

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D- 4461 of 2017

Before :  
Mr. Justice Nadeem Akhtar  
Mr. Justice Adnan-ul-Karim Memon

Mst. Imtiaz Bibi V/S Federation of Pakistan and 03 others.

Date of hearing  
& decision : **28.02.2020**

Petitioner Mst. Imtiaz Bibi (CNIC No.42000-0465423-0) present in person.  
Mr. Muhammad Khalil Dogar, advocate for respondents 3 and 4.  
Ms. Durdana Tanweer, Assistant Attorney General.

**ORDER**

**Adnan-ul-Karim Memon, J.** For several years, the long and unjustified delay in the payment of pension has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite the strictures and orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay still persist.

2. Petitioner is the second wife of deceased Saeeduddin Qureshi, who passed away on 22.12.2009, seeks twenty-eight (28) month family pension, granted to deceased's first wife namely Mst. Bushra Saeed, who passed away on 25.11.2016.

3. Mr. Muhammad Khalid Dogar, learned counsel for respondents 3 and 4, has conceded that the petitioner is entitled to the aforesaid remaining portion of the pension, not availed by deceased's first wife Mst. Bushra Saeed and has prayed for disposal of this petition by directing the Accountant General, Accountant General Pakistan Revenues (AGPR) to release twenty-eight (28) month family pension of the deceased after the death his first wife.

4. Ms. Durdana Tanweer, Assistant Attorney General representing respondent No.1, has referred to the comments filed on behalf of respondent No.2 and argued that after the demise of Mst. Bushra Saeed (first wife of deceased) on 24.11.2016, the entire family pension is being paid to the petitioner being only surviving wife of deceased Saeeduddin Qureshi ; and, twenty-eight (28) month

family pension benefits which are / were payable to Mst. Bushra Saeed has now been retained / withheld by the office of AGPR on the premise that the aforesaid amount was/is right of Mst. Bushra Saeed and after her death the said 28 months arrears of family pension benefits, only legal heirs of deceased Mst. Bushra Saeed are entitled ; as the petitioner is not legal heir of Mst. Bushra Saeed as such she is not entitled for the aforesaid amount; that after the death of deceased his pension was payable to two widows, the petitioner has drawn her share, whereas Mst. Bushra Saeed has not drawn her share i.e. 28 months pension and after her death the petitioner is only entitled to full / undivided family pension with effect from 25.11.2016, whereas only legal heirs of Mst. Bushra Saeed have a right to claim the undrawn / life time family pension of 28 months arrears. She lastly prayed for dismissal of this petition.

5. We have heard the petitioner who is present in person as well as learned counsel for the respondents and perused the material available on record.

6. The important question involved in the present proceedings is whether the second wife is entitled to payment of family pension after the death of the first wife ?

7. To address the aforesaid proposition, it is well settled now that if the Government Servant had more than one wife, the pension shall be divided equally amongst the surviving widows and children. In the present case, petitioner's deceased husband had retired while serving as Principal Appraiser, Grade-V (BPS-17) in Pakistan Custom in the year 1988. His first wife Mst. Bushra, being his widow, was getting family pension during her life time. However, on 25.11.2016 she passed away, and after her demise, petitioner became entitled to all the pensionary benefits of her deceased husband. The only claim of the petitioner is with regard to payment of remaining pensionary benefits which could not be drawn by the first wife of the deceased i.e. twenty-eight (28) month pension.

8. The legal position of the case is that any financial benefit, which an employee can claim from his employer in his lifetime and has also become payable in his lifetime, is to be treated as an absolute right of the employee. However, a service benefit, which has not fallen due to an employee during his lifetime is a grant or concession on the part of the employer, then whatever amount that becomes payable after the death of the employee is to be distributed only to those members of his family who are entitled for the same as per following Pension-cum-Gratuity Scheme, 1954.

“S.4 (2) (a) A pension sanctioned under this Section will be allowed to:—

- (i) *Widow of the deceased for her life, if the deceased is a male Government servant. If the Government servant had more than one wife, and the number of his surviving widows and children does not exceed 4, the pension shall be divided equally among the surviving widows for life and children. If the number of surviving widows and children together is more than four, the pension shall be divided in the following manner, viz. each surviving widow shall get 1/4<sup>th</sup> of the pension and the balance if any shall be divided equally among the surviving children. For the purpose of this cause, the term “Children” exclude sons above the age of 21 years, married daughters and daughters above the age of 21 years.*
- (ii) *failing a widow or husband, as the case may be, to the eldest surviving son for 10 years or un-expired portion of 10 years excluding sons above the age of 21 years;*
- (iii) *failing (i) and (ii) to the eldest surviving unmarried daughter below the age of 21 years ; if the eldest daughter marries or dies then the next eldest for 10 years or un-expired portion of 10 years excluding daughters above the age of 21 years .*
- (iv) *failing (i) to (iii) to the eldest widowed daughter for 10 years or un-expired portion of 10 years.*
- (v) *failing (i) to (iv) to the eldest widow of a deceased son of the Government servant for 10 years or un-expired portion of 10 years ;*
- (vi) *failing (i) to (v) to the eldest surviving son below 21 years of age of a deceased son of the Government servant for 10 years or unexpired portion of 10 years;*
- (vii) *failing (i) to (vi) to the eldest un-married daughter below 21 years of age of a deceased son of the Government servant for 10 years or unexpired portion of 10 years;*
- (viii) *failing these, to the eldest widowed daughter of a deceased son of the Government servant for 10 years or unexpired portion of 10 years.”*

9. During the course of arguments, petitioner informed this court that she is getting entire family pension and so far as twenty-eight (28) month family pension is concerned, deceased's unmarried daughter, namely Ishna who is living with her is also entitled to share as per aforesaid proposition. If this is the position of the case, let the entire family pensionary benefits be distributed amongst the surviving widow and unmarried daughter of deceased, including 28 months pension as discussed supra in terms of this order.

10. On the aforesaid proposition, we seek guidance from the order dated 21.02.2013 passed by Hon'ble Supreme Court in Civil Appeal No.48 of 2013 (International Islamic University, Islamabad V/S Jahanzaib Khan and others), wherein it was held, inter alia, that all the Government departments, agencies and officers deployed to serve the general public within the limits prescribed by the Constitution and the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary / retirement benefits, and any violation of such direction shall amount to criminal negligence and dereliction of the duty assigned to them.

11. This petition stands allowed / disposed of with no order as to costs along with pending application(s) in the above terms. Let notice be issued to respondents 1 and 2 as well as to the Chief Secretary, Government of Sindh, and the Accountant General, Sindh, for compliance.

**JUDGE**

**JUDGE**