

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitutional Petition No.D-2024 of 2025
(Mst. Sawera Saeed v. Province of Sindh and others)

Before:-

Mr. Justice Amjad Ali Bohio,
Mr. Justice Ali Haider 'Ada'.

Petitioner : Mst. Sawera Saeed, *through*
Mr. Alam Sher Khan Bozdar, Advocate

Respondents : Province of Sindh and others,
through Mr. Zulfiqar Ali Naich,
Assistant Advocate General, Sindh.

Date of Hearing : 12.03.2026

Date of Decision : 12.03.2026

ORDER

Ali Haider 'Ada' J. The crux of the petition is that one Mst. Shahzadi Sultana, an unmarried woman, was serving as a Primary School Teacher and passed away in the year 2018. The petitioner claims that she is the adopted daughter of the deceased and seeks directions to the Education Department for the release of pensionary benefits in her favour on the basis that she should be treated as the adopted child of the deceased.

2. Learned counsel for the petitioner submits that the petitioner, being the adopted daughter of the deceased employee, is entitled to receive the pensionary benefits. However, the respondents have not recognized her status as an adopted child; therefore, the petitioner was left with no other option but to file the instant petition.

3. On the other hand, the learned Assistant Advocate General submits that the record reflects that a civil suit was filed by one Saira Saeed against Muhammad Saeed regarding the recovery of certain funds, which fact has also been admitted by the petitioner in

paragraph No. 5 of the memo of petition. He further contends that, for a person to be recognized as an adopted child, certain legal requirements must be fulfilled. Since the petitioner has not been legally recognized as an adopted child under the relevant law, she is not entitled to claim pensionary benefits.

4. Heard learned counsel and perused the material available on record.

5. To examine the question as to whether an adopted child is entitled to pensionary benefits, reference may be made to the Compendium of Pension Rules and Orders, 2018. In this regard, an Office Memorandum issued by the Finance Division (Regulation Wing) has been placed on record. Section 01 relating to gratuity, particularly Note-1, clarifies the entitlement of family pension. For ready reference, Office Memorandum No. 1(13)-Reg.6/83 is reproduced as under:

*No.1(13)-Reg.6/83
Government of Pakistan
Finance Division
(Regulation Wing)*

Islamabad, the 23rd October, 1983

OFFICE MEMORANDUM

Subject:- FURTHER LIBERALIZATION OF LIBERALIZED PENSION RULES FOR CIVIL SERVANTS - FAMILY PENSION

SECTION -I:- GRATUITY

5. (1) The 'Family' for the purpose of payment of death-cum-retirement gratuity will include the following relatives of the Government Servant:-

- (a) Wife or wives, in the case of male Government Servant.*
- (b) husband, in the case of a female Government Servant.*
- (c) children of the Government Servant.*
- (d) widow or widows and children of a deceased son of the Government servant.*

Notes:- (I) A child means a legitimate child. An "adopted child will be considered to be a child when the Account officer, or if any arise in the mind of the Accounts Officer, the recognized Legal Advisor of Government, is satisfied that under the personal law of the Government servant concerned, adopted is legally recognized as conferring the status of a natural child, but in this case only.

(II) If it is proved that the wife has been judicially separated from the Government servant or has ceased under the customary law of the community to which she belongs to be entitled to maintenance, she shall no longer be deemed to be member of the family unless the Government servant has himself intimated in that she shall continue to be so regard.

(III) In the case of female Government servant if she intimates in writing to the Accounts Officer/Head of Office that her husband should not be included as a member of the family then he shall no longer be considered a member of the family unless she subsequently cares in writing her intimation excluding him.

6. Furthermore, the West Pakistan Civil Services Pension Rules, 1963, also define the entitlement and the term "family." In this regard, Rule 4.7 of the said Rules has been placed on record. For ease of reference, the same is reproduced as under:

4.7. (1) The term "family" for the purpose of payment of gratuity under this section shall include the following relatives of the Government servants -

(a) Wife or wives, in the case of a male Government servant;

(b) Husband in the case of a female Government servant;

(c) Children of the Government servant;

*(d) Widow or widows and children of a deceased son of the Government servant *[, ;]*

**[(e) Divorced daughter and sister.]*

Note. (i) A child means a legitimate child or an "adopted child" if under the personal law of the Government servant concerned adoption is legally recognized as conferring the status of a natural child.

7. Now the question arises whether the petitioner, claiming to be an adopted child, can be legally recognized under the personal law of the Government servant. In the present case, the deceased Government servant was a Muslim. However, no documentary proof is available on record to establish that the petitioner was legally recognized as an adopted child so as to confer upon her the status of a natural child.

8. Additionally, the Government servant, from whom the petitioner claims to derive the status of an adopted daughter, was

unmarried. Even otherwise, there is no material on record to demonstrate that the petitioner was ever formally adopted by the said Government servant. In the absence of such proof, a clear factual controversy arises.

9. It is a settled principle of law that disputed questions of fact cannot ordinarily be resolved in the Constitutional jurisdiction of a High Court. In the present case, the claim of the petitioner regarding her status as an adopted daughter involves the determination of factual issues, which require proper evidence and adjudication before a competent forum. In this regard, reliance is placed upon the judgments of the Hon'ble Supreme Court in **Special Secretary-II (Law and Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar (2023 SCMR 1442)**, **Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Intizar Ali and others (2022 SCMR 472)**, **Province of Punjab through Secretary Communication and Works Department, Lahore through Chief Engineer (North/Central) Punjab Highway Department, Lahore v. Yasir Majeed Sheikh and others (2021 SCMR 624)** and **Messrs Fateh Yarn (Pvt.) Ltd. Faisalabad v. Commissioner Inland Revenue Faisalabad and others (2021 SCMR 1133)**, wherein it has been held that Constitutional jurisdiction is not meant for resolving disputed questions of fact.

10. Keeping in view the foregoing reasons, the instant petition is hereby dismissed.

JUDGE

JUDGE