

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-2113 of 2019.

Present:

**Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon**

Mst. Maryam Nizamani ----- Petitioner

VERSUS

Province of Sindh & others ----- Respondents

Date of hearing & decision: 02.09.2020

Mr. Agha Waqar Ahmed advocate for the petitioner.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh alongwith Mr. Shakeel Ahmed Qureshi focal person Education Department and Mr. Habibullah Soomro D.E.O. Hyderabad.

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant petition, the petitioner has prayed for issuance of directions to respondents-Education department Government of Sindh to pay her family pension on the premise that on 28.07.1978, her husband passed away during service as Assistant Science Teacher and he had the requisite length of service in his credit.

2. Relevant facts of the case are that the Petitioner is widow of Late Amanullah , who was an employee of respondent-education department and was appointed as Assistant Science Teacher High School Halepota, Hyderabad vide office order dated 10.2.1964 . Subsequently, vide office order dated 21.3.1970 he was reappointed against the said post and served the respondent-education department upto 1978. However, on 28.7.1978, the husband of the Petitioner namely Amanullah passed away while he was in service with the Respondents. After the death of her husband, Petitioner approached the Respondents from time to time and demanded service benefits pursuant to Family pension and dues accrued to deceased but she did not receive any response from them. Petitioner being aggrieved by and dissatisfied with the inaction on the part of Respondents has approached this Court through the instant Constitutional Petition.

3. The parawise comments on behalf of Respondents 3 and 4 were filed with the assertion that late husband of the petitioner served the respondent-department for about eight years, four months and seven days only as such deceased he did not possess minimum length of service viz. 10 years to be entitled for family pension and Rs. 3837.46/- in terms of gratuity have already been paid to the Petitioner vide letter dated 30.11.1978.

4. Mr. Agha Waqar Ahmed, learned counsel for the Petitioner has contended that the instant case pertains to pensionary benefits of deceased Amanullah, which have not been paid by the Respondents without any rhyme or reason, thereby, compelling the Petitioner to approach this Court. He next contended that deceased was serving the Respondent-department continuously for about 14 years prior to his demise and was entitled to pensionary benefits in accordance with pension Rules. He referred to pension rules and argued that the Petitioner is entitled to claim family pension as the husband of the Petitioner rendered his service more than 14 years with Respondent-department.

5. On the other hand, Mr. Allah Bachayo Soomro, Additional Advocate General Sindh has raised the question of maintainability of instant petition under Article 199 of the Constitution, however, he argued that deceased Amanullah did not possess minimum length of service viz. 10 years to be entitled for family pension and admittedly the deceased has less than 10 years' service, as such he was not entitled to be granted such relief under pension rules. He prayed for dismissal of the Petition.

6. Counsel for Petitioner, while exercising his right of rebuttal has argued that the case of Petitioner relates to pensionary benefits, and the Petitioner has been deprived of the same, which is in violation of fundamental rights of the Petitioner, as such the instant Petition is maintainable under Article 199 of the Constitution. It is contended by him that the services of a Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed. He next argued that temporary and officiating services shall also be counted for pension or gratuity; that the husband of petitioner served in Education Department for more than 14 years with effect from 1964 to 1978, therefore, he is entitled for pensionary benefits of the aforesaid period; that when a civil servant is first appointed against a post and later on joins department without any break in service, his period of previous service shall be treated as part of his services under pension rules.

7. We have heard learned counsel for the Petitioner, learned A.A.G. and have perused the entire material available on record. It would be

advantageous to reproduce (1) Rule 9.6(v) & (11) Civil Service Regulations 418 (b) which read, thus, respectively:--

(I) Rule 9.6.--.

"(i)

"(ii).....

"(iii)

"(iv).....

"(v) Only the service paid from the General Revenues qualifies for pension. Foreign Service also counts for pension, provided the pension contribution was paid as required under the rules. The effective service rendered by a Government servant in an autonomous or semi-autonomous body, in a post appointment to which is, by law, required to be made, and the salary of which is required to be fixed by the Federal Government or a Provincial Government is treated as effective service rendered in a post in Government service."

