

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

**Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D- 7941 of 2015**

Mst. Sabiha Ilyas .....Petitioner

Versus

The Federation of Pakistan  
& 02 others .....Respondents

Date of hearing: 19.08.2019

Date of Order: 19.08.2019

Mr. Abdul Shakoor, advocate for the Petitioner.  
Mr. Muhammad Nishat Warsi, DAG.  
Mr. Haroon-ur-Rehman, advocate for PTCL.  
Mr. Sakhiullah Chandio, advocate for Respondent No.3.

**O R D E R**

**ADNAN-UL-KARIM MEMON, J:-** By means of this petition, the Petitioner has asked for release of Family Pension in her favour being widow of the deceased Muhammad Ahmed Ilyas, pensioner of Pakistan Telecommunication Corporation (PTCL). Petitioner has also called in question the reply of legal Notice dated 19.11.2015 issued by Pakistan Telecommunication Employees Trust, whereby Family pension was denied to her, in view of Judgment dated 15.9.2017 and Decree of Khulla passed by the learned Family Court in Family Suit No. 987 of 2007. Petitioner has claimed that she is the only surviving legal heir of deceased Muhammad Ahmed Ilyas, who passed away on 23.01.2015. We asked from the learned Counsel for the petitioner to satisfy this Court as to how the petitioner is entitled for Family pension when she obtained a Decree of Khulla against Muhammad Ahmed Ilyas in the year 2007.

2. Mr. Abdul Shakoor, learned Counsel for the Petitioner replied that due to some differences with the deceased husband,

the Petitioner filed Family Suit No.987 of 2007 before Family judge Karachi East for Dissolution of Marriage by way of Khula and in due process, Khula was granted vide Judgment and Decree dated 15.9.2007; that her late husband resolved the dispute with the petitioner, during his life time, on the intervention of their elders; that petitioner after obtaining Fatwa from the Darul Afta, Jamia Darul Uloom Karachi rejoined Muhammad Ahmed Illayas as his legally wedded wife; that Union Council concerned did not revoke their Nikahnama; that after death of her husband, the petitioner approached the Respondent-Department for Family pension and same was replied vide impugned reply letter dated 19.11.2015; that impugned rejection letter dated 19.11.2015 is erroneous and is against the documentary evidence provided by the Petitioner; that the Petitioner stayed with deceased as his lawful wife till his death; that the CNIC issued by NADRA on 11.06.2013 is in her favour which indicates the relation of the Petitioner with the deceased; that the competent authority issued passport in favour of the Petitioner on 16.01.2015 in life time of the deceased; that the Municipal Administration Gulshan-e-Iqbal Town Karachi issued Death Registration Certificate dated 27.01.2015 on application of the petitioner; that the Government Quarter/Flat was handed over by the Petitioner to the relevant authority on 10.03.2015 being widow of the deceased; that Petitioner has been deprived of the Family pension; that the Family pension application was rejected on the sole ground that Khula was granted to the Petitioner by the Court in the year 2007 and ignored the subsequent evidence provided by the Petitioner to the Respondents and such plea has no substance in the light of evidence provided later on; that impugned rejection letter dated 19.11.2015 has been issued contrary to the true facts confirmed by the NADRA and Ministry of Interior Government of Pakistan by

virtue of Passport issued on 16.01.2015. He lastly prayed for allowing the instant Petition.

3. Mr. Sakhiullah Chandio, learned Counsel for Respondent No.3 has controverted the stance taken by the petitioner with the assertion that the instant petition is not maintainable.

4. Mr. Muhammad Nishat Warsi, DAG has taken the plea that after obtaining Khulla from the Family Court, petitioner is not entitled for family pension under the law.

5. We have heard learned Counsel for the parties and perused the record minutely.

6. From the pleadings of parties, an important question of law arises whether a divorced wife is entitled for Family pension?

7. To appreciate the aforesaid proposition, we are of the view that the Family Pension Scheme is in the nature of a Welfare scheme framed by the Government to provide relief to the widow and the minor children of the deceased Government servant. They are the real beneficiaries of the family pension amount to be sanctioned in the name of one or the other persons mentioned in pension Rules as per order of priority. The beneficiaries of such scheme are the persons who come under the fold of "Family" as defined under pension Rules.

8. Perusal of Record explicitly show that in the year 2007, the petitioner had obtained a Decree of Khulla from the learned Family Court vide judgment and Decree dated 15.9.2017 passed in Family Suit No. 987 of 2007. The claim of the petitioner that she rejoined her husband after dissolution of Marriage, in our view is immaterial in presence of judgment and Decree passed by the learned Family Court as discussed supra, for all practical purposes the wife of the deceased, after Khulla, her status in law cannot be recognized as a wife to claim status of Family for entitlement of Family pension, in law the term, "Family" appearing in the pension

Rules means wife/husband, minor sons and unmarried minor daughter of the deceased Government servant. Thus no other person except those designated in the order of priority under Rules are entitled to receive the Family pension for and on behalf of the Family as defined above. Law on the aforesaid proposition is very clear that a divorced wife or husband of the Government servant shall be deemed to have pre-deceased the Government servant and shall not be eligible for the Family pension.

9. As per record, we have noticed that at the time of retirement from service, deceased Muhammad Ahmed Illayas had submitted an application for grant of pension in the month of August, 2012 alongwith his specimen signature and List of Family Member, wherein he has not listed any family member. Record is silent whether deceased either intimated about his Marriage or intimated about any Decree of Khula to the Respondent-department. Per learned Counsel for the Respondents that in the title of the judgment and decree dated 15.9.2007 passed by the learned Family Court, the deceased is shown as resident of F-17, KDA Overseas Apartment, opposite Urdu Science College, Gulshan-e-Iqbal Karachi, the aforesaid residence was allotted to the deceased by the Respondent-PTCL being its serving employee, whereas the petitioner in the title of said Judgment and Decree is shown to be residing at Flat No.5, 2<sup>nd</sup> Floor, Gulshan Court, Block 13-C, Gulshan-e-Iqbal, Karachi, even her CNIC issued on 11.06.2013 at same residential address of Gulshan Court Flat.

10. Adverting to the claim of the petitioner that she rejoined Muhammad Ahmed Illayas after obtaining Fatwa dated 5th Muharum Al-Haram, 1429 Hijri is of no help to the petitioner, for the simple reason that Decree of Khulla for the purpose of present proceedings would still hold the field, besides the entire case is

based upon factual controversy which cannot be gone into by this court in exercising of its constitutional jurisdiction.

11. This being the position of law, the instant petition is accordingly dismissed. However the petitioner is at liberty to avail an appropriate remedy in accordance with law.

12. These are the reasons of our short order dated 19.8.2019, whereby we have dismissed the captioned petition.

**JUDGE**

**JUDGE**

`Nadir/PA`