

IN THE HIGH COURT OF SINDH, KARACHI

Present:-

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No.D-7114 of 2016

Asifa Jawed Petitioner

V E R S U S

Federation of Pakistan and others Respondents

Date of hearing: 07.08.2019

Date of Decision: 07.08.2019

Mr. Faisal Ikram, Advocate for the Petitioner.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON-J. Through the captioned Petition, the Petitioner has sought direction to the Respondents to grant her payment of lump sum grant in lieu of Plot under Prime Minister's Assistance Package announced vide Establishment Division's letter No. 8/10/2013-E2 (Pt) dated 04.12.2015.

2. The relevant facts of the case are that the Petitioner is a widow of late Jawed Ikram, who passed away on 17th July, 2012 during his tenure of service as Accounts Officer with Pakistan Military Accounts Department Karachi, Ministry of Defence. The petitioner has submitted that after death of her husband, her case for allotment of plot under the provisions contained in Prime Minister's Assistance Package announced vide Establishment Division's Office Memorandum dated 13.6.2006 was processed, but till date nothing has been done by the Respondent-department, inspite of fulfillment of all the codal formalities as set forth in the aforesaid Office Memorandum (OM). The petitioner has added that

aforesaid OM was revised/superseded from time to time and lastly another Office Memorandum dated 4.12.2015 was issued, whereby payment of lump sum of grant in lieu of plot was introduced subject to conditions enumerated therein. Per the petitioner, she is entitled to 2% quota for allotment of plot and payment of lump sum grant in cash in lieu of plot. The petitioner has averred that she attempted several times to convince the Respondent-Department to adhere the provisions contained in the OM dated 4.12.2015, but they turned their deaf ear. The petitioner being aggrieved of and dissatisfied with the aforesaid inaction on part of the Respondent-Department has filed the instant Petition on 28.12.2016.

3. Upon notice, para-wise comments were filed by the Respondents.

4. Mr. Faisal Ikram, learned Counsel for the Petitioner argued that instant petition pertains to benefits of the deceased Jawed Ikram, who served the Respondent-department for considerable period, which have not been paid to his widow by the Respondents for no rhyme or any reason and, compelled the Petitioner to approach this Court; that under the Family Assistance Package-2006, the Petitioner is/was entitled for allotment of plot, as her case falls under the category of BPS-17 officer and above; that under the amended Prime Minister's Assistance Package, 2013, which changed the condition of allotment of plot to the cash in lieu of plot of land, thus the petitioner became entitled for cash payment in lieu of plot as the said amendment revised/superseded the previous Assistance packages; that late Jawed Ikram, the petitioner's husband served the Respondent-Department and passed away during service and the Petitioner being widow of deceased namely Jawed Ikram is also entitled for a treatment equal to those women, who recently became widows after the amendment/supersession of the Assistance Package, thus there would be no discrimination amongst the widows of deceased Government officers; that the Respondents have allowed the similar benefits to the widows, whose husbands served the Government-departments and passed away during service tenure under Assistance package 2013-14 and 15; that discriminatory treatment has been meted out with the petitioner by not allowing the same benefits; that by virtue of revision in the Assistance

Package, the Government is asking for benefits of plot as per old policy of 2006, which disentitle the petitioner for grant of cash in lieu of plot; that change in the criteria differentiates between old package for allotment of plot only and new amended package i.e. cash in lieu of plots and deprives the petitioner to avail benefit of the amended package and is highly unjustified in law; the Counsel contended that husband of the petitioner was not allotted any plot during his service till his death, thus the respondents are under obligation to grant cash in lieu of plot as committed in the revised Assistance package and they cannot ask for wait in queue till her turn come. He lastly prayed for allowing the instant Petition.

5. Conversely, Mr. Muhammad Nishat Warsi, learned Deputy Attorney General argued that the Petitioner is not entitled for aforesaid benefit as she is required to apply against any scheme of Federal Government Employees Housing Foundation, Islamabad as and when announced; that the Office Memorandum dated 20.10.2014, which allows the cash payment in lieu of plot is effective from 15.6.2013; but later on the same had been kept in abeyance vide O.M dated 4.12.2015; that the husband of the Petitioner passed away on 17.7.2012, therefore she is/was not entitled for this facility i.e. grant of cash in lieu of plot and the Assistance package announced vide O.M dated 13.6.2006 is effective under O.M dated 25.5.2015, hence case of the Petitioner does not fall under the aforesaid policy decision of Federal Government, which has been clarified vide letter dated 12.8.2016 that widow/family of those deceased Government employees, who died before 09.02.2015 are entitled the benefits under the Assistance Package dated 3.6.2006; that the Petitioner is entitled to claim the benefits under Assistance Package, 2006 and not under the O.M dated 4.12.2015; that the Petitioner is required to apply herself in any scheme of Federal Government Employees Housing Foundation, as and when, announced to claim plot and not cash as per the Policy; that aforesaid Housing Foundation has announced 2x2 membership drives after 2012 and the petitioner is required to get in touch with them for the aforesaid purpose; that 2% quota fixed for allotment of