(II) CSR 418:

"(a)

(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service."

8. Perusal of above Rule and CSR clearly brings it to the fore that the protection given to the pay of a civil servant as also the counting of the period spent by a civil servant in his earlier appointment with an autonomous body towards his pensionary benefits does advance the case of the petitioner.

9. The basic arguments of learned counsel for the Petitioner is that deceased served the Respondents for ten years four months and fourteen days therefore, qualified for full pension since his death, in addition to monthly Benevolent Grant and Group Insurance. We do agree with the contention of learned counsel for the Petitioner that deceased having service tenure of ten years four months and fourteen days with the Respondents was entitled for full pensionary benefits, which were admissible to the pensioner, who qualify conditions as prescribed under the law. Since the deceased did qualify the minimum years of service as laid down under the pension rules whereby the qualifying service for being entitled to pensionary benefits is minimum 10 years, whereas, it is an admitted fact that deceased was an employee of Respondents and had served it initially with effect from 10.2.1964 to 18.2.1966 for a period of Two years and Eight days, thereafter he again served the department with effect from 21.3.1970 upto 28.7.1978

as such the deceased was entitled for regular pensionary benefits and other allied service benefits.

10. Prima facie, as per service book of the petitioner's late husband who has ten years four months and fourteen days service to his credit which is qualifying length of service for family pension. However, the temporary / substantive period of deceased employee had already been brought on a normal budget by regularizing his previous service as discussed supra which entitled the petitioner to claim family pensionary benefits of her late husband.

11. To add further, Article 371-A of Civil Service Regulations is clear in its terms that a government servant, not employed in a substantive permanent capacity, who has rendered more than five years continuous temporary service, counts such service for the purpose of pension or gratuity excluding broken periods of service, if any, rendered previously. Continuous temporary and officiating service of less than five years service immediately followed by confirmation shall also count for gratuity or pension, as the case may be.

12. Record reflects that petitioner's husband was appointed in the year 1964 on permanent post and he continuously served as such and then his employment was converted into regular service in the year 1970 with retrospective effect, and therefore, according to Articles 358, 371-A, 423 and 474 (b) of Civil Service Regulations, his previous service is countable to his regular service for the purpose of service / pensionary benefits and other fringe benefits, therefore, petitioner-widow is entitled to claim family pension. On the aforesaid proposition, we are fortified with the decisions of Hon'ble Supreme Court in the cases of Nafees Ahmad V/S Government of Pakistan and others, 2000 SCMR 1864, Ch. Muhammad Azim V/S The Chief Engineer, Irrigation and others, 1991 SCMR 255, and Chairman, Central Board of Revenue and others V/S Nawab Khan and others, 2010 SCMR 1399.

13. Since the petitioner's late husband served the respondent-education department in the year 1964 and his service was continued by another office order dated 21.3.1970, the principle set forth by the Hon'ble Supreme Court of Pakistan in the case of Messrs State Oil Company Limited V/S Bakht Sidique and others, (2018 SCMR 1181), is providing guidance on the issue involved in the matter, excerpt whereof is as under:

“3..... However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long term benefits, if any, available under the law, **they would be entitled**

from the date when they have joined the service of the petitioner.
All the petitions are accordingly dismissed." (Emphasis added)

14. In view of the above discussion, this petition is allowed with no order as to costs and the competent authority of respondents is directed to include employment of petitioner's late husband rendered with effect from 10.2.1964 to 18.2.1964 as his substantive service as regular for the purpose of service dues and other allied pensionary benefits. The competent authority of respondents is further directed to complete the entire exercise and recalculate and settle the pensionary / service dues of the petitioner's late husband and pay the same to the petitioner as per law within sixty (60) days from the date of this order.

JUDGE

JUDGE