

Order Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P. No. D – 1939 of 2012

Before :

**Mr. Justice Aftab Ahmed Gorar
Mr. Justice Mahmood A. Khan**

Date of hearing : **13-10-2020.**

Mr. Abdul Wahab Shaikh, Advocate for the petitioner.
Mr. Muhammad Imran Khan, Advocate for the respondents.
Mr. Ali Raza Pathan, Assistant Attorney General.

ORDER

MAHMOOD A. KHAN, J. – This Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 filed by the petitioner required the payment of dues and pensionary benefits of her late husband Zafar Iqbal Lashari who died due to heart attack on 20-08-2010 while serving with the respondents primarily being Pakistan Railway Police. The respondents in the matter have conceded to the eligibility of the petitioner including that of the legal heirs for other benefits as available in accordance with rules, however, the claim of pension is denied on account of not qualifying to the required length of service. It also bears from the record that the deceased was inducted on 13-11-2001.

2. The learned counsel for the petitioner has not agitated specifically any entitlement (other than pension having not been provided), and as such each of the other benefits as are / may have been available need no discussion. However, in this regard, no dispute as to the entitlement we hold that the petitioner along with the legal heirs are entitled to the benefits as available in accordance with rules.

3. As to the matter of pension, learned counsel for the petitioner has relied upon the cases reported as Chairman, Pakistan Railway, Government of Pakistan, Islamabad and others v. Shah Jehan Shah (PLD 2016 Supreme Court 534), WAPDA through Chairman and another v. Mst. Parizada (2018 SCMR 1542), Toufiq Bokhari v. Secretary Ministry of Defence Rawalpindi and another (PLJ 1999 Tr.C. (Services) 480), Abdul Hameed Khan v. Maqbool Ahmed Khakwani and 2 others (1998 SCMR 2083) and Mst. Rashida Khatoon and 2 others v. District Education Officer (Male) and 3 others (2016 PLC (CS) 308). It is primarily contended by the learned counsel for the petitioner that the shortage in the entitlement as to pensionary benefit is not restricted as the same is liable to be so treated under Article 371-A of the Civil Service Regulations (CSR) and otherwise condonable by the competent authority.

The said aspect, however, is not found available in the case of the petitioner as his services were lasting for 08 years and 09 months only well short of the eligibility of 10 years, and no temporary / contract period of employment / service has been shown for inclusion in order to extend the same to the qualifying 10 years of service.

4. Learned Assistant Attorney General as well as learned counsel for the respondents have relied upon the case reported as Syeda Sakina Riaz v. Federation of Pakistan and another (2019 PLC (CS) 55) as well as the case referred to by learned counsel for the petitioner reported as Chairman, Pakistan Railway, Government of Pakistan, Islamabad and others v. Shah Jehan Shah (PLD 2016 Supreme Court 534) contending that Article 371-A of the Civil Service Regulations (CSR) is available only where the benefit of service required period is short and a temporary employment was available to bring it within the required limit, and that the

pension is not a bounty of the state but requires completion of the specified period in order to acquire entitlement of the benefit therefrom.

5. The petitioner has also filed a copy of application dated 08-09-2020 for consideration of her case with the respondents based upon Government of Pakistan, Cabinet Secretariat, Establishment Division Office Memorandum No. 8/10/2013-E-2 (Pt) dated 4th December 2015, titled as Revision of Assistance Package for Families of Government Employees who die in service, providing for availability of pension for the families of deceased Government servants in case of less than 10 years' service of the deceased employees. However, it is not clear whether the petitioner qualifies to the benefit of the said notification nor there seems to be any order passed on the application of the petitioner. As such while dismissing the petition on merits as to the entitlement of pension on account of the legal position, we direct the concerned Railway authorities to pass an order on merits to the said application of the petitioner either way, but keeping in view the office memorandum and acceptance thereof by the Railway authorities by way of Government of Pakistan, Ministry of Railways (Railway Board), Islamabad letter No. 26 (1)/2005-E-I dated February 10, 2016 and Pakistan Railways, Headquarters Office, Lahore letter No. 803-E/7/4-X/ PMAP(APO-IV) dated 15-02-2016. The said order be passed within a period of sixty (60) days from receipt of this order, and compliance be reported through the Additional Registrar of this Court.

The petition stands **disposed of** in the above terms.

J U D G E

J U D G E

Abdul Basit