plot is still operative for the widow/families of those Government employees who died during 1.7.2005 to 8.2.2015; that it is responsibility of a Government servant to apply for allotment of plot for Federal Government Employees Housing Foundation or any other authority and the Respondent-Accounts Department has nothing to do with the policy decision of Federal Government; that the Petitioner is/was entitled for Assistance under Prime Minister's Assistance Package, 2006 as she had already enjoyed all the service benefits under that package, except allotment of plot against 2% quota from Federal Government Employees Housing Foundation Islamabad as per policy, but she failed to apply for the same. He lastly prayed for dismissal of the instant Petition.

6. We have heard learned Counsel for the Petitioner and learned DAG and perused the entire material available on record.

7. The issue in hand relates to the service benefits of petitioner's late husband accrued to him under the Prime Minister's Assistance Package, revised from time to time as discussed supra and as per claim of the Petitioner, she has been deprived of the same.

8. We have perused the O.M dated 30.6.2006, whereby the widows of deceased Government employees of Defence Division are entitled to claim benefits under the Assistance Package. This position has been endorsed by the Establishment Division vide O.M dated 12.8.2016, which prima-facie suggests that the Assistance Package for families of deceased Government employees was introduced by the Federal Government, notified by the Establishment Division vide O.M No.7/40/2005-E-2 dated 13th June, 2006, which is applicable with effect from 1st July, 2005; that Assistance Package-2014 was notified by the Establishment Division vide O.M No.8/10/2013 E-2 dated 20th October, 2014 which is applicable with effect from 15th June, 2013, which was subsequently held in abeyance by the Prime Minister till the Committee constituted under chairmanship of Secretary Finance Division, Govt. of Pakistan re-examined the policy of the death benefits and finalized it issued by the Establishment Division's O.M No.8/10/2013 dated 9th February, 2015. We have noted that the Prime Minister directed

that the pending cases of Assistance Package be processed in the light of instructions contained in the Establishment Division's O.M No.7/40/2005-E 2 dated 13th June, 2006, which was clarified by the Establishment Division vide O.M dated 25th May, 2015, for convenience of reference an excerpt of the recommendations of the Review Committee is as under:-

- i. **"In the light of recommendations of the Review Committee, the Prime Minister has been pleased to approve the Assistance Package 2015 with effect from 9th February, 2015. The same has been notified vide this Division's O.M No.8(10)/2013-E-2 dated 4th December, 2015.**
- ii. **Since deceased employees of Defence Division died before 9th February, 2016, therefore, as per policy approved by the competent authority referred above widows/families of deceased government employees of Defence Division are entitled to claim benefits under the Assistance Package dated 13th June, 2006."**

**(Manzoor Ahmed)
Section Officer (E-2)**

9. In view of forgoing O.M dated 13th June, 2006 which prima-facie suggests that the widow of a Government employee is entitled for allotment of plot fixed for deceased Government employees as per policy. The claim of the Petitioner is that vide O.M dated 11th June, 2018 the Assistance package for the families of Government employees, who died in service was revised with the suggestion that claims arising during the period between 15.6.2013 and 09.02.2015 while the Assistance package dated 20.10.2014 was in field has to be processed in accordance with law and rights created under this package. We have perused the aforesaid O.M and do not agree with contention of the learned Counsel for the petitioner for the simple reason that the O.M dated 04.12.2015 does not benefit the Petitioner, because it could not be applied retrospectively as desired by the Petitioner, as husband of the Petitioner passed away on 17.7.2012, whereas the Notification was issued by the Respondent No.2 on 20.10.2014 and 4.12.2015.

10. We have noticed that the O.M dated 12.8.2016 is clear in its terms that since the aforesaid facility has been revised by the Government vide O.M dated 4.12.2015 under which widow of family of deceased Government employee is entitled for lump sum payment of cash in lieu of plot at prescribed rates instead of 2% quota for allotment of plot and is

applicable with effect from 9.2.2015; therefore, the Petitioner is entitled for allotment of plot only against 2% quota fixed for deceased employees as per policy of the Federal Government Employees Housing Foundation, Islamabad for which the petitioner is required to apply, as and when, any scheme is announced by the said Foundation.

11. In the light of facts and circumstances of the case, this Petition is disposed of in above terms and the Competent Authority of Respondents is directed to consider case of the Petitioner against 2% quota for allotment of plot as per policy and her entitlement. This exercise shall be undertaken preferably within a period of three (03) months from the date of receipt of this order, in case of default the Petitioner shall be entitled for compensation in accordance with law.

JUDGE

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