification dated 21<sup>st</sup> June 1980 Government of Sindh framed Sindh Civil Servants Welfare Fund Rules 1980 "the Rules" by exercising powers conferred under section 9 of the Ordinance to carry out its purposes. Per rule 3 of the Rules a civil servant was required to contribute Rs 4.75 per annum per thousand rupees of the fund to which he is insured, provided that in case of a civil servant in grade 1 to 4 shall be made by the government.

3. (1) Every civil servant in Grade-5 or above shall contribute towards the Fund a sum of Rs. 3.60 (three rupees and sixty paise) per annum per thousand rupees of the sum in which he is insured, and

*the contribution in respect of the civil servant up to Grade-4 shall be made by Government.*

*(2) The contribution under sub-rule (1) shall be made in twelve equated monthly installments.*

10. In case, where a civil servant defaults in payment of contribution, the subordinate legislation has laid down a procedure under rule 4 of the Rules that such default amount shall be recovered from the subsequent pay bill of the said civil servant. Since the Petitioner has died and question of payment and deduction of amount from subsequent salary also vanished, therefore, it is for the department to make good this deficiency. The group insurance claim has been made conditional for payment. Under the provisions of Welfare Fund Ordinance 1979 the claim is payable when an employee dies while in service and before attaining the age of 60 years. Since on the death of employee, the benefits of service get transferred to the family, there is no provision under the service law and ordinance to effect recovery of default amount from the family, as family of the deceased civil servant remains never at fault; therefore, on account of default in contribution to the fund the family cannot be deprived of this right in any manner. Therefore, the department is left with no option but to forward the claim of the group insurance of the deceased husband of the petitioner by making good the deficiency in terms of Rule 10 of the Rules which reads as under:

*10. (1) As soon as may be after the death of a civil servant the Head of Office or Department shall furnish to the Insurance Company:*

*(i) a certificate in the form set out in Annexure 'B' or 'C', as the case may be, certifying the death of the civil servant indicating the Grade in which he was placed immediately before his death.*

*(ii) where the deceased was a civil servant in Grade-15 or below one copy of the nomination form referred to in sub-rule (3) of rule 8.*

*(iii) a certificate specifying the names of the members of his family, and in the absence of any member of his family, the names of his surviving relatives, to whom the sum assured is payable under the provisions of clause (b) of section 8, and the shares in which the sum is payable to each member of the family or surviving relative as the case may be; and*

*(iv) in the absence of the persons referred to in clause (ii) and (iii) a certificate specifying the name of the holder of succession certificate obtained from the court of competent jurisdiction.*

*(2) On receipt of the documents referred to in sub-rule (1) the Insurance Company shall make arrangement for immediate payment of the assured sum.*

11. Use of word shall in Rule 10, obligates to the head of the department to forward the claim of insurance of the deceased employee without any delay. Civil Service is a source of earning bread and butter for family. the Ordinance was a beneficial piece of legislation which aimed at the welfare of the bereaved family, as the death of the breadwinner brings financial constraints and the financial crises creep up and lower the status of family from independent category to dependence. The Legislation was live to the situation thus initiated the scheme for insurance of the life of an employee by providing it a statutory cover. It is the responsibility of the concerned department to transfer the benefits of the service accrued on account of the death of a civil servant to the family of deceased without any delay. Though no such period for payment of life insurance claim has been provided under the Ordinance. Since the claim of group insurance was similar in nature to that of family pension, therefore, the statutory period of one month embodied under section 20 of the Sindh Civil Servant Act 1973 for payment of family pension shall be treated as the time limit for transfer of the amount of group insurance claim to the family of the deceased civil servant.

12. The claim of the Petitioner that a general upgradation from grade 7 to 11 was awarded to the clerks working in SSIC in year 2016 but the relief was not extended to the husband of Petitioner. Though the claim of the Petitioner has not been specifically denied, but it will be in the fitness of things that the claim as to the upgradation of be referred back to the department. The Chairman SSIC is directed to personally examine this claim of the petitioner and if found genuine, the benefit of the upgradation in service shall be extended to the deceased employee from the date of the issuance of notification of upgradation until his death and the said benefit shall also accrue to the family pension benefits of the Petitioner.

13. The State Life Insurance Corporation (SLIC) in its reply has stated that the SSIC commenced group insurance policy since 26.03.1976 and policy remained in force until 25.03.2012, its renewal premium was due on 26.03.2012 and no premium amount was paid therefore policy lapsed and SLIC was absolved of all the liabilities. This stance of SLIC was contrary to the provisions of law and cannot be accepted. SLIC is required to proceed in

accordance with law and get the claims realized on fulfilment of the obligations by the department.

14. It is an inalienable right of every citizen to be dealt with in accordance law and through due process, such right has been guaranteed and protected under Articles 4 and 9 of the Constitution. To our dismay the respondents have failed to treat petitioner in accordance with law and hampered the grant of group life insurance. Such an act of apathy and contumacious delay in payment of claim of group insurance added in the sufferings of Petitioner and she remained a shuttle cock in between the officers and insurance company; such practice on the part of respondents is highly depreciated. The department has failed to do needful for the bereaved family even after the lapse of seven (07) years after the death of the husband of the Petitioner. Such action on the part of department is without justification and beyond the bounds of law

15. For what has been discussed hereinabove the petitioner has successfully made out a case for indulgence of this court to exercise the powers of judicial review. Consequently, this petition is allowed. The respondents are directed to forward the claim of the Petitioner on the prescribed proforma to the Insurance Company after fulfilling all the formalities within a period of One month from the date of this Order. The insurance Company shall ensure the payment of the claim to the Petitioner within a period of one month from the date of receipt of the claim.

The Petition stands disposed of in above terms. Office is directed to send the copy of the order to the Respondents for compliance.

JUDGE

JUDGE

Karar\_Hussain/PS\*

Approved for reporting

Dated 21.10.2025