

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-631 of 2018

Shah Abul Hasan

V/s

The Federation of Pakistan & others

Petitioner : Through Mr. Muhammad Arif Khan advocate

Date of hearing : 26.01.2018

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- The Petitioner seeks following relief(s) in the above captioned Constitutional Petition as under:-

- a) To direct the respondent No. 1 to 4 to grant full medical facilities to the petitioner, his second wife Mrs. Shama Hasan and Children (from the said wedlock) since the date of marriage i.e. 31.08.2015.
- b) To direct the respondent No.1 to 4 to Reimbursement to petitioner the amount of Rs. 912,815/- which was spent by him on the medical care of his first wife late Mrs. Talat Ara (who died on 22.04.2013).

2. Brief facts of the above referred petition are that the Petitioner is retired employee of State Bank of Pakistan. Petitioner has submitted that his first wife M/s Talat Ara, died due to long illness and the Petitioner borne all medical expenses incurred in the medical treatment of her wife, though as per rules and Regulations the Government of Pakistan was bound to bear the aforesaid medical expenses. Petitioner added that after death of Petitioner's first wife he contracted second marriage with Mrs. Shama Hasan. Petitioner has further submitted that after the death

of the Petitioner's wife he is entitled to collect pension amount as well as other benefits i.e. Life time medical facilities and other benefits but the Respondent No. 3 & 4 declined the same through correspondence and declared Petitioner's second wife Mrs. Shama Hasan and Children if any from the said wedlock will be entitled to collect only pension amount except other benefits i.e life time medical facilities and others. Petitioner added that time and again he approached to the Respondents for such benefits but his all efforts went in vain and refused to provide life time medical benefits to his second wife Mrs. Shama Hasan except Petitioner. It is further submitted by the Petitioner that the Respondents refused to reimburse to the Petitioner sum of Rs. 912,815/- being the amount spent by him on the medical care of his first wife, late Mrs. Talat Ara, who died on 22.04.2013. Petitioner being aggrieved by and dissatisfied with the inaction of the Respondents has filed the instant petition.

3. Mr. Muhammad Arif, Khan, learned counsel for Petitioner has argued that Petitioner is entitled to the re-imburement of an amount of Rs. 912,815/- being the amount spent by him on the medical care of his first wife late Mrs. Talat Ara as per Rules and Regulations framed by the State Bank of Pakistan. He further stated that the Petitioner is also entitled to grant full medical facilities, his second wife Mrs. Shama Hasan and Children from the said wedlock since the date of marriage i.e. 31.08.2015. He lastly prayed for allowing the instant petition.

4. We have heard learned counsel for the Petitioner, and perused the material available on record minutely with his assistance.

5. Upon query by this Court as to how the instant Petition is maintainable against the Respondent-Bank, the Petitioner reiterated

his arguments and argued that this is a hardship case and this Court can hear and decide the matter on merits.

6. Firstly with regard to the question of maintainability, we seek Guidance taken from the Hon'ble Apex Court's Judgment enunciating the test of Statutory Rules and non-Statutory Rules [Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others (PLD 2016 SC 377] and Muhammad Zaman etc versus government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (un-reported Judgment dated 21.02.2017) in civil Appeal No. 1313 of 2017 where in Paragraph-7 following was held:-

“ According to the Judgment delivered in Civil Appeal No. 654/2010 etc. titled Shafique Ahmed Khan, etc. Vs. NESCOM through its Chairman, Islamabad, etc. the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The formers are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to Section 54(1) of the Act and Section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving he generality of the power under Section 54(1) of the Act] Out of all the matters listed in Section 54(2) of the Act, Clause (i) is the most relevant which pertains to the “recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank's contribution, for the officer and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift” A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or

management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition.

Since it has been held above that the Regulations are non-statutory, therefore, we do not find it necessary to dilate upon the point of laches. In the light of the above, this appeal is dismissed.” (Emphasis Added)

7. We are cognizant of the fact that this Court cannot entertain the grievance of the Petitioner against a Respondent-Bank under Article 199 of the Constitution. Consequently, the instant Petition stands dismissed in limine along with listed applications. However, the Petitioner may avail appropriate remedy as provided to him under the law.

JUDGE

JUDGE

Shafi Muhammad P.